

1999221 15010

**SECOND RESTATED GENERAL DECLARATION
FOR
BIG MOUNTAIN RESORT
FLATHEAD COUNTY, MONTANA**



This Second Restated General Declaration is made this 27 day of July, 1999 by Winter Sports, Inc., a Montana corporation, and constitutes the General Declaration for Big Mountain Resort, Flathead County, Montana.

SECOND RESTATEMENT SUPERCEDES PREVIOUS DECLARATIONS

(i) The General Declaration for Big Mountain Resort, dated September 2, 1992, was filed in the offices of the Clerk and Recorder of Flathead County, Montana on October 13, 1992, as Document No. 9228712390. A Restated General Declaration for Big Mountain Resort, Flathead County, Montana, dated October 20, 1994 was filed in the offices of the Clerk and Recorder of Flathead County, Montana on October 25, 1994 under Reception No. 9429808050. The Restated General Declaration for Big Mountain Resort of October 20, 1994 was amended by a document entitled Amendment of the Restated General Declaration for Big Mountain Resort, dated September 3, 1996 and recorded on September 19, 1996 under Reception No. 9626310060. The Restated General Declaration for Big Mountain Resort of October 20, 1994 was further amended by a document entitled Amendment of the Restated General Declaration for Big Mountain Resort dated December 7, 1996, and recorded on July 18, 1997, under Reception No. 199719909190. A Supplemental Declaration of Land Use Restrictions for Sun Rise Ridge Subdivision, Big Mountain Resort, Flathead County, Montana was recorded on September 29, 1992, under Reception No. 9228712420. A Restated Supplemental Declaration for Land Use Restrictions for Sun Rise Ridge Subdivision of the Big Mountain Resort, Flathead County, Montana was recorded on November 5, 1992, under Reception No. 9231114420. A Supplemental Declaration of Land Use Restrictions for Sun Rise Ridge Subdivision, Phase II, Big Mountain Resort, Flathead County, Montana, was recorded on September 27, 1993, under Reception No. 9333410010. A Supplemental Declaration of Land Use Restrictions for Sun Rise Ridge Subdivision, Phase III, Big Mountain Resort, Flathead County, Montana, was recorded on October 10, 1994, under Reception No. 9432511341. A Supplemental Declaration of Land Use Restrictions for Sun Rise Ridge Subdivision, Phase IV, Big Mountain Resort, Flathead County, Montana, was recorded on _____, 199__, under Reception No. _____.

(ii) At a special membership meeting of the Big Mountain Resort Association, held on June 10, 1999, and adjourned to and continued on June 17, 1999, this document entitled SECOND

RESTATED GENERAL DECLARATION FOR BIG MOUNTAIN RESORT was approved (a) by the Affirmative Vote of a Majority of the Classes as provided in Section 9.2 of the Restated General Declaration, and (b) by the approval of the Declarant, the Resort Association and the Owners of a majority of the Sites in each of Sun Rise Ridge; Sun Rise Ridge, Phase II; Sun Rise Ridge, Phase III; and Sun Rise Ridge, Phase IV, as provided in Section 6.3 of each of the Supplemental Declarations which are applicable to the said four Sun Rise Ridge phases.

(iii) The Second Restated General Declaration reflected by this instrument supersedes and replaces the original General Declaration, the Restated General Declaration, all Supplemental Declarations and all previous amendments to any of these documents, all of which are described in paragraph (i), above. The documents described in paragraph (i), above, are hereby terminated.

(iv) This Second Restated General Declaration is intended to facilitate the separation of the functions of a homeowners association from other functions that are of more general application throughout the entire Big Mountain Resort. Consequently, certain provisions of this Second Restated General Declaration shall be applicable only to certain residential subdivisions as described below, and other provisions of this Second Restated General Declaration shall be applicable to the entire Big Mountain Resort, all as provided below.

PROVISIONS APPLICABLE TO THE ENTIRE BIG MOUNTAIN RESORT

The following Articles I through IX, inclusive, shall be applicable to and binding upon all of the property described below as the Big Mountain Resort.

ARTICLE I. DECLARATION - PURPOSES

1.1 **General Purposes:** (a) Winter Sports, Inc. and Big Mountain Development Corporation, the Declarant, owns or owned the real property hereafter defined as BIG MOUNTAIN RESORT, and has developed and intends to develop or make available for development through one of its subsidiaries or others, said property as a recreational resort and self-contained village-like area designed to contain facilities and provide services, including lodging, food and beverage services, shops and merchandising areas, and entertainment and recreation opportunities, for all persons residing, visiting, or doing business within Big Mountain Resort.

(b) Big Mountain Homeowners Association, Inc., a Montana non-profit corporation, will perform certain functions for the common benefit of the owners of residential properties within certain residential areas of the Big Mountain Resort, as more specifically described in Articles X-XVII, below.

(c) Additional associations may be formed to perform certain functions for the common benefit of other owners, lessees or other members of such associations within the Big Mountain Resort.

(d) By the provisions contained in Articles I-IX of this Declaration, Declarant intends to establish certain general overall terms and conditions applicable to all of the associations that may be formed within the Big Mountain Resort and to create a pleasant and desirable environment for all persons residing, visiting or doing business therein.

1.2 **Declaration:** To further the general purposes herein expressed, Winter Sports, Inc. and Big Mountain Development Corporation, for itself, its successors and assigns, hereby declares that all real property hereinafter defined as Big Mountain Resort, including any property added to Big Mountain Resort as hereinafter provided, shall, at all times, be owned, held, used and occupied subject to the provisions contained in Articles I-IX of this Declaration and to the covenants, conditions and restrictions therein contained.

ARTICLE II. CERTAIN DEFINITIONS

2.1 **Association:** Association shall mean Big Mountain Homeowners Association, Inc. and any other association created by Declarant or approved in writing by Declarant as an approved association operating within the Big Mountain Resort.

2.2 **Big Mountain Resort:** "Big Mountain Resort" shall mean all of the real property located in Flathead County, Montana, described in Exhibit "A" attached hereto, as well as all real property which becomes part of Big Mountain Resort, as provided in this Section 2.2, and excluding all real property deleted from Big Mountain Resort as provided in this Section 2.2. Additional real property within Flathead County, Montana, may become part of Big Mountain Resort and in such event shall be deemed to be within Big Mountain Resort and subject to all of the provisions contained in Articles I-IX of this Declaration, only upon recording in the office of the Clerk and Recorder of Flathead County, Montana, a written instrument signed by Declarant containing a legal description of the additional real property and declaring that said additional real property shall become part of and shall be deemed to be within Big Mountain Resort. Only real property owned or leased by Declarant or its subsidiaries at the time it is declared to be part of Big Mountain Resort may become part of Big Mountain Resort. Any real property included in the definition of Big Mountain Resort pursuant to this Section 2.2, which is hereafter incorporated as or becomes part of a municipal corporation, may be excluded from and be deemed outside of Big Mountain Resort by the action and consent of Declarant. The properties deemed outside of Big Mountain Resort shall be reflected by a written instrument signed by the Declarant containing a legal description of the real property to be excluded in declaring that said real property shall be deemed to be outside Big Mountain Resort.

2.3 **Declarant:** Declarant shall mean Winter Sports, Inc. and/or Big Mountain Development Corporation, Montana corporations, and any party which (a) acquires from Declarant

all or substantially all of its property at Big Mountain Resort and (b) prior to or at the time of such acquisition is designated by a written instrument as a successor or assignee of Declarant under Articles I-IX of this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case Winter Sports, Inc. shall retain all other rights as Declarant.

2.4 **Declaration:** Declaration shall mean Articles I-IX of this amended superseding instrument, as such Articles may be amended from time to time.

2.5 **Dwelling Unit:** Dwelling Unit shall mean one or more rooms designed for or which may be readily occupied exclusively by one family or a group of people living independently from another family or group of people, and having not more than one cooking facility.

2.6 **Guest:** Guest shall mean any customer, agent, employee, guest or invitee of an Owner, Lessee, Lodge and any person or persons, entity or entities, who have any right, title or interest in a Site which is not the fee simple title to the Site and any customer, agent, employee, guest or invitee of such person or persons, entity or entities.

2.7 **Lessee:** Lessee shall mean the person or persons, entity or entities who are the lessees of any part or all of a Site or any space within a building on the Site. The term "Lessee" shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee. It shall not include any Association or any governmental entity (which term shall include but is not limited to special districts formed pursuant to Montana law).

2.8 **Lodge:** A Lodge shall mean a building used for the accommodation of tourists, transients, or permanent guests for compensation, but shall not include Dwelling Units. However, if the term Lodge is defined in some other manner in the Master Plan, the term Lodge shall have the meaning set forth in the Master Plan.

2.9 **Master Plan:** Master Plan shall mean the Master Plan of Big Mountain as amended or supplemented from time to time, which has been approved or is hereafter approved by the Declarant.

2.10 **Owner:** Owner shall mean the person or persons, entity or entities who own of record, according to the real property records of Flathead County, Montana, fee simple title to a Site, except that a person purchasing a Site under a contract for deed which is recorded (or an abstract of which is recorded) in the records of Flathead County, Montana, shall be considered the Owner of the Site. The term "Owner" shall include Declarant to the extent it is the owner of fee simple title to a Site.

2.11 **Review Board:** Review Board shall mean the Design Review Board established pursuant to Article VIII of this Declaration.

2.12 **Site:** Site shall mean each parcel of real property within Big Mountain Resort, the fee simple interest of which may be conveyed in its entirety to a third party without violating the subdivision regulations of Flathead County, Montana, as in effect from time to time, including each condominium unit as that term is defined in the Unit Ownership Act of the State of Montana, and including any such parcel or condominium unit owned by Declarant. A parcel of property owned, held or used in its entirety by an Association or by any governmental entity (which term shall include but is not limited to Special Districts formed pursuant to Montana law), or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service or for access to any property within or without Big Mountain Resort shall not be considered a Site.

ARTICLE III. CERTAIN OBLIGATIONS AND RIGHTS OF ASSOCIATIONS

Each Association shall have such obligations and rights and may undertake such functions as may be provided for in that Association's governing documents, consistent with the provisions of this Declaration. The functions may include the following:

3.1 **Property Maintenance Function:**

(a) An Association may be responsible for the maintenance, repair and replacement of any common properties over which the Association has jurisdiction, to include but not be limited to snow control in the common areas, road maintenance within the common areas, general maintenance of the common areas, and maintenance care of the open space, plants, trees, and shrubs, all as is more particularly provided by the Association's governing documents.

(b) Declarant or other entities designated by Declarant shall be responsible for the maintenance and repair of all properties outside of and not included in the common areas over which an Association has jurisdiction.

3.2 **Operation Function:** Declarant and all Associations shall cooperate in efforts to keep and maintain Big Mountain Resort as a safe, attractive and desirable community.

3.3 **Public Health and Safety Function:** Declarant and any Association may provide public health and safety services, including but not limited to, providing health care services and facilities, security system, fire protection facilities, and a fire water system which may include periodic fire prevention inspections and equipment certifications.

3.4 **Parking Function:** Declarant and any Association may construct, purchase, lease, care for, operate, manage, maintain, repair, or replace parking areas within their particular areas of jurisdiction to accommodate Owners, Lessees and Guests. The parking function includes, but is not limited to installation and maintenance of signs, landscaping, and other similar facilities appurtenant to said parking areas. Each entity shall have the responsibility of removal of snow from and the cleaning of its parking areas. Declarant and/or any Associations may associate with each other in providing parking.

3.5 Transportation Function: Declarant and any Association may provide or associate with each other in providing for the operation, maintenance and repair of a transportation system to the extent and in accord with any agreement reached between the relevant parties. Said transportation function may extend and service residential, commercial, and open areas of the Big Mountain Resort and may extend to adjacent non-resort areas, to include but not be limited to the City of Whitefish and environs. Such transportation system may include, but is not limited to, bus, auto, or overhead transportation, and encompasses all facilities necessary and appropriate for the proper operation and maintenance of said system.

3.6 Recreational Function: Declarant and any Association may provide or associate with each other in providing a year-round recreational program of suitable variety and such miscellaneous equipment as may be necessary therefor, including but not limited to, informing visitors of recreation available and stimulating their participation therein; conducting, operating, managing and maintaining programs for children, including but not limited to, day care facilities and such miscellaneous equipment as may be appropriate for use in connection therewith; conducting, caring for, operating, managing, maintaining, repairing and replacing within Big Mountain Resort swimming pools, ice rinks, sauna or steam baths, golf courses, trails of various kinds, concerts and concert facilities, horseback riding stables, tennis courts, game courts, game areas and other recreational amenities, and such miscellaneous equipment as may be appropriate for use in connection therewith; and removing snow from and cleaning such facilities as necessary to permit their full use and enjoyment.

3.7 Central Reservations Function: Declarant and any Association may provide or associate with each other in providing a central reservation service for Owners or Lessees of a Lodge or a Dwelling Unit, which service may include the administration of a complimentary room pool and the performance of related travel arrangement services.

3.8 Marketing Function: Declarant and any Association may provide or associate with each other in providing a suitable and continuing program to promote Big Mountain Resort and the Big Mountain Resort Ski Area as a desirable year-round destination resort, including but not limited to, advertising the Big Mountain Resort Ski Area, stimulating and coordinating major events, advertising and placing articles in news media, establishing uniform standards for promotional programs of individual members, involvement in lecture tours and ski shows, encouraging responsible groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers and buying space for the accommodation of Guests.

3.9 Solid Waste Collection and Disposal Function: Declarant and any Association may provide or associate with each other in providing for the collection, removal and disposal of all solid waste within their particular areas of jurisdiction, including but not limited to the construction, operation and maintenance of centralized waste disposal facilities, and the possible production and sale of any energy generated in connection therewith.

3.10 Pet Control Function: Declarant and any Association may provide or associate with each other in providing regulations, facilities, manpower and funds to enforce pet control or exclude pets from within their particular areas of jurisdiction. Declarant and any Association may provide or associate with each other in providing reasonable facilities for the keeping and care of Owners', Lessees' and Guests' pets.

3.11 Environmental Monitoring Function: Declarant and any Association may provide or associate with each other in providing for monitoring of air and water quality within their particular areas of jurisdiction to determine trends, to detect violation of state pollution laws and may control and enforce fireplace or any wood or pellet burning appliance construction, installation and utilization pursuant to regulations suggested by the Declarant or an Association.

3.12 Other Functions: The Declarant and any Association may undertake and perform other such other functions as permitted under their governing documents, provided that such functions do not conflict with the provisions contained in Articles I-IX of this Declaration.

3.13 Insurance: Declarant and each Association shall be required to obtain and keep in full force and effect broad form, comprehensive combined single limit liability insurance covering bodily injury and property damage with underlying limits no less than \$1,000,000 per occurrence, and \$2,000,000 aggregate, along with a \$4,000,000 umbrella, with coverage to include comprehensive general liability and auto (or non-owned and hired auto). These coverage amounts may be increased from time to time by Declarant in accordance with good business practice. All insurance may contain such deductible provisions as good business practice may dictate. All such insurance for each Association shall name Declarant as an additional named insured, and shall, to the extent reasonably possible, cover each Owner and Lessee without each Owner and Lessee being specifically named. Declarant may elect to self-insure all or any potential liability.

3.14 Indemnification: Each Association shall be obligated to and shall indemnify Declarant and hold it harmless from all liability, loss, cost, damage and expense, including attorneys' fees, arising with respect to the operations of that Association or the Common Areas or other property or functions of that Association.

3.15 Right to Make Rules and Regulations: Each Association shall be authorized to and shall have the power to adopt, amend and enforce rules and regulations applicable to the common area, other property and functions of that Association; provided, however, that no such rules and regulations shall be effective without the prior written consent of Declarant, which consent will not be unreasonably withheld. All rules and regulations adopted by an Association shall be uniformly applied, except such rules may differentiate between reasonable categories of Sites, Owners, Lessees or Guests. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from common area, other property and functions of the Association, or otherwise. Each Owner, Lessee and Guest shall be obligated to and shall comply with and abide by such rules and regulations and pay such fines and penalties upon failure to comply with or abide by such rules and regulations, and such

unpaid fines and penalties shall be enforceable in accordance with the governing documents of the Association.

3.16 Taxes: The Declarant and each Association shall be required to pay in a timely fashion all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with any property owned by such entity.

3.17 Right to Dispose of Facilities: No Association may sell, lease, grant rights in, transfer, encumber, abandon or dispose of any common area owned by it without the prior written consent of Declarant.

3.18 Governmental Successor: No Association may turn over to any governmental entity any common area owned by it without the prior written consent of Declarant.

ARTICLE IV. ASSOCIATION MEMBERSHIP

4.1 Association: The governing documents of each Association shall specify who shall be members of that Association. If membership in the Association results from ownership of property, Declarant shall be a member of the Association if Declarant owns property subject to the Association.

4.2 Declarant: In addition to Declarant's rights, if any, as a member of any Association under Section 4.1, in order to facilitate communication between Declarant and the Associations and their members, Declarant shall be permitted to appoint one ex-officio, non-voting member to the Board of Directors or other governing body of each Association. Such ex-officio, non-voting member shall have all of the rights and responsibilities of other Board members, except that such member shall not be entitled to vote. Such member shall be entitled to attend meetings of the Board of Directors and all meeting of members of the Association. Whenever any Association communicates with its members, Declarant shall simultaneously be provided with a copy of all such communications. If requested to do so, each Association shall provide Declarant with the names and addresses of its members so that Declarant may communicate with such members.

ARTICLE V. ASSESSMENTS

5.1 Assessments by Associations: An Association may establish assessments as permitted in its governing documents.

5.2 Transfer Assessment: The Declarant, for each Site owned within the Properties by the Declarant, hereby covenants and agrees, and each Owner of any Site, by acceptance of the deed therefore whether or not it shall be so expressed in such deed (including all deeds recorded after the

General Declaration for Big Mountain Resort, dated September 2, 1992, was filed in the offices of the Clerk and Recorder of Flathead County, Montana on October 13, 1992, as Document No. 9228712390), is deemed to covenant and agree, to pay a transfer assessment as provided in this Section 5.2. Transfer assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Sites against which each such assessment is made. The assessments shall also be the personal obligation of the Owner(s) of the Sites at the time the assessments were due.

5.2.1 Transfer assessments shall be payable as follows:

(a) Seventy-five percent (75%) to Declarant. Declarant shall use such funds only for construction or repair of capital improvements which benefit all Owners of Big Mountain Resort, and not for general operating funds. By way of example, such projects may include but not be limited to projects to provide the functions outlined in Sections 3.3, 3.4, 3.5, and 3.10.

(b) Twenty-five percent (25%) to the Association that has jurisdiction over the common area associated with the Site that is sold triggering the transfer assessment. The Association shall use such funds only for construction or repair of capital improvements which benefit the members of the Association (or the members of the Association and others), and not for general operating funds.

5.2.2 Declarant may, from time to time, discontinue the transfer assessment or reinstate the transfer assessment, provided that no such change shall occur less than one year from the previous change.

5.2.3 The transfer assessment shall not exceed the sum of one percent (1%) of the Fair Market Value of the Site transferred. The percentage rate (hereafter referred to as the "Real Estate Transfer Assessment Rate") shall be determined from time to time by Declarant, but shall not exceed one percent (1%).

5.2.4 If adopted, the following rules apply to the transfer assessment.

(i) **General.** If such assessment is adopted, upon the occurrence of a transfer as defined below, the transferor under such transfer shall pay to the Declarant, for the uses and purposes set forth above, a real estate transfer assessment (the "Real Estate Transfer Assessment") equal to the Fair Market Value, as defined below, of the Site subjected to transfer, multiplied by the Real Estate Transfer Assessment Rate.

(ii) **Definitions.**

A. **Transfer.** For purposes of this Section 5.2, "transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership of any Site, including but not limited to (1) the

conveyance of fee simple title to any Site, (2) the transfer of more than 50 percent of the outstanding shares, membership interests, partnership interests or other ownership interests of a corporation, limited liability company, partnership or other entity which, directly or indirectly, owns one or more sites.

- B. **Transferor.** For purposes of this Section 5.2, "transferor" means and includes all parties from whom any interest passes by a transfer, and each party included in the term "transferor" shall have joint and several liability for all obligations of the transferor under this Section.
- C. **Fair Market Value.** In the case of a transfer that is in all respects a bona fide sale, "fair market value" of the Site subjected to transfer shall be the consideration, as such term is defined below, given for the transfer. A transferor may make written objection to the Declarant's determination within 15 days after the Declarant has given notice of such determination, in which event the Declarant shall obtain an appraisal, at the transferor's sole expense, from a real estate appraiser of good reputation, who is qualified to perform appraisals in Montana, who is familiar with Flathead County real estate values, and who shall be selected by the Declarant. The appraisal so obtained shall be binding on both the Declarant and the transferor. The above provisions to the contrary notwithstanding, where a transferor does not make a full report of a transfer within 15 days after the time required by this Section for making such report, the transferor shall be deemed to have waived all right of objection concerning fair market value, and the Declarant's determination of such value shall be binding.
- D. **Consideration.** For purposes of this Section 5.2, "consideration" means and includes the total of money paid and the fair market value of any property delivered, or contracted to be paid or delivered, in return for the transfer of any site. The term "consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Montana, or a municipal or quasi-municipal governmental corporation or district.

(iii) **Exclusions.** The Real Estate Transfer Assessment shall not apply to any of the following, except to the extent that they are used for the purpose of avoiding the Real Estate Transfer Assessment.

- (A) Any transfer to the United States, or any agency or instrumentality thereof, the State of Montana, any County, City and County, Municipality, District or other political subdivision of this State.
- (B) Any transfer to any Association or its successors.
- (C) Any transfer from Declarant to a successor of Declarant, wherein the successor succeeds to all of the rights or part of the rights of Declarant, as Declarant under the Declaration.
- (D) Any transfer from Declarant (including a successor of Declarant) or a subsidiary, partner, joint venturer or other entity related to Declarant (including a successor of Declarant) to any third party, including without limitation, to any individual purchaser of a Site, and any subsidiary, partner, joint venturer or other entity.
- (E) Any transfer made by a building contractor (1) who acquired the Site pursuant to a transaction which was exempt from the Real Estate Transfer Assessment for a reason provided herein, and (2) thereafter constructed improvements thereon for speculative purposes which the contractor sold following completion; provided, however, that this exclusion shall not apply to any transfer which occurs more than 1 year after the improvements are occupied.
- (F) Any transfer, whether outright or in trust, that is for the benefit of the transferor or his relatives, but only if there is no more than nominal consideration for the transfer. For the purposes of this exclusion, the relatives of a transferor shall include all lineal descendants of any grandparent of the transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion. For the purposes of this exclusion, a distribution from a trust shall be treated as a transfer made by the grantors of the trust, in the proportions of their respective total contributions to the trust.
- (G) Any transfer arising solely from the termination of a joint tenancy or the partition of property held under common ownership, except to the extent that additional consideration is paid in connection therewith.
- (H) Any transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution.
- (I) Any transfer made (1) by a subsidiary to a parent corporation or by a parent corporation to a subsidiary for no consideration other than

issuance, cancellation or surrender of the subsidiary's stock, or (2) by an Owner to a corporation, partnership, joint-venture, limited liability company or other entity in which the Owner has not less than a 50% interest, or by a corporation, partnership, joint-venture, limited liability company or other entity to a shareholder, partner, joint-venturer or member holding not less than a 50% interest in such partnership or joint-venturer, or (3) by a corporation in connection with the liquidation of such corporation if the Site is transferred generally prorata to its shareholders and no consideration is paid other than the cancellation of such corporation's stock.

- (J) Any transfer made solely for the purpose of confirming, correcting, modifying or supplementing a transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses, and any exchange of lots between Declarant and any original purchaser from Declarant of the one or more lots being transferred to Declarant in such exchange.
- (K) Any transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a condemnation proceeding, but only where such decree or order would otherwise have the effect of causing the occurrence of a second assessable transfer in a series of transactions which includes only one effective transfer of the right to use or enjoyment of a Site.
- (L) Any lease of any Site (or assignment or transfer of any interest in any such lease) for a period of less than thirty years.
- (M) Any transfer solely of minerals or interests in minerals.
- (N) Any transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including transfers in connection with foreclosure of a deed of trust or mortgage or transfers in connection with a deed given in lieu of foreclosure.
- (O) The subsequent transfer(s) of a Site involved in a "tax free" or "tax deferred" trade under the revenue code wherein the interim owner acquires property for the sole purpose of reselling that property within 30 days after the trade. In these cases, the first transfer of title is subject to Real Estate Transfer Assessment and subsequent transfers will only be exempt as long as a transfer assessment has been paid in connection with the first transfer of such Site in such exchange.

(iv) **Payment Reports.** The Real Estate Transfer Assessment shall be due and payable by the transferor to the Declarant at the time of the transfer giving rise to such Real Estate Transfer Assessment. With such payment the transferor shall make a written report to the Declarant prescribed by the Association, fully describing the transfer and setting forth the true, complete and actual consideration for the transfer, the names of the parties thereto, the legal description of the Site transferred, and such other information as the Declarant may reasonably require.

5.3 General Provisions. Any payment or report required hereunder to be made to the Declarant shall be deemed to have been made in a timely fashion if sent to the principal office of the Declarant by first class mail, postage prepaid, and postmarked no later than the date such payment or report is due, provided the Declarant thereby actually receives such payment or report. The Declarant at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any member which are reasonably related to such member's obligations hereunder to pay assessments or make reports to the Declarant. If any portion of any assessment hereunder is not paid when due and payable, such portion shall bear simple interest at the rate of 12 percent per annum from the date due until paid, and the amount of such interest shall for all purposes hereunder (other than the computation of such interest) be added to and become part of the assessment; provided that the Declarant may in its discretion waive all or any part of such interest for reasonable cause shown. The Declarant shall have power to collect any part of any assessment not paid when due and to enforce any other obligations of any member under this Article V by any legal means available to it. Each Owner shall hold harmless and indemnify the Declarant and its agents and employees from and against any and all costs, losses, obligations, penalties, expenses, liabilities, and damages of every kind whatsoever, including court costs and all reasonable attorney's fees, incurred by or imposed upon the Declarant or any of its agents or employees in the collection of such Owner's or member's assessments hereunder which are not paid when due or otherwise in the enforcement of any of such Owner's or member's obligations under this Article V. The Declarant shall have power to determine any matter and to resolve any dispute arising out of the application, determination, payment and collection of any assessment or the making of any report provided for in this Article V, and may promulgate such additional rules and regulations which are consistent with the provisions hereof as the Declarant may deem necessary, useful or appropriate to the reasonable and efficient administration of such provisions.

ARTICLE VI. CERTAIN RIGHTS OF DECLARANT, OWNERS AND LESSEES

6.1 Reserved Rights with Respect to Property Furnished by Declarant: Whether or not expressed at the time, all real property conveyed by Declarant to an Association shall at all times remain subject to: existing easements for utilities, including gas, electricity, water, sewer, telephone, television or other utility services, and for intercommunication, alarm or other similar systems; existing easements for parking purposes; existing easements in favor of Declarant and Declarant's customers, lessees and assignees; existing easements for ingress, egress and access for the benefit of other property in the vicinity of Big Mountain Resort; and easements as provided in Section 6.2.

6.2 Easements to Owners: Declarant grants to each Owner, Owner's Lessees, and Guests a non-exclusive easement over, upon, and across roads within Big Mountain Resort as appropriate and necessary for access, ingress and egress to the Site of such Owner, Lessee, or Guest. The location of such roads shall be determined by Declarant and may be changed from time to time by Declarant at Declarant's expense. The use of such roads shall be subject to such reasonable and uniformly applied rules and regulations as Declarant may impose to assure reasonable use and enjoyment of such roads by all persons entitled to such use and enjoyment. In addition, each Owner shall have an easement for encroachment by improvements caused by the settling, rising or shifting of earth; and for horizontal and lateral support of improvements.

6.3 Owner's Rights and Obligations Appurtenant: All rights, easements and obligations of an Owner under this Declaration and all rights of an Owner with respect to membership in any Association formed pursuant to this Declaration are hereby declared to be and shall be appurtenant to the title to the Site owned by such Owner and may not be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from fee simple title to such Owner's Site. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of a Site shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance or transfer or disposition of such rights and obligations.

6.4 Assignment of Rights or Obligations: An Owner may assign or delegate to a Lessee, Guest or other person all or a portion of his rights under this Declaration and may enter into an arrangement with such assignee under which the assignee shall agree to assume all or a portion of such Owner's obligations hereunder as an Owner or member of any Association. All Associations shall recognize any such assignment or delegation of rights or arrangements for assumption of obligations, provided that, to be effective with Declarant or any other Owner, the assignment or delegation of rights or arrangement for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and such assignment shall not be effective as to the Association until a copy thereof shall be filed with and approved by the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve himself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period he is an Owner.

6.5 Right to Participate in Rental Pool: Each Owner shall be permitted to rent any residential Dwelling Unit on a long- or short-term basis. To facilitate such rental, each Owner may participate in a rental pool arrangement with Declarant or others. No Association shall take any action which would prevent or hinder such participation in a rental pool.

6.6 Resort Uses: The Big Mountain Resort is a growing and active outdoor year-round recreational resort. The parties agree that, with respect to those parts of the Big Mountain Resort owned or leased by Declarant or its affiliates or assigns, Declarant and its affiliates and assigns shall be permitted to operate, maintain, expand, modify and control all activities in which the Resort is or may become involved including, but not limited to, downhill and cross-country skiing, snowboarding, snowmobiling, snow plowing, snow making, grooming, trail making and maintenance, night skiing, night operations, climbing, parasailing, blade-running, roller-blading, in-

line skating, bike riding, hiking, horse-back riding, wagon rides, other recreational activities, musical concerts, commercial and restaurant establishments, residential and business development, real property acquisition, construction, modification, facility and equipment maintenance, landscaping, tree removal and thinning, avalanche control and other blasting, development or subdivision, or any other land use activities or any other activities, noise, sound, lighting, dust, music, or other effects of any activities, by or on behalf of Declarant or its affiliates, parent companies, subsidiaries, agents, servants, tenants, guests, licensees, invitees, lessees, employees, successors or assigns. None of such activities shall be deemed or considered to be a nuisance or a violation of any express or implied covenant or warranty.

ARTICLE VII. RESTRICTIONS APPLICABLE TO BIG MOUNTAIN RESORT

7.1 Property: The term "Property" as used in Article VII and VIII of this Declaration shall mean Big Mountain Resort, as defined in Section 2.2, above, including public or private streets, roads, common areas and any public or private easements or rights-of-ways and including any and all improvements on any of the foregoing.

7.2 Land Use Restrictions: In addition to the restrictions found in this Article VII, all or any portion of the Property to be sold or leased by Declarant may be further restricted in its use, density or design by Declarant according to one or more Supplemental Declarations of Land Use Restrictions for Big Mountain Resort recorded with the Clerk and Recorder of Flathead County, Montana, prior to the time Declarant transfers or conveys any such Property to any Association or to any third party.

7.3 Occupancy Limitations: No portion of any Property shall be used as a residence or for living or sleeping purposes other than a room designed for living or sleeping in a completed structure for which a certificate of occupancy, if applicable, has been issued. No room in any structure shall be used for living and sleeping purposes by more persons than it was designed to accommodate comfortably, except as expressly permitted in writing by the Design Review Board.

7.4 Maintenance of Property: All Property, including all improvements on any Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair.

7.5 No Noxious or Offensive Activity: No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property which is or may become a nuisance or cause any significant embarrassment, disturbance or annoyance to others.

7.6 No Hazardous Activities: No activities shall be conducted on any Property and no improvements constructed on any Property which are or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property; and no open fires shall be lighted or permitted on any Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed

interior fireplace or other wood or pellet burning appliance (except campfires or picnic fires on Property designated for such use by Declarant or by the relevant association(s) and controlled and attended fires authorized in writing by Declarant or the relevant association(s) and required for clearing or maintenance of land). Blasting as approved by relevant authorities will not be considered a hazardous activity for the purposes of this section.

7.7 No Unsightliness: No unsightliness shall be permitted on any Property. Without limiting the generality of the foregoing: (a) All unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure; (b) Trailers, mobile homes, trucks (except pickups), boats, tractors, all vehicles (except automobiles), campers not on a truck, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment may be parked on parking lots or other areas specifically designated by the Design Review Board or Declarant; (c) Refuse, garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure; (d) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure; (e) Pipes for water, gas, sewer, drainage or other purposes, wires, poles, antennas, satellite dishes, and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground; and (f) No lumber, grass, shrub or tree clippings or plant waste, compost, metals, bulk materials, scrap, refuse, trash, or unused items of any kind shall be kept, stored or allowed to accumulate on any property, provided that Declarant and any Association may maintain shops or storage areas for its equipment and materials that are reasonably shielded so as not to be unsightly.

7.8 No Annoying Lights, Sounds or Odors: No light shall be emitted from any Property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Property which is unreasonably loud or annoying; and no odor shall be emitted from any Property which is noxious or offensive to others.

7.9 Restriction on Animals: No animals shall be kept on any Site, except that an Owner may maintain a total of not more than two cats, dogs or other household pets which do not unreasonably bother or constitute a nuisance to others. However, said pets shall be allowed on a Site subject to the provisions of Section 3.11 and Section 7.23 and such additional restrictions pertaining to the keeping of animals on any Site as may be established by the applicable Association, provided that the commercial raising of animals shall be prohibited. The Declarant may maintain or allow horses, mules or llamas for use in commercial activities in those areas subject to the specific control of Declarant. Any use of such animals or allowance of animals within a residential subdivision area shall solely be at the approval of the Board of Directors of the applicable Association.

7.10 Restriction on Signs: No signs or advertising devices of any nature shall be erected or maintained on any property except signs approved by the Declarant or the Design Review Board in accordance with their Signage Regulations, signs required by law or legal proceedings, temporary

signs to caution or warn of danger, or signs necessary or desirable to give directions or advise of rules or regulations.

7.11 Restriction on Parking: Parking of vehicles on Property is permitted with respect to a Site only within designated parking spaces constructed with the prior approval of the Design Review Board and such parking shall be used only by an Owner or Lessee of such Site or their guests. Each Association shall control parking on streets which constitute common area under the jurisdiction of that Association, subject to the reserved rights of Declarant contained in Article VI, above. Notwithstanding the above, Declarant may permit parking on such streets for the temporary parking of maintenance and delivery vehicles, for the purpose of assisting in a maintenance operation or to provide for the loading or unloading of such vehicles, or to accommodate special circumstance.

7.12 Restriction on Recreational Vehicles: No motorcycle, motorbike, ski mobile, golf cart or other motorized recreational vehicle shall be operated within or on Property except as otherwise specifically permitted by rules and regulations established by Declarant for those areas under its jurisdiction, and an Association for those areas under its jurisdiction, except that Declarant may use such vehicles to maintain ski trails and other recreational facilities.

7.13 Restriction on Fireplaces: Except as permitted in writing by the Design Review Board there shall be no wood-burning fireplaces or any other wood or pellet-burning appliances in any Dwelling Unit or within the guest rooms of a Lodge. Each wood-burning fireplace or appliance built shall have an outside air intake and be provided with glass doors at the hearth except as otherwise authorized in writing by the Review Board. No wood-burning fireplace or appliance shall be operated during periods of adverse meteorological conditions or adverse air pollution conditions as determined by the Declarant or public governmental entity.

7.14 Drainage Restriction: As to the natural drainage of any Property, there shall be no drainage into any sewer system on any Property except by means of storm sewers constructed for that purpose.

7.15 No Wells: No water wells shall be permitted on any Property without the prior written approval of the Declarant.

7.16 Landscape Restriction: No tree of three inches or greater diameter, or eight feet or greater height, may be removed from any Property without the prior written approval of the Design Review Board, except that Declarant may remove trees from Property under the jurisdiction of the Declarant without such approval. Vegetation on all Property must be maintained to minimize erosion and encourage growth of ground cover and all tree and shrub planting must be consistent with the landscaping plans approved by the Design Review Board or by Declarant. Any landscape fertilizer to be used must be of a type and quantity approved by the Design Review Board.

7.17 No Mining and Drilling: No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons or precious

metals, except that Declarant may remove and use rocks, stones, gravel or earth from Property under the jurisdiction of the Declarant for construction, operation and maintenance purposes.

7.18 No Cesspools or Septic Tanks: No cesspools or septic tanks shall be permitted on any Property without the prior written approval of the Declarant. Sewage disposal systems shall be installed pursuant to the regulations of the Big Mountain Resort Sewer District, or any successor in interest thereto.

7.19 No Fences: No fences, walls or other barriers shall be permitted, including fences enclosing or demarcating any property boundaries, without the prior written approval of the Design Review Board, except that Declarant may construct fences, walls or other barriers on Property under the jurisdiction of the Declarant without such approval.

7.20 Construction Period Exception: During the course of actual construction of any permitted structures or improvements on any Property, the Design Review Board, by written instrument, may waive certain provisions contained in this Article VII to the extent necessary to permit such construction, provided that, during the course of such construction, nothing is done which will result in a violation of any of such provisions upon completion of construction.

7.21 Compliance With Law: No Property shall be used, occupied, altered, charged, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Montana, County of Flathead, and all other municipal, governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials.

7.22 Condominium Ownership: Prior to the recording in the real property records of Flathead County, Montana of an instrument submitting any portion of the Property to condominium ownership, the owner of such Property shall submit to the Declarant for its review and approval copies of the proposed Condominium Declaration, Articles of Incorporation, and By-Laws of the condominium owners association. On or before 30 days after the submittal of such documents, the Declarant shall approve or disapprove the documents by written notice to such owner. If such documents are disapproved, the Declarant shall set forth the specific returns for such disapproval.

7.23 Additional Covenants, Conditions and Restrictions: By specific provision in any deed from Declarant, Declarant may subject any Property to be conveyed by such deed to particular covenants, conditions or restrictions applicable to the particular Property conveyed by such deed.

7.24 Real Estate Sales: Declarant and one or more of its subsidiaries may establish and maintain real estate sales and leasing offices and model improvements on any Site.

ARTICLE VIII. DESIGN REVIEW

8.1 Purpose: In order to preserve the natural beauty of Big Mountain Resort and its setting, to maintain Big Mountain Resort as a pleasant and desirable environment, to establish and preserve a harmonious design for the recreational resort and community, and to protect and promote the value of Property, exterior design, landscaping and use of all new development and additions, changes or alterations to existing use, landscaping and exterior design and development shall be subject to design review.

8.2 Objectives: Design review shall be directed towards attaining the following objectives for Big Mountain Resort:

(1) Preventing excessive or unsightly grading, indiscriminate earthmoving or clearing of Property, removal of trees and vegetation which could cause disruption of natural watercourses or scar natural land forms.

(2) That the location and configuration of structures are visually harmonious with the terrain and vegetation of the Site and with surrounding Sites and structures, and do not unnecessarily block scenic views from existing buildings or tend to dominate any general development or the natural landscape.

(3) That the architectural design of structures and their materials and colors are visually harmonious with Big Mountain Resort's overall appearance, history and cultural heritage, with surrounding development, with natural landforms and native vegetation, and with development plans, zoning requirements and other restrictions officially approved by Declarant or any government or public authority, if any, for the areas in which the structures are proposed to be located.

(4) That plans for the landscaping of open spaces provide visually pleasing settings for structures on such Sites and on adjoining and nearby Sites and blend harmoniously with the natural landscape.

(5) That any development, structure, building or landscaping complies with the provisions of this Declaration, including but not limited to, those provisions set forth in Article VII.

(6) That building design and construction techniques respond to energy consumption and environmental quality considerations such as heat loss, air emissions, and run-off water quality.

(7) That design of Dwelling Units and Lodges provide rooms of types and standards generally consistent throughout Big Mountain Resort.

8.3 Design Review Board: (a) Declarant may establish a Design Review Board which shall have such representation as Declarant determines from time to time. Declarant shall appoint all members of the Design Review Board. Initially, the Design Review Board shall have three (3) members, and one such member shall be a member of the Big Mountain Homeowners Association, Inc. appointed by Declarant. If additional Associations are formed, Declarant may elect to appoint members from such Associations to the Design Review Board. Declarant may, from time to time increase or decrease the number of members of the Design Review Board. The regular term of office for any member appointed to the Design Review Board shall be one (1) year. Declarant may remove and replace any member. In the event of a vacancy on the Design Review Board, Declarant shall appoint a replacement.

(b) The Design Review Board shall select its own chairman and vice-chairman from among its members. The chairman, or in his absence the vice-chairman, shall be the presiding officer of its meetings. In the absence of both the chairman and the vice-chairman from a meeting, the members present shall appoint a member to serve as acting chairman at such meeting. All business of the Design Review Board shall be conducted at meetings which are open to members of all Associations. Meetings shall be held at least once in each calendar month or upon call of the chairman. All meetings shall be held at the offices of Declarant, at Big Mountain Resort, unless otherwise permanently or temporarily changed to another location by notice mailed to the members of the Design Review Board and each Association at least three (3) days prior to a meeting. A majority of members of the Design Review Board shall constitute a quorum for the transaction of business, but in the absence of a quorum, a lesser number may adjourn any meeting to a later time or date, and in the absence of all members, any staff member may adjourn any meeting to a later time or date. The affirmative vote of a majority of the members of the Design Review Board present at a meeting at which there is a quorum shall constitute the action of the Design Review Board on any matter before it. The Design Review Board shall operate in accordance with its own rules of procedure. The rules shall be maintained in the records of the Design Review Board and shall be subject to inspection by the members of any Association.

(c) Subject to availability of funds, the Design Review Board is authorized to retain the services of one or more consulting architects, landscape architects or urban designers, who need not be licensed to practice in the State of Montana, to advise and assist in performing the design review functions prescribed in this Article VIII and in carrying out the provisions of Article VII. Such consultants may be retained to advise the Design Review Board on a single project, on a number of projects, or on a continuing basis.

8.4 Design Review Board Approval and Control: (a) No Owner, Lessee, or Guest of Property in the Big Mountain Resort shall perform or permit others to perform site preparation, landscaping, building or construction of any new structure, sign erection, exterior change, modification, alteration, or enlargement of any existing structure, paving, fencing, planting, or other improvements to any Site or Property or building or structure thereon, change the use of any Site or Property or building or structure thereon, unless approval for said modification, change or alteration has been received from the Design Review Board. Alterations or remodeling which are completely within a building or structure and which do not change the exterior appearance and are not visible

from the outside of the structure may be undertaken without Design Review Board approval, provided such alterations or remodeling do not change the use of, or the number of Dwelling Units (as such term is defined in the Master Plan) or amount of commercial space in, the building or structure, or the number of required vehicle parking spaces. All actions taken by the Design Review Board shall be in accordance with the Design Regulations established by the Design Review Board which shall be published as set forth in Section 8.5 and shall be in accordance with the purposes and intent of the Master Plan. Such guidelines may be amended from time to time by action of the Review Board that is consistent with and fulfills the purpose of this Declaration. The approval or consent of the Review Board on matters properly coming before it shall not be unreasonably delayed or withheld, actions taken shall not be arbitrary or capricious and decisions shall be conclusive and binding upon all interested parties; provided that such approval or consent shall not prohibit enforcement of the provisions of this Declaration under Section 9.4. The Design Review Board or its designated representative shall monitor any approved project to the extent required to insure that the construction or work on such project complies with any and all approved plans and construction procedures. The Design Review Board or its designated representatives may enter upon any Property at any reasonable time or times to inspect the progress, work status, or completion of any project. In addition to the remedies described in Section 9.4, the Design Review Board may withdraw approval of any project, thereby stopping all activity at such project, if deviations from the approved plan or approved construction practices are not corrected or reconciled within 24 hours after written notification to the Owner specifying such deviations.

(b) Any material to be submitted or notice to be given to the Design Review Board shall be submitted at the offices of the Design Review Board at Big Mountain, unless the Design Review Board's address is changed by notice to each Association and the Declarant seven days prior to such address change.

(c) All actions requiring approval of the Design Review Board shall be deemed approved only if such approval is obtained in writing from the Design Review Board.

(d) By acquiring any interest in a Site, the Owner of such Site consents to and accepts the authority of the Design Review Board to review and approve the plans and specifications for any building improvement and landscaping on such Site in accordance with the Design Regulations in effect from time to time. In particular, such Owner recognizes that certain of the judgments which will be made by the Design Review Board are subjective in nature, and such Owner agrees not to contest such subjective judgments unless they are made in bad faith or in an arbitrary and capricious manner.

8.5 Design Standards and Construction Procedure: The Design Review Board shall promulgate and publish guidelines that shall state the general design theme of all projects at Big Mountain, specific design requirements, and the general construction procedures that will or will not be allowed at Big Mountain. (Such guidelines are hereinafter referred to as the Design Regulations.) The Design Review Board shall also promulgate and publish guidelines that shall set forth the procedures to be followed and material which must be provided by any Owner or Lessee or his authorized agents in order to obtain review of proposed construction by the Design Review Board.

All such guidelines and Design Regulations may be amended from time to time by action of the Design Review Board. The Design Review Board shall make such publications available to members of all Associations, and may charge a fee to cover its costs of copying the Design Regulations. The Design Review Board may grant variances from the Design Regulations from time to time as it deems necessary or desirable, for good cause shown.

8.6 Exterior Maintenance: Each Owner and Lessee shall maintain the exterior of such Owner's or Lessee's structures in accordance with the Design Guidelines.

8.7 Review Fee and Bond: The Design Review Board may set a review fee schedule to cover all or part of the cost of any reviews, consultant fees, and incidental expenses incurred. If the fee amount is not known in advance, Applicants for design review may be required to deposit with the Design Review Board an amount which the Design Review Board deems sufficient to cover the costs of design review from which the actual costs shall be deducted when determined, and the balance returned to applicant following completion of the design review process. The Design Review Board may also require applicants to provide a bond or other security to insure compliance with the approved plans. On completion of the project in accordance with the approved plans, the bond or other security shall be returned to the applicant.

8.8 Enforcement of Restrictions: The Design Review Board shall have the primary responsibility to enforce the provisions of this Article VIII; provided, however, that such responsibility shall not prevent the Declarant or any Owner from acting under Section 9.4, below.

8.9 No Other Design Review: In order to promote a unified, consistent and harmonious appearance within the Big Mountain Resort, the design review process provided in this Article VIII shall be the only design review process within the Big Mountain Resort. No Association shall institute a design review process or undertake any actions that would nullify, replace or be inconsistent with the design review process provided in this Article VIII.

8.10 Lapse of Design Review Approval: Approval of the design of a project shall lapse and become void one year following the date of the final approval of the project, unless prior to the expiration of one year a building permit is issued (if applicable) and construction is commenced and diligently pursued toward completion, or unless an extension has been granted in writing by the Design Review Board.

8.11 Liability: Neither the Declarant, any of the Associations, the Design Review Board or, their respective officers, directors, employees or agents shall be responsible or liable for the defects in any plans or specifications submitted, revised or approved under this Article VIII, nor for any defects in construction pursuant to such plans and specifications. Approval of plans and specifications under this Article VIII shall not be deemed in lieu of compliance by Owners or Lessees with applicable governmental laws or regulations.

ARTICLE IX. MISCELLANEOUS

9.1 Duration of Declaration: Each provision contained in Articles I-IX of this Declaration, which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation, shall continue and remain in full force and effect for the period of 21 years following the death of the survivor of Brian T. Grattan, of Lakeside, Montana, and Dennis Green, of Kalispell, Montana, and the now living children of said persons, or until the provisions contained in Articles I-IX of this Declaration are terminated as hereinafter provided, whichever first occurs. All other provisions contained in Articles I-IX of this Declaration shall continue and remain in full force and effect until January 1 in the year 2010 A.D., and thereafter for successive periods of ten years each; unless at least one year prior to January 1, 2010 A.D., or at least one year prior to the expiration of any such ten-year period of extended duration, the provisions contained in Articles I-IX of this Declaration are terminated by recorded instrument, directing termination, signed by the Declarant and approved by at least sixty percent (60%) of the Associations. The approval of an Association in which membership is connected to ownership of property must be by vote of the Owners of at least sixty percent (60%) of the Sites within the jurisdiction of that Association. The approval of an Association in which membership is not connected to ownership of property must be by vote of at least 60% of the members of the Association.

9.2 Amendment: (a) Any provision contained in Articles I-IX of this Declaration may be amended or repealed only by action of the Declarant; provided, however, that no such amendment shall be effective until Declarant shall have mailed a copy of the proposed amendment to each Association. Thereafter, each Association shall have 45 days in which to act to disapprove the proposed amendment. If sixty percent (60%) of the Associations disapprove the proposed amendment within the 45-day period, the amendment shall not be effective. Disapproval of any Association in which membership is connected to ownership of property must be by vote of the Owners of at least sixty percent (60%) of the Sites within the jurisdiction of that Association. Disapproval of an Association in which membership is not connected to ownership of property must be by vote of at least 60% of the members of the Association. If such disapproval does not take place within the 45-day period, the proposed amendment shall become effective.

(b) Notwithstanding Section 9.2(a), above, or anything herein to the contrary, so long as Declarant owns a Site, the Declarant shall have the unilateral right to amend this Declaration and such amendment shall not be subject to disapproval under Section 9.2(a) in the following circumstances: (1) if such amendment is solely to comply with applicable law or correct a technical or typographical error, (2) if such amendment does not adversely alter any substantial rights of any Owner or Mortgagee, or (3) in order to meet the guidelines or regulations of a mortgagor or insurer including, but not limited to, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Veterans Administration or any similar agency.

9.3 Effect of Provisions of Declaration: Each provision contained in Articles I-IX of this Declaration, and any agreement, promise, covenant and undertaking to comply with each

provision contained in Articles I-IX of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision contained in Articles I-IX of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Big Mountain Resort is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within Big Mountain Resort by an Owner or an Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or Association, as the case may be, and, as a personal covenant, shall be binding on such Owner or Association and such Owner's or Association's respective heirs, personal representatives, successors and assigns; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within Big Mountain Resort, including property that may hereafter become part of Big Mountain Resort under Section 2.2, above; and (d) shall be deemed a covenant, obligation and restriction secured by a lien, binding, burdening and encumbering the title to each parcel of real property within Big Mountain Resort, which lien with respect to any Site shall be deemed a lien in favor of Declarant.

9.4 Enforcement and Remedies: Each provision contained in Articles I-IX of this Declaration shall be enforceable by Declarant, or by any Owner who has made written demand on Declarant to enforce such provision and 30 days have lapsed without appropriate action having been taken by Declarant, by a proceeding for such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction or a suit or action to recover damages.

9.5 Protection of Encumbrancer: No violation or breach of, or failure to comply with, any provision contained in Articles I-IX of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any first mortgage, deed of trust or other lien on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of an instrument describing such property and listing the name or names of the Owner or Owners of fee simple title to the property and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such first mortgage, deed of trust, or other lien or title or interest acquired by any purchaser upon foreclosure of any such first mortgage, deed of trust or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration.

9.6 Limited Liability: Neither the Declarant, any of the Associations, the Design Review Board or, their respective officers, directors, employees or agents shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

9.7 Use of Trademark: Each Owner, by acceptance of a deed for a Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed (a) to acknowledge that the names "Big Mountain," "Big Mountain Resort," "Big Mountain Development Corporation,"

and "The Big Mountain," are service marks and trademarks of Winter Sports, Inc., and (b) to covenant that such Owner shall not use (i) the terms "Big Mountain," "Big Mountain Resort," "Big Mountain Development Corporation," and "The Big Mountain," or similar service marks, trademarks and trade names using the word "Big" or "Mountain," and (ii) the Big Mountain logos in current use or any future Big Mountain logos, without the prior written permission of Winter Sports, Inc.

9.8 Successors and Assigns: Except as otherwise provided herein, the provisions contained in Articles I-IX of this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Associations, and each Owner and their respective heirs, personal representatives, successors and assigns.

9.9 Severability: Invalidity or unenforceability of any provision contained in Articles I-IX of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

9.10 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

9.11 Construction: When necessary for proper construction, the masculine of any word used in any provisions contained in Articles I-IX of this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

9.12 No Waiver: Failure to enforce any provision contained in Articles I-IX of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

9.13 Attorneys' Fees: In the event of a dispute arising under any provision contained in Articles I-IX of this Declaration, the prevailing party shall be entitled to its reasonable costs and attorneys' fees incurred.

9.14 Conflict: In the event of a conflict between the provisions of Articles I-IX and the provisions of Articles X-XVII of this Second Restated General Declaration, the provisions of Articles I-IX shall be controlling.

**PROVISIONS APPLICABLE ONLY TO CERTAIN RESIDENTIAL
SUBDIVISIONS**

The following Articles X through XVII, inclusive, shall be applicable to and binding upon only the property described below as the Residential Subdivisions.

ARTICLE X. DECLARATION - PURPOSES

10.1 **General Purposes:** (a) Winter Sports, Inc., the Declarant, owns or owned the real property hereafter defined as the Residential Subdivisions, and has developed and intends to develop or make available for development through one of its subsidiaries or others, said property as a residential subdivision for persons who wish to reside at the Big Mountain and/or rent their Dwelling Units to others on a long-term or short-term basis.

(b) Big Mountain Homeowners Association, Inc., a Montana non-profit corporation (the "Homeowners Association"), will perform certain functions for the common benefit of the owners of the Residential Subdivisions, as provided in Articles X-XVII, herein and in the Articles of Incorporation and Bylaws of the Homeowners Association.

(c) By the provisions contained in Articles X-XVII of this Declaration, Declarant intends to establish certain general overall terms and conditions applicable to the Residential Subdivision and the Homeowners Association, and to create a pleasant and desirable environment for all persons residing, visiting or doing business therein.

10.2 **Declaration:** To further the general purposes herein expressed, Winter Sports, Inc. and Big Mountain Development Association, for itself, its successors and assigns, hereby declares that all real property hereinafter defined as the Residential Subdivisions, including any property added to the Residential Subdivisions as hereinafter provided, shall, at all times, be owned, held, used and occupied subject to the provisions contained in Articles X-XVII of this Declaration and to the covenants, conditions and restrictions therein contained.

ARTICLE XI. CERTAIN DEFINITIONS

11.1 **Articles of Incorporation:** Articles of Incorporation shall mean the Restated Articles of Incorporation of Big Mountain Homeowners Association, Inc. (formerly Big Mountain Resort Association, Inc.), as the same may be amended from time to time.

11.2 **Bylaws:** Bylaws shall mean the Restated Bylaws of Big Mountain Homeowners Association, Inc. (formerly Big Mountain Resort Association, Inc.), as the same may be amended from time to time.

11.3 **Common Area:** Common Area means the real property described in the attached "C" and any other property in which the Homeowners Association owns an interest for the common use, benefit and enjoyment of some or all of the Owners and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any contract with the Homeowners Association. Additional real property within Flathead County, Montana, may become part of the Common Area and in such event shall be deemed to be within the Common Area and subject to all of the provisions contained in Articles X-XVII of this Declaration, only upon recording in the office of the Clerk and Recorder of Flathead County, Montana, a written instrument signed by Declarant containing a legal description of the additional real property and declaring that said additional real property shall become part of and shall be deemed to be within the Common Area. Only real property owned or leased by Declarant or its subsidiaries at the time it is declared to be part of the Common Area may become part of the Common Area. Any real property included in the definition of the Common Area pursuant to this Section 11.3, which is hereafter incorporated as or becomes part of a municipal corporation, may be excluded from and be deemed outside of the Common Area by the action and consent of Declarant and the Homeowners Association. The properties deemed outside of the Common Area shall be reflected by a written instrument signed by the Declarant and the Homeowners Association containing a legal description of the real property to be excluded in declaring that said real property shall be deemed to be outside the Common Area.

11.4 **Common Expenses:** Common Expenses means (i) the expenses of maintaining the roads which are part of the Common Area within the Residential Subdivisions, (ii) premiums for the liability insurance carried by the Homeowners Association under Article XII; (iii) all other expenses incurred by the Homeowners Association in administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Area and any improvements located on it; (iv) all expenses incurred by the Homeowners Association in administering and managing the Homeowners Association; (v) all expenses incurred by the Homeowners Association in any other activities undertaken for the common benefit of all or some of the Owners; and (vi) all expenses lawfully determined to be Common Expenses by the Board of Directors of the Homeowners Association, as provided in the Articles and Bylaws.

11.5 **Declarant:** Declarant shall mean Winter Sports, Inc. and/or Big Mountain Development Corporation, Montana corporations, and any party which (a) acquires from Declarant all or substantially all of its property and (b) prior to or at the time of such acquisition is designated by a written instrument as a successor or assignee of Declarant under Articles X-XVII of this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant which are being assigned, in which case Winter Sports, Inc. shall retain all other rights as Declarant.

11.6 **Declaration:** Declaration shall mean Articles X-XVII of this amended superseding instrument, as such Articles may be amended from time to time.

11.7 **Dwelling Unit:** Dwelling Unit shall mean one or more rooms designed for or which may be readily occupied exclusively by one family or a group of people living independently from another family or group of people, and having not more than one cooking facility.

11.8 **Guest:** Guest shall mean any customer, agent, employee, guest or invitee of an Owner, Lessee, and any person or persons, entity or entities, who have any right, title or interest in a Residential Site which is not the fee simple title to the Residential Site and any customer, agent, employee, guest or invitee of such person or persons, entity or entities.

11.9 **Homeowners Association:** Homeowners Association shall mean Big Mountain Homeowners Association, Inc. and its successors and assigns.

11.10 **Lessee:** Lessee shall mean the person or persons, entity or entities who are the lessees of any part or all of a Residential Site or any space within a building on the Residential Site. The term "Lessee" shall include Declarant to the extent it is a Lessee as defined above and shall include a sublessee. It shall not include the Homeowners Association or any governmental entity (which term shall include but is not limited to special districts formed pursuant to Montana law).

11.11 **Master Plan:** Master Plan shall mean the Master Plan of Big Mountain as amended or supplemented from time to time, which has been approved or is hereafter approved by the Declarant.

11.12 **Owner:** Owner shall mean the person or persons, entity or entities who own of record, according to the real property records of Flathead County, Montana, fee simple title to a Residential Site, except that a person purchasing a Residential Site under a contract for deed which is recorded (or an abstract of which is recorded) in the records of Flathead County, Montana, shall be considered the Owner of the Residential Site. The term "Owner" shall include Declarant to the extent it is the owner of fee simple title to a Residential Site.

11.13 **Residential Site:** Residential Site shall mean each parcel of real property within the Residential Subdivisions, the fee simple interest of which may be conveyed in its entirety to a third party without violating the subdivision regulations of Flathead County, Montana, as in effect from time to time, including each condominium unit as that term is defined in the Unit Ownership Act of the State of Montana, and including any such parcel or condominium unit owned by Declarant. A parcel of property owned, held or used in its entirety by the Homeowners Association or by any governmental entity (which term shall include but is not limited to Special Districts formed pursuant to Montana law), or for or in connection with the distribution of electricity, gas, water, sewer, telephone, television or other utility service or for access to any property within or without the Residential Subdivisions shall not be considered a Residential Site.

11.14 **Residential Subdivisions:** "Residential Subdivisions" shall mean all of the real property located in Flathead County, Montana, described in Exhibit "B" attached hereto, as well as all real property which becomes part of the Residential Subdivisions, as provided in this Section 11.14. Additional real property within Flathead County, Montana, may become part of the

Residential Subdivisions and in such event shall be deemed to be within the Residential Subdivisions and subject to all of the provisions contained in Articles X-XVII of this Declaration, only upon recording in the office of the Clerk and Recorder of Flathead County, Montana, a written instrument signed by Declarant containing a legal description of the additional real property and declaring that said additional real property shall become part of and shall be deemed to be within the Residential Subdivisions. Only real property owned or leased by Declarant or its subsidiaries at the time it is declared to be part of the Residential Subdivisions may become part of the Residential Subdivisions. Any real property included in the definition of the Residential Subdivisions pursuant to this Section 11.14, which is hereafter incorporated as or becomes part of a municipal corporation, may be excluded from and be deemed outside of the Residential Subdivisions by the action and written consent of Declarant and the Homeowners Association.

ARTICLE XII. HOMEOWNERS ASSOCIATION

12.1 **Homeowners Association:** The Homeowners Association shall act as a homeowners association for the Residential Subdivisions (including any land which is added to the Residential Subdivisions under Section 11.14, above).

12.2 **Powers:** The Association shall have all such powers as permitted by the laws of the State of Montana, provided that the Association shall be subject to and abide by the provisions of Articles I-IX of this Second Restated General Declaration, as the same may be amended from time to time.

12.3 **Membership:** All Owners of the Residential Sites within the Residential Subdivisions shall be members of Homeowners Association. The Owners of any Residential Site shall automatically become members of the Homeowners Association and shall remain a member thereof until such time as the ownership of such Residential Site ceases for any reason, at which time the corresponding membership in the Homeowners Association shall automatically cease.

12.4 **Voting:** There shall be one vote for each Residential Site. If a person or entity owns more than one Residential Site, that person or entity shall have as many votes as the number of Residential Sites owned by that person or entity. If more than one person or entity has an ownership interest in a single Residential Site, such persons or entities must decide among themselves how the vote for that Residential Site shall be cast.

ARTICLE XIII. COMMON AREA

13.1 **Common Area:** The Homeowners Association shall have jurisdiction over the Common Area, subject to the provisions of Articles I-IX, above.

13.2 **Easement:** The Owners shall have an easement for use and enjoyment of the Common Areas, subject to such rules and regulations as the Homeowners Association may develop

from time to time, and also subject to the rights reserved to Declarant and the reserved rights of third parties with respect to the Common Area.

13.3 Roads: All roads that are part of the Common Area shall be maintained, repaired and replaced by the Homeowners Association. No gates, other impediments, or signage may be placed on any roads without the prior written consent of Declarant.

ARTICLE XIV. ASSESSMENTS

14.1 Assessments: The Declarant, for each Residential Site owned within the Properties by the Declarant, hereby covenants and agrees, and each Owner of any Residential Site, by acceptance of the deed therefore whether or not it shall be so expressed in such deed (including all deeds recorded after the General Declaration for Big Mountain Resort, dated September 2, 1992, was filed in the offices of the Clerk and Recorder of Flathead County, Montana on October 13, 1992, as Document No. 9228712390), is deemed to covenant and agree, to pay to the Homeowners Association assessments for Common Expenses as provided in the Bylaws. The assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Residential Sites against which each such assessment is made. The assessments shall also be the personal obligation of the Owner(s) of the Residential Sites at the time the assessments were due.

ARTICLE XV. RESTRICTIVE COVENANTS

15.1 Definitions: For the purpose of this Article XV, the following terms shall have the meanings set forth below:

15.1.1 Building Improvements shall mean any material improvement to a Residential Site including, but not limited to, landscaping, site preparation, paving, fencing, building, construction, exterior changes, or interior changes which would change the use of any interior space to an unauthorized use or which would change the number of Living Units in a structure.

15.1.2 Single Family Structure shall mean a detached building which contains one Living Unit.

15.1.3 Multiple Family Structure shall mean a building which contains one or more than one Living Unit.

15.1.4 Plat shall mean the plats of Sun Rise Ridge, Sun Rise Ridge Phase II, Sun Rise Ridge Phase III and Sun Rise Ridge Phase IV, collectively, on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

15.1.5 Design Review Board shall mean the Design Review Board created and established pursuant to the Article VIII, above.

15.2 Single Family Uses Permitted: Lots 1 through 71, as shown on the Plat may not contain any building improvements except:

- a. A Single Family Structure, including attached guest and caretaker facilities; plus
- b. A garage of a size and at a location approved in writing by the Design Review Board; and
- c. Such enclosed service areas for garbage, trash, utilities, clothes lines and other maintenance facilities as may be approved in writing by the Design Review Board; and
- d. Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Board; and
- e. Landscaping improvements approved in writing by the Design Review Board; and
- f. Swimming pools, hot tubs, tennis courts, solar devices and greenhouses approved in writing by the Design Review Board.

15.3 Multiple Family Uses Permitted: Lots 1T through 56T, as shown on the Plat may not contain any building improvements except:

- a. Twenty-one (21) Multiple Family Structures containing a total of fifty-six (56) Living Units as shown on the plat; plus
- b. A garage of a size and at a location approved in writing by the Design Review Board; and
- c. Such enclosed service areas for garbage, trash, utilities, clothes lines and other maintenance facilities as may be approved in writing by the Design Review Board; and
- d. Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Board; and
- e. Landscaping improvements approved in writing by the Design Review Board; and
- f. Swimming pools, hot tubs, tennis courts, solar devices and greenhouses approved in writing by the Design Review Board.

15.4 Residential Uses: No Residential Site may be used other than for residential purposes with customary accessory uses (including but not limited to long- or short-term rental to persons who use such improvements for residential or lodging purposes) except as permitted under this Section, and except that Common Areas, easements and roadways may be used for purposes consistent with their designation. No Residential Site may be used for any commercial activity unless the Declarant has issued a written permit for such activity; however, this provision shall not prohibit the use of any Residential Site for skiing and ski-related activities, nor for long- or short-term rental). Declarant may refuse to issue a permit in its sole and absolute discretion, and it will not issue a permit for any commercial activity if, in the Declarant's reasonable judgment, such activity would:

- a. Create additional vehicular traffic to or from such Residential Site;
- b. Employ persons at such Residential Site other than those residing at such Residential Site;
- c. Require storage of any significant materials, machinery, inventory, or other items at such Residential Site;
- d. Require processing of materials and finished products, or the assembly of parts produced off-site;
- e. Require additional parking at such Residential Site, whether for customers, delivery or otherwise; or
- f. Otherwise violate the provisions of this Declaration.

Any permit for commercial activity issued by Declarant shall be limited to a two-year period, and may be revoked without cause by Declarant.

15.5 No Request for Change of Use: No Owner of a Residential Site shall apply to Flathead County, Montana, or any other governmental authority for permission to construct building improvements on such Owner's Residential Site other than those permitted by this Article, without the prior express written authorization of the Homeowners Association and Declarant.

15.6 No Request for Change of Zoning: No Owner of a Residential Site shall apply to Flathead County, Montana, or any other governmental jurisdiction to change the zoning applicable to such Owner's Residential Site, or to subdivide such Residential Site without the prior written approval of the Homeowners Association and Declarant.

15.7 Parking: At such time as any building improvements are completed on any Residential Site, such building improvements must provide a minimum of two parking spaces per Dwelling Unit constructed on or at such Residential Site, and detached buildings must be separated by a minimum of fifteen (15) feet. In addition, (a) with respect to building improvements containing more than 3,000 square feet of enclosed living area (excluding garage), the Design Review Board may require additional parking spaces to be provided, and (b) the Design Review Board may require

additional off-street parking within or near any Residential Site in cases where, in such Board's opinion, there is insufficient off-street parking near such Residential Site.

15.8 Approval: All Single Family Structures and any other structures and developments on any Residential Site must be approved in writing by the Design Review Board prior to beginning construction and shall comply with the Design Regulations and other requirements of the Design Review Board. All construction shall comply with the edition of the Uniform Building Code adopted by the State of Montana and in effect at the time of construction.

15.9 Erosion and Runoff: Precautions shall be taken during construction to prevent erosion and minimize problems associated with water runoff. Disturbed areas on each Residential Site shall be revegetated as soon as practicable in order to minimize the effects of erosion.

15.10 Street Numbers: All Single Family Structures shall have a street number which is visible from the roadway situated in front of the residence. The number may be located on the building or near its driveway entrance.

15.11 Dogs: Dogs shall be kenneled or leashed at all times.

15.12 Roofing Material: All roof construction on any Residential Site shall use only Class A and Class B fireproof roofing materials are allowed, and untreated wood shakes are not allowed.

15.13 Landscaping: All construction and landscaping on any Residential Site shall be in accordance with the applicable Guidelines set forth in the July 1993 Fire Protection Guidelines for Wildland Residential Interface Development.

ARTICLE XVI. EXPANSION

16.1 Declarant May Expand: Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include additional property developed as residential property. The consent of the existing Owners, the Homeowners Association or the Board of Directors of the Homeowners Association will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

16.2 Declaration of Annexation: Any expansion may be accomplished by recording a Declaration of Annexation and one or more supplemental plats in the records of the Clerk and Recorder of Flathead County, Montana. The Declaration of Annexation will describe the real property to be annexed, submitting it to this Declaration. Upon such annexation, each Residential Site in the annexed property will be allocated one vote and liability for the Common Expenses equal to the liability allocated to each of the other Residential Sites, and the proportionate voting interest and allocation of Common Expenses for the other Residential Sites will be adjusted accordingly. Such Declaration of Annexation will not require the consent of Owners, the Homeowners Association, or the Board of Directors of the Homeowners Association. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such Declaration of Annexation, the

definitions used in this Declaration will be expanded automatically to encompass the annexed property. Such Declaration of Annexation may add supplemental covenants peculiar to the annexed property, or delete or modify provisions of this Declaration as it applies to the annexed property. However, this Declaration may not be modified with respect to that portion of the property already subject to this Declaration, except as provided below for amendment.

ARTICLE XVII. MISCELLANEOUS

17.1 Duration of Declaration: Each provision contained in Articles X-XVII of this Declaration, which is subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule prohibiting unreasonable restraints or alienation, shall continue and remain in full force and effect for the period of 21 years following the death of the survivor of Brian T. Grattan, of Lakeside, Montana, and Dennis Green, of Kalispell, Montana, and the now living children of said persons, or until the provisions contained in Articles X-XVII of this Declaration are terminated as hereinafter provided, whichever first occurs. All other provisions contained in Articles X-XVII of this Declaration shall continue and remain in full force and effect until January 1 in the year 2010 A.D., and thereafter for successive periods of ten years each; unless at least one year prior to January 1, 2010 A.D., or at least one year prior to the expiration of any such ten-year period of extended duration, the provisions contained in Articles X-XVII of this Declaration are terminated by recorded instrument, directing termination, signed by the Homeowners Association and approved by the Owners of at least sixty percent (60%) of the Residential Sites. In addition, any such termination must be approved in writing signed by the Declarant.

17.2 Amendment: Any provision contained in Articles X-XVII of this Declaration may be amended or repealed as provided in this Section. Any amendment shall require the consent of the Owners of sixty percent (60%) of the Residential Sites. Such consent may be evidenced by written consent or by vote at a regular or special meeting of the members of the Homeowners Association, or by a combination of written consents and votes. In addition, any such amendment must be approved in writing signed by the Declarant.

17.3 Effect of Provisions of Declaration: Each provision contained in Articles X-XVII of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision contained in Articles X-XVII of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision contained in Articles X-XVII of this Declaration: (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Residential Subdivisions is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Residential Subdivisions by an Owner or the Association, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or Association, as the case may be, and, as a personal covenant, shall be binding on such Owner or Association and such Owner's or Association's respective heirs, personal representatives, successors and assigns; (c) shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each parcel of real property within the Residential Subdivisions, including property that may hereafter become part of the Residential Subdivisions under Section 11.14, above; and (d) shall be deemed a covenant, obligation and restriction secured

by a lien, binding, burdening and encumbering the title to each parcel of real property within the Residential Subdivisions, which lien with respect to any Residential Site shall be deemed a lien in favor of Declarant.

17.4 Enforcement and Remedies: Each provision contained in Articles X-XVII of this Declaration shall be enforceable by the Homeowners Association, by Declarant, or by any Owner who has first made written demand on the Homeowners Association, with a copy to Declarant, to enforce such provision and 30 days have lapsed without appropriate action having been taken by the Homeowners Association, by a proceeding for such relief as may be provided at law or in equity, including but not limited to a temporary or permanent injunction or a suit or action to recover damages.

17.5 Protection of Encumbrancer: No violation or breach of, or failure to comply with, any provision contained in Articles X-XVII of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any first mortgage, deed of trust or other lien on any property taken in good faith and for value and perfected by recording in the office of the Clerk and Recorder of Flathead County, Montana, prior to the time of recording in said office of an instrument describing such property and listing the name or names of the Owner or Owners of fee simple title to the property and giving notice of such violation, breach or failure to comply; nor shall such violation, breach, failure to comply or action to enforce, affect, defeat, render invalid or impair the title or interest of the holder of any such first mortgage, deed of trust, or other lien or title or interest acquired by any purchaser upon foreclosure of any such first mortgage, deed of trust or other lien or result in any liability, personal or otherwise, of any such holder or purchaser. Any such purchaser upon foreclosure shall, however, take subject to this Declaration.

17.6 Limited Liability: Neither the Declarant, the Homeowners Association, the Design Review Board or, their respective officers, directors, employees or agents shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

17.7 Use of Trademark: Each Owner, by acceptance of a deed for a Residential Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed (a) to acknowledge that the names "Big Mountain," "Big Mountain Resort," "Big Mountain Development Corporation," and "The Big Mountain," are service marks and trademarks of Winter Sports, Inc., and (b) to covenant that such Owner shall not use (i) the terms "Big Mountain," "Big Mountain Resort," "Big Mountain Development Corporation," and "The Big Mountain," or similar service marks, trademarks and trade names using the word "Big" or "Mountain," and (ii) the Big Mountain logos in current use or any future Big Mountain logos, without the prior written permission of Winter Sports, Inc.

17.8 Successors and Assigns: Except as otherwise provided herein, the provisions contained in Articles X-XVII of this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Homeowners Association, and each Owner and their respective heirs, personal representatives, successors and assigns.

17.9 Severability: Invalidity or unenforceability of any provision contained in Articles X-XVII of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.

17.10 Captions: The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.


17.11 Construction: When necessary for proper construction, the masculine of any word used in any provisions contained in Articles X-XVII of this Declaration shall include the feminine or neuter gender, and the singular the plural, and vice versa.

17.12 No Waiver: Failure to enforce any provision contained in Articles X-XVII of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

17.13 Attorneys' Fees: In the event of a dispute arising under any provision contained in Articles X-XVII of this Declaration, the prevailing party shall be entitled to its reasonable costs and attorneys' fees incurred.

17.14 Conflict: In the event of a conflict between the provisions of Articles I-IX and the provisions of Articles X-XVII of this Second Restated General Declaration, the provisions of Articles I-IX shall be controlling. In the event of a conflict between the provisions of this Second Restated General Declaration, the provisions of the Articles of Incorporation or Bylaws of the Homeowners Association, the provisions of this Second Restated General Declaration shall be controlling.

IN WITNESS WHEREOF, this Second Restated General Declaration is executed the day and year first above written.

Declarant and Mountain
Special Member:

[Signature]
Secretary

WINTER SPORTS, INC.

By [Signature]
President

STATE OF MONTANA)
 : ss
County of Flathead)

On this 29th day of July, 1999, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared Buck Love and Michael Collins known to me to be the President and Vice President, respectively, of BIG MOUNTAIN RESORT ASSOCIATION, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year first above written.

Anne Elshaw Moran

Notary Public for the State of Montana

Residing at Whitefish

My Commission expires 6/29/03



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FOR
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EXHIBIT "A"**Tract 1:**

Government Lots 1, 2 and 3; the SE $\frac{1}{4}$ NE $\frac{1}{4}$; the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana.

EXCEPTING THEREFROM:

All of the Big Mountain View Subdivision; all of Big Mountain View Subdivision No. 2; all of First Addition to Big Mountain Subdivision #2, according to the recorded plats thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

ALSO EXCEPTING THEREFROM:

All that property included in the Amendment and Addendum to Declaration of Unit Ownership of Alplinglow Inn, recorded in Book 509, page 53, records of Flathead County, Montana.

ALSO EXCEPTING THEREFROM:

All that portion of the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana, described as follows:

Commencing at a point at the Southeast corner of Lot 9 of the Big Mountain View Subdivision, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana; thence North 48° 29' West a distance of 40 feet to a point; thence North 41° 31' East a distance of 40 feet to the True Point of Beginning of the tract of land to be herein described; thence continuing North 41° 31' East a distance of 120 feet to a point; thence North 48° 29' West a distance of 245 feet to a point; thence South 50° 50' West a distance of 121.48 feet to a point; thence South 48° 29' East a distance of 265 feet to the Point of Beginning.

ALSO EXCEPTING THEREFROM:

A tract of land situated, lying and being in Government Lot 1 of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana, and more particularly described as follows:

Commencing at the Northeast corner of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana; thence South 42° 20' 43" West a distance of 1400.05 feet to a point and the true point of beginning of the tract of land herein described; thence South 44° 30' 00" West a distance of 96.00 feet to a point; thence

North 45° 30' 00" West a distance of 63.00 feet to a point; thence
 South 44° 30' 00" West a distance of 195.00 feet to a point; thence
 North 45° 30' 00" West a distance of 87.00 feet to a point; thence
 North 44° 30' 00" East a distance of 245.45 feet to a point; thence
 North 89° 30' 00" East a distance of 64.42 feet to a point; thence
 South 45° 30' 00" East a distance of 104.45 feet to the point of beginning.

ALSO EXCEPTING THEREFROM:

A tract of land, situated, lying and being the Northeast Quarter of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana, and more particularly described as follows to-wit:

Commencing at the Northwest corner of Lot 18 of the Big Mountain View Subdivision (records of Flathead County, Montana); thence
 South 40° 33' 07" West a distance of 29.01 feet to the true point of beginning of the tract of land herein described; thence
 South 13° 12' 09" West a distance of 76.00 feet to a point; thence
 North 76° 47' 51" West a distance of 195.50 feet to a point; thence
 North 13° 12' 09" East a distance of 76.00 feet to a point; thence
 South 76° 47' 51" East a distance of 195.50 feet to the point of beginning.

Tract 2:

The W $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 1 and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 12, all in Township 31 North, Range 22 West, M.P.M., Flathead County, Montana.

EXCEPTING THEREFROM that certain tract of land described in Deed to Big Mountain Sewer District, recorded October 30, 1974 under Recorder's Fee No. 10592 in Book 574, page 509, records of Flathead County, Montana, described as follows:

Beginning at the Southwest corner of Section 1, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana; thence
 North 00° 41' 14" East and along the westerly line of said Section 1, a distance of 50.00 feet to a point; thence
 North 55° 41' 14" East a distance of 400.00 feet to a point; thence
 South 28° 06' 35" East a distance of 534.82 feet to a point; thence
 South 62° 04' 39" West a distance of 450.00 feet to a point; thence
 North 87° 55' 21" West a distance of 200.00 feet to a point on the westerly boundary line of said Section 12; thence
 North 02° 04' 39" East a distance of 400.00 feet to the Point of Beginning.

ALSO EXCEPTING THEREFROM: any portion of First Addition to Big Mountain Subdivision #2, or Re-subdivision of Block 5 of First Addition to Big Mountain Subdivision #2, lying within the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2.

Tract 3:

Government Lot 4 of Section 1, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana.

Tract 4:

A tract of land in the N $\frac{1}{2}$ of Section 1, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana, and more particularly described as follows to-wit:

Beginning at the North Quarter corner of said Section 1; thence
 South 88° 10' 05" East and along the North line of the NE $\frac{1}{4}$ of said
 Section 1, a distance of 1816.07 feet to a point; thence
 leaving the said North line
 South 35° 59' 15" West a distance of 395.76 feet to a point; thence
 South 61° 02' 35" West a distance of 757.00 feet to a point; thence
 South 77° 41' 54" West a distance of 2043.03 feet to a point; thence
 South 00° 40' 06" West a distance of 502.68 feet to a point; thence
 North 88° 19' 05" West a distance of 1600.00 feet to a point on the West line of the NW $\frac{1}{4}$ of said
 Section 1; thence
 North 00° 40' 06" East and along the West line of said NW $\frac{1}{4}$ a distance of 400.00 feet to a point
 which is the Southwest corner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 1; thence, leaving the West
 line
 South 88° 19' 05" East a distance of 1331.07 feet to a point; thence
 North 00° 40' 06" East a distance of 1309.26 feet to a point which is the Northeast corner of the said
 NW $\frac{1}{4}$ NW $\frac{1}{4}$; thence
 South 88° 19' 05" East and along the North line of the NE $\frac{1}{4}$ of said Section 1, a distance of 1331.06
 feet to the Place of Beginning.

Tract 5:

A tract of land in the Northeast Quarter of the Southwest Quarter and the North Half of Section 1, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana, described as follows:

Beginning at the West Quarter corner of Section 1; thence
 North 00° 40' 06" East and along the West boundary of the said Section 1 a distance of 939.39 feet
 to a point; thence
 South 88° 19' 05" East a distance of 1600.00 feet to a point; thence
 North 00° 40' 06" East a distance of 502.68 feet to a point; thence
 North 77° 41' 54" East a distance of 2043.03 feet to a point; thence
 North 61° 02' 35" East a distance of 757.00 feet to a point; thence

North 35° 59' 15" East a distance of 395.76 feet to a point on the North boundary of the NE¼ of said Section 1; thence
 South 88° 19' 05" East and along the said North boundary of the Northeast Quarter a distance of 121.06 feet to a point; thence
 South 35° 59' 15" West a distance of 486.21 feet to a point; thence
 South 61° 02' 35" West a distance of 793.86 feet to a point; thence
 South 77° 41' 54" West a distance of 951.48 feet to a point; thence
 South 26° 40' 10" West a distance of 1760.92 feet to a point; thence
 South 00° 40' 23" West a distance of 751.47 feet to a point; thence
 North 89° 19' 37" West a distance of 600.00 feet to a point on the West boundary of the NE¼SW¼ of said Section 1; thence
 North 00° 40' 23" East a distance of 751.46 feet to a point which is the Northwest corner of the NE¼SW¼; thence
 North 88° 33' 12" West a distance of 1328.31 feet to the place of beginning.

Tract 6:

The Northwest Quarter of the Southeast Quarter (NW¼SE¼), the Northeast Quarter of the Southeast Quarter (NE¼SE¼) and the Southeast Quarter of the Southeast Quarter (SE¼SE¼) of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana.

Tract 7:

Lots 5 and 6 of Block 5 of First Addition to Big Mountain Subdivision #2, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

EXCEPTING THEREFROM Lot 5, that portion included in the Re-subdivision of Block 5 of First Addition to Big Mountain Subdivision #2.

AND

That portion lying between Block 4 of First Addition to Big Mountain Subdivision #2 and Lot 1 of Re-subdivision of Block 5 of First Addition to Big Mountain Subdivision #2, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana, shown as a private road on the recorded plats.

AND

That portion lying between Lot 3 and Lot 4 of Re-subdivision of Block 5 of First Addition to Big Mountain Subdivision #2, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana, shown as a private road on the recorded plat.

EXHIBIT "B"
TO
SECOND RESTATED GENERAL DECLARATION
FOR
BIG MOUNTAIN RESORT

LEGAL DESCRIPTION OF RESIDENTIAL SUBDIVISIONS

1. Sun Rise Ridge, according to the map or plat thereof on file and of record in the office of the Clerk and Recorded of Flathead County, Montana.
2. Sun Rise Ridge, Phase II, according to the map or plat thereof on file and of record in the office of the Clerk and Recorded of Flathead County, Montana.
3. Sun Rise Ridge, Phase III, according to the map or plat thereof on file and of record in the office of the Clerk and Recorded of Flathead County, Montana.
4. Sun Rise Ridge, Phase IV, according to the map or plat thereof on file and of record in the office of the Clerk and Recorded of Flathead County, Montana.

Tract 8:

A tract of land situated, lying and being in the Northeast Quarter of Section 2, Township 31 North, Range 22 West, M.P.M., Flathead County, Montana, and more particularly described as follows to-wit:

Commencing at the Northwest corner of Lot 18 of the Big Mountain View Subdivision (records of Flathead County, Montana); thence

South 40° 33' 07" West a distance of 29.01 feet to the true point of beginning of the tract of land herein described; thence

South 13° 12' 09" West a distance of 76.00 feet to a point; thence

North 76° 47' 51" West a distance of 195.50 feet to a point; thence

North 13° 12' 09" East a distance of 76.00 feet to a point; thence

South 76° 47' 51" East a distance of 195.50 feet to the point of beginning.

EXHIBIT "C"
TO
SECOND RESTATED GENERAL DECLARATION
FOR
BIG MOUNTAIN RESORT

LEGAL DESCRIPTION OF COMMON AREA OF RESIDENTIAL SUBDIVISIONS

1. The following areas shown on the plat of Sun Rise Ridge:
 - a. The roads identified as Sun Rise Court, Ridge Run Drive, Ridge Run Court, Wood Run Drive and Wood Run Court, and
 - b. Common Areas A, B, C and D as shown on page 1 of the plat of Sunrise Ridge (west of the Big Mountain Road in the area commonly known as Sunrise Ridge)
 - c. Common Areas A, B, C, D, E, F, G, H, I, J, K and L as shown on page 2 of the plat of Sunrise Ridge (east of the Big Mountain Road in the area commonly known as Wood Run).

2. The following areas shown on the plat of Sun Rise Ridge, Phase II:
 - a. The road identified as Ridge Run Drive, and
 - a. Common Areas A and B.

3. The following areas shown on the plat of Sun Rise Ridge, Phase III:
 - a. The roads identified as Ridge Run Drive and Ridge Top Drive, and
 - b. Common Areas A, B, C and D.

4. The following areas shown on the plat of Sun Rise Ridge, Phase IV:
 - a. The road identified as Ridge Top Drive.

Return after recording to
 Steve Cummings
 Box 7370
 Kalispell MT 59704-0370

STATE OF MONTANA)
 County of Flathead) SS S. Cummings
 Recorded at the request of _____
 this 9 day of Aug 1999 at 3:01 o'clock P
 and recorded in the records of Flathead County, State of Montana.
 Fee \$ 294- Sharon W. Sawyer
 Flathead County Clerk and Recorder
Sharon W. Sawyer
 Deputy

Assessor Number Cross-Reference

Trancode [I] Reception Number [REDACTED] [2000] MISC RE
MORE NUMBERS PRESENT. USE ACTION 'I' TO CONTINUE.

Action	Assr No.	Action	Assr No.	Action	Assr No.
[]	[0000676]	[]	[0948300]	[]	[0979901]
[]	[0000677]	[]	[0948350]	[]	[0979902]
[]	[0000678]	[]	[0948400]	[]	[0979903]
[]	[0000679]	[]	[0948417]	[]	[0979904]
[]	[0000680]	[]	[0948418]	[]	[0979905]
[]	[0000681]	[]	[0948419]	[]	[0979906]
[]	[0000682]	[]	[0948425]	[]	[0979907]
[]	[0000683]	[]	[0972427]	[]	[0979908]
[]	[0000684]	[]	[0974043]	[]	[0979909]
[]	[0000685]	[]	[0975202]	[]	[0979910]
[]	[0000686]	[]	[0979793]	[]	[0979911]
[]	[0000687]	[]	[0979897]	[]	[0979912]
[]	[0000688]	[]	[0979898]	[]	[0979913]
[]	[0000689]	[]	[0979899]	[]	[0979914]
[]	[0579000]	[]	[0979900]	[]	[0979915]

[e]

Assessor Number Cross-Reference

Trancode [M] Reception Number [199922115010] Instr. [2000] MISC RE
MORE NUMBERS PRESENT. USE ACTION 'M' TO CONTINUE.

Action	Assr No.	Action	Assr No.	Action	Assr No.
[]	[0979916]	[]	[0979931]	[]	[0979946]
[]	[0979917]	[]	[0979932]	[]	[0979947]
[]	[0979918]	[]	[0979933]	[]	[0979948]
[]	[0979919]	[]	[0979934]	[]	[0979949]
[]	[0979920]	[]	[0979935]	[]	[0979950]
[]	[0979921]	[]	[0979936]	[]	[0979951]
[]	[0979922]	[]	[0979937]	[]	[0979952]
[]	[0979923]	[]	[0979938]	[]	[0979953]
[]	[0979924]	[]	[0979939]	[]	[0979954]
[]	[0979925]	[]	[0979940]	[]	[0979955]
[]	[0979926]	[]	[0979941]	[]	[0979956]
[]	[0979927]	[]	[0979942]	[]	[0979957]
[]	[0979928]	[]	[0979943]	[]	[0979958]
[]	[0979929]	[]	[0979944]	[]	[0979959]
[]	[0979930]	[]	[0979945]	[]	[0979960]

[e]

