

## AFFORDABLE HOUSING DEED RESTRICTIONS

THIS DEED RESTRICTION is made and executed this \_\_\_ day of 20\_\_\_ by \_\_\_\_\_ (the “Owner”), whose address is \_\_\_\_\_, for the benefit of and enforceable by the City of Whitefish (the “City”) and its duly designated and authorized agent, the Whitefish Housing Authority (the “WHA”), their successors or assigns (referred collectively herein as “the Beneficiaries”).

### RECITALS

WHEREAS, the Owner owns real property (the “Property”) located in Whitefish, Montana, and described as: [legal description]

WHEREAS, a residence has been constructed on the Property to increase affordable housing opportunities in the City; and

WHEREAS, pursuant to the Whitefish Legacy Homes Program, eligible purchasers such as the Owner are given the opportunity to purchase residential property at less than its fair market value if the purchaser agrees to certain use and transfer restrictions, including an agreement to occupy the property as a principal residence and convey the property for an amount not greater than a maximum resale price, all more fully provided herein; and

WHEREAS, the Owner, on behalf of itself, its heirs, executors, administrators, representatives, successors, and assigns, desires to comply with the requirements of the Whitefish Legacy Homes Program by restricting the use and transfer of the Property as provided herein.

NOW, THEREFORE, in consideration of the recitals set forth above and for value received, the Owner does hereby declare and impose the following covenants on the Property.

### COVENANTS

**1. Covenants to Run with Property.** The Property is hereby burdened with the covenants delineated herein, which covenants must be a burden upon, and run with, the Property for the benefit of the Beneficiaries, their successors and assigns, who may enforce the covenants and compel compliance therewith. Lack of compelled compliance at any time, for any duration, or for any reason does not remove the right of Beneficiaries, their successors and assigns, from enforcing the covenants and compelling compliance.

**2. General Definitions.**

“*Guidelines*” means the Whitefish Legacy Homes Program policies and procedures, regulations and ordinances adopted by the Beneficiaries, as same may be amended from time to time.

“*Owner*” means a Qualified Household.

*“Qualified Household”* means a household that has been certified by the WHA as qualified to own or occupy the Property according to the Guidelines. A Qualified Household must maintain continuous compliance with the Guidelines and the terms and provisions of this Deed Restriction during its entire term of occupancy of the Property.

### **3. Restrictions on Occupancy.**

3.1 Residential Use Only. The Owner must use, and must cause all occupants to use, the Property only for residential purposes and any incidental activities related to residential use that are permitted by the applicable zoning.

3.2 Compliance with Law. The Owner must use the Property in a manner so as to not cause actual harm to others or create any nuisances, public or private. The Owner must use and maintain the Property in compliance with all applicable laws and regulations, including homeowner association covenants and requirements.

3.3 Occupancy. The Owner must occupy the Property as the Owner’s primary residence. The Owner will be considered as occupying the Property as his/her/their primary residence if the Owner is living in the Property for at least ten (10) months out of each calendar year. The WHA may, in its sole discretion, grant a temporary waiver of this occupancy requirement for good cause such as to facilitate sale of the Property to a Qualified Household, illness, temporary job relocation, military deployment or sabbatical. The Owner must provide written request for a temporary waiver of the owner occupancy requirement to the WHA at least thirty (30) days prior to such temporary vacancy. The Owner’s failure to comply with the provisions of this paragraph may, following a three (3) month notice to cure, be deemed a breach of this Deed Restriction, allowing the Beneficiaries or their designee to purchase the Property as set forth in section 7.

3.4 Maintenance and Inspection of Property. The Owner must maintain the Property and any improvements thereon in good condition and repair throughout the Owner’s period of ownership. If the WHA receives a report of poor maintenance or unsafe condition, the Owner must allow the WHA, or its designee, access to the Property upon 48 hours’ notice. The WHA, or its designee, will inspect the property and notify Owner if repairs or corrections are required. The Owner must make any required repairs or corrections in a reasonable manner acceptable to WHA within thirty (30) days of being notified. In addition, upon the WHA’s receipt of a Notice of Intent, as detailed in section 6, the WHA must be given the right to enter and inspect the Property. The Owner is obligated to make repairs to the Property deemed necessary by the WHA prior to appraisal and sale. If Owner is unable to make the required repairs, the WHA may enter into an agreement with the Owner to make necessary repairs.

### **4. Taxes and Assessments.**

4.1 Owner Responsibility. The Owner must be responsible for the payment of all taxes, governmental assessments, and homeowners’ dues/assessments relating to the Property.

4.2 Right to Contest. The Owner has, at the Owner's own expense, the right to contest the amount or validity of any taxes or assessments relating to the Property.

**5. Term of Covenants and Restrictions.** The covenants and restrictions contained herein must continue in full force and effect for a period of ninety (90) years after the date of recordation of this Deed Restriction. With each sale or transfer, the Owner must ensure that the purchaser or transferee executes these Deed Restrictions and records them with the Flathead County Clerk and Recorder. Said ninety (90) year period must start over with each resale, should resale occur within ninety (90) years of the previous sale.

**6. Voluntary Sale of the Property.**

6.1 Requirements. The Owner may, subject to the Purchase Option set forth in section 7, sell the Property if all the following conditions are met:

i. The Owner must deliver a written notice of its intent to sell the Property ("Notice of Intent") to the WHA.

ii. No later than ten (10) days after delivering a Notice of Intent to the WHA, WHA, or designee, will inspect the property and notify the Owner of required repairs. The Owner must make required repairs within thirty (30) days. If Owner is unable to make the required repairs, the WHA may cause the repairs to be made and charge one and one-half (1.5) times the repair costs to the Owner payable out of purchase proceeds at closing. Once repairs are made, Owner must, at his/her/their own expense, commission an appraisal of the Property by a licensed appraiser. The appraisal must be by analysis and comparison of comparable properties, disregarding this Deed Restriction. The Owner must provide a copy of such appraisal to the WHA.

iii. To proceed to the closing of the sale of the Property, the WHA must certify in writing that the prospective buyer is a Qualified Household. The WHA will maintain a list of Qualified Households.

6.2 Selling the Property. The Owner may sell the Property by selling the Property directly to a Qualified Household on the WHA's approved list or by using one of the methods outlined in the Guidelines. The Owner is ultimately responsible for selling the Property, including any real estate commissions and fees paid to the WHA, if any.

6.3 Maximum Resale Price. In no event shall the Property be sold for an amount exceeding the price calculated as follows:

A. The original purchase price of the Property plus an increase in price of three percent (3%) of the original purchase price per year from the date of purchase to the date that the Owner's Notice of Intent is delivered to the WHA (prorated for each whole month of any part of a year and not compounded).

B. PLUS, any other costs allowed by Beneficiaries pursuant to Guidelines and any applicable WHA policies and procedures.

6.4 No Guarantee of Price. Nothing herein shall be intended to be construed to constitute a representation or guarantee by the Beneficiaries that the Owner will obtain the Maximum Resale Price upon sale of the Property.

6.5 No Assumption of Owner's Costs. The Owner must not permit any prospective buyer to assume any or all of the Owner's customary closing costs (including title policy and half of any escrow expenses) or accept any other consideration which would cause an increase in the purchase price above the Maximum Resale Price. The Owner must pay all costs of advertising and marketing the Property for sale, including real estate commissions and the WHA Administration Fee. The Owner must not accept any other consideration which would cause an increase in the net proceeds paid to the Owner from the sale. Assumption of certain closing costs may be permitted according to applicable WHA procedures.

6.6 Administration Fee. At closing on the sale of the Property, the Owner (Seller) shall pay to the City or its designated beneficiary an administration fee of two and one-half percent (2.5%) of the Maximum Resale Price to defray the actual costs of facilitating the real estate transaction. This provision only applies to all subsequent purchases after initial sale.

**7. Beneficiaries' Option to Purchase.** To further the purpose of preserving the affordability of the Property, upon receiving a Notice of Intent, either of the Beneficiaries, or their successors, must have the right and option to purchase the Property for the Maximum Resale Price, pursuant to 6.3 above. Such option may be exercised by delivery to the Owner of a written Notice of Intent to Purchase within thirty (30) days of the WHA's receipt of the appraisal. Unless extended by mutual agreement of the Owner and the purchasing Beneficiary, the purchase must be completed within ninety (90) days of delivery of the Notice of Intent to Purchase or the Owner may sell the Property as set forth in section 6. The Beneficiaries may assign their purchase option.

## **8. Prohibited Sale/Transfer.**

8.1 Effect. Any prohibited sale/transfer of the Property in violation of this Deed Restriction or an attempt to make a prohibited sale/transfer must be void, must be a material breach, and must be subject to exercise by the Beneficiaries of their option to purchase or to have an assignee purchase the Property at the Maximum Resale Price as set forth in section 7.

8.2 Sales/Transfers Not Prohibited. The following are not considered prohibited sales/transfers and therefore are not subject to the Beneficiaries' option to purchase the Property: (i) Transfer of title by gift, devise, or inheritance to the Owner's spouse or natural or adopted children; (ii) Transfer of title due to the Owner's death to a surviving joint tenant, tenant by entirety, or a surviving spouse of community property; (iii) transfer to a spouse as part of divorce or dissolution proceedings; (iv) transfer of title by the Owner into an inter-vivos trust in which the Owner is the beneficiary; or (v) transfer of title or an interest in the Property to the spouse in conjunction with marriage. However, for these not to be deemed prohibited

sales/transfers all of the following three conditions must be met: (i) at the time of the sale/transfer, the Property was the transferee's primary place of residence, as set forth in section 3.3, and will continue to be the transferee's primary place of residence, or transferee meets the definition of an Qualified Household and will make the Property his/her primary place of residence; (ii) this Deed Restriction must continue to run with title of the Property following said sale/transfer; and (iii) transferee must execute and record this Deed Restriction. A transferee who satisfies the above three conditions shall then be considered the Owner.

## **9. Rental of the Property.**

9.1. When Permitted. The Owner is prohibited from renting the Property unless the WHA grants a temporary waiver of the owner occupancy requirements set forth in section 3.3 and the WHA grants approval in accordance with the following procedures:

- i) The Owner must deliver written notice to the WHA of its intent to rent no less than fifteen (15) days prior to the execution of any lease or any other occupancy agreement for the Property.
- ii) Prior to occupancy, any tenant must be certified in writing as a Qualified Household by the WHA in accordance with the Guidelines.
- iii) A signed copy of the lease must be provided to the WHA prior to occupancy by any tenant. Such lease must include all provisions specified in the Guidelines, if any.
- iv) The maximum rental rate must be determined when the notice of intent to rent is submitted and approved by the WHA. The monthly rent must not exceed Owner's monthly obligations, consisting of principal, interest, taxes, insurance and homeowners' dues/assessments.

9.2 Owner's Liability. Nothing herein shall be construed to require the Beneficiaries to: (i) protect or indemnify the Owner against any losses attributable to the rental, including, but not limited to, non-payment of rent or damage to the Property; (ii) require the WHA to obtain a qualified tenant for the Owner in the event none is found by the Owner; or (3) require the Beneficiaries to enforce any of the terms of or perform any of the obligations of any lease entered into by the Owner.

## **10. Breach.**

10.1 Notice and Cure. Upon violation of any of the provisions of this Deed Restriction, either Beneficiary must give written notice to the Owner by certified mail, return receipt requested, specifying the nature of the violation. If the violation is not corrected to the satisfaction of the Beneficiary within a reasonable period of time, not to exceed thirty (30) days after the date the notice is mailed, or within further time as is determined to be necessary to correct the violation, the Beneficiary may declare a default.

10.2 Remedies Upon Default. Upon the declaration of a default, the Beneficiaries may invoke any remedies available to them under this Deed Restriction including, but not limited to, seeking a court order for specific performance of the obligations of this Deed Restriction, for an injunction prohibiting a proposed sale/transfer in violation of this Deed Restriction, for a declaration that a sale/transfer in violation of this Deed Restriction is void, or for any other such relief at law or equity as may be appropriate.

10.3 Attorney fees and costs. In the event of a default by the Owner, the Owner and/or the Owner's transferee must hold the Beneficiaries, their officials, employees, and agents harmless and reimburse the expenses, attorney fees, and costs for any action the Beneficiaries take to enforce the provisions of this Deed Restriction.

10.4 Beneficiaries' Option to Purchase. In addition to these remedies, the Beneficiaries have the option to purchase the Property for the Maximum Resale Price, effective upon the declaration of default. Either Beneficiary must have thirty (30) days after a default is declared to notify the Owner of its decision to exercise its option to purchase the Property.

## **11. Foreclosure.**

11.1 Exclusivity. This paragraph applies in the event of foreclosure of the Property. In the event of foreclosure, paragraphs 6, 7, 8 and 10 do not apply.

11.2 Notice. The Owner must deliver to the WHA a foreclosure notice or any similar document he/she/they receive from a mortgagee within five (5) days of receipt.

11.3 Beneficiaries' Option to Purchase. The Owner grants to the Beneficiaries the right and option to purchase the Property upon receipt of notice of an impending foreclosure or deed in lieu of foreclosure. In the event a Beneficiary intends to exercise its right, such Beneficiary must purchase the Property within sixty (60) days of receipt of notice, at a price equal the mortgage satisfaction amount (as herein defined). "Mortgage satisfaction amount" means the sum of the outstanding principal balance of the note secured by the mortgage, plus accrued interest and all reasonable costs and expenses which the mortgagee is entitled to pursuant to the mortgage.

11.4 Effect Upon Deed Restrictions. If a Beneficiary does not exercise its option to purchase the Property, the rights and restrictions contained in this document will not apply to such mortgagee upon acquisition the Property, any purchaser of the Property at a foreclosure sale conducted by such mortgagee, or any purchaser of the Property from such mortgagee and the Property must thereafter be free from all such rights and restrictions.

**12. Financing.** The owner may not incur any debt or promissory note secured by a deed of trust or other security instrument that encumbers the Property in excess of the original purchase price.

### **13. Liability, Insurance, Damage, Destruction, and Improvements.**

13.1 Owner's Liability. The Owner has sole responsibility and liability to all persons and authorities related to the Owner's possession, occupancy, and use of the Property and must hold the Beneficiaries harmless from any and all claims of liability for injury or damage to person or property from any cause, on or about the Property. The Owner waives all claims against the Beneficiaries for such injury or damage.

13.2 Insurance. The Owner must, at the Owner's expense, procure and maintain appropriate and adequate insurance on the Property.

13.3 Damage to the Property. In the event of fire or other damage to the Property, the Owner must take all necessary steps to ensure the repair of such damage and the restoration of the Property to its condition immediately prior to the damage. All such repairs and restoration must be completed as promptly as possible. Provided, however: If the Owner, using reasonable judgment and relying on professional estimates, determines that either: (i) full repair and restoration of the Property and improvements is physically impossible; or (ii) insurance proceeds will pay for less than eighty percent (80%) of the cost of repair and restoration, then the Owner may elect not to repair or restore the Property. In this case, the mortgagee is to receive all condemnation or insurance proceeds, however, all proceeds in excess of the mortgage satisfaction amount must be paid to the WHA.

13.4 Eminent Domain. If the Property is taken by reason of eminent domain or other action of public authority prior to expiration of this deed restriction and:

- i. The Property is either taken in entirety or to such extent that the Property is lost or damaged beyond repair, this Deed Restriction must terminate as of the date the Owner is required to give up possession of the Property.
- ii. The taking of the Property results in damage to the Property only to such an extent that the Property can reasonably be restored to a residential use consistent with this Deed Restriction, the Owner must utilize such of the monetary compensation as is needed to repair or restoration of the Property.
- iii. Any and all proceedings brought by a party in connection with any damages as a result of any taking referred to in this section 13.4 must be conducted at the sole expense of such party. If any provision of law requires that such proceedings be brought by or in the name of the Owner, the Owner must join in the proceedings or permit the same to be brought in the Owner's name. Each party agrees to do all acts and execute all documents that may be required to enable the other to maintain such proceedings. If the party required to join in the proceedings incurs any cost or expense in doing so, such party must be entitled to reasonable reimbursement and this entitlement must constitute a first charge against any monetary compensation for the taking.

13.5 Improvements. The Owner may make improvements to the Property and recapture some of the value of said improvements if the Owner and WHA enter into a written agreement regarding the cost of the improvements, the scope of work, the depreciation of the improvements, if any, and recapture of value of the improvements. General property maintenance and repairs are not considered to add value and the Owner is obligated to make such when necessary.

#### **14. General Provisions.**

14.1 Notice. Any notice required or permitted under this Deed Restriction must be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, at the address set forth below, or such other address designated by the written notice. All notices must be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

If to WHA: Whitefish Housing Authority  
100 East 4<sup>th</sup> Street  
Whitefish MT 59937

If to City: The City of Whitefish  
Attn:  
P.O. Box 158  
Whitefish, MT 59937

If to Owner:

14.2 Severability. Whenever possible, each provision of this Deed Restriction and any other related document must be interpreted in such manner as to be valid under applicable law. However, if any provision must be invalid or prohibited under said applicable law, such provisions must be ineffective only to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.

14.3 Choice of Law and Venue. This Deed Restriction must be interpreted in accordance with and governed by the laws of the State of Montana. Venue for any legal action arising from this Deed Restriction must be in Flathead County, Montana.

14.4 Waiver. Waiver by the Beneficiaries of any term or condition of this Deed Restriction, or the failure of the Beneficiaries to take action with respect to any breach of any such term or condition, must not be deemed to be a waiver of such term or condition with regard to any subsequent breach of such term or condition, or of any other term or condition of the Deed Restriction. The Beneficiaries may grant waivers in the terms of this Deed Restriction, but such waivers must be in writing and signed by the Beneficiaries before becoming effective.

14.5 Successors. The provisions and covenants contained herein must inure to the benefit of, and be binding upon, successors and assigns of the parties.



14.6 Authority. Each of the parties warrants that it has complete and full authority, without limitation, to commit itself to all terms and conditions of this Deed Restriction, including each and every representation, certification and warranty contained herein.

14.7 Further Actions. The parties agree to execute such further documents and take such further actions as may be deemed reasonably necessary to carry out the provisions and intent of this Deed Restriction or any agreement or document relating hereto or entered into in connection herewith.

14.8 Amendment. This Deed Restriction may not be amended unless in writing, signed by all parties, and recorded with the Flathead County Clerk and Recorder.

14.9 Conflicts. To the extent any Covenants, Conditions and Restrictions, bylaws, or any other limitations or restrictions placed upon the Property by a builder, developer, or homeowner's association conflicts with any provisions of this Deed Restriction or the Guidelines, the applicable provision of this Deed Restriction or the applicable Guideline shall prevail.

14.10 FHA Loans. If the Property is encumbered by a mortgage insured by the Federal Housing Authority, the provisions of 24 C.F.R. 203.41 prevail to the extent such provisions conflict with any provisions of this Deed Restriction.

IN WITNESS WHEREOF, the parties have executed this Deed Restriction at Whitefish, Montana on the day and year first written above.

CITY OF WHITEFISH

\_\_\_\_\_  
Owner

By: \_\_\_\_\_

Its: \_\_\_\_\_

WHITEFISH HOUSING AUTHORITY

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA )

: ss

County of FLATHEAD )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

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

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
[Print Name]

STATE OF MONTANA )

: ss

County of FLATHEAD )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the \_\_\_\_\_ and on behalf of the City of Whitefish.

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

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
[Print Name]

STATE OF MONTANA )

: ss

County of FLATHEAD )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019, before me, the undersigned Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she executed the same as the \_\_\_\_\_ and on behalf of the City of Whitefish.

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

\_\_\_\_\_  
Notary Public for the State of Montana

\_\_\_\_\_  
[Print Name]