

WHITEFISH COMMUNITY HOUSING COMMITTEE AGENDA



Monday, July 24, 2023, at 4:00 p.m.
City Hall – City Council Conference Room

1. Call to order.
2. Communications from the public.
3. Approval of minutes from the June 26th and July 6th meeting.
4. Update on the resort tax re-allocation plan.
5. Review light deed restriction drafts (ownership and rental).
6. Other items not on the agenda.
7. Next committee meeting.
 - a. Monday, August 28th at 4:00 p.m.
8. Adjourn.

Committee Documents:

Click [here](#) to access the Whitefish Community Housing Roadmap

Click [here](#) to access the 2022 Whitefish Area Community Housing Needs Assessment

Click [here](#) to access the Workforce Housing Needs Assessment

Click [here](#) to access the 2017 Whitefish Strategic Housing Plan

WHITEFISH COMMUNITY HOUSING COMMITTEE MINUTES

June 26, 2023 at 4:00 p.m.

1. Call to Order

The meeting was called to order at 4:00 p.m. by Ben Davis

Present: Ben Davis, Cameron Blake, Rhonda Fitzgerald, Carolyn Pitman, Daniel Sidder, Leanette Galaz, Dwarne Hawkins, Jeff Raper

Staff: Dana Smith, City Manager; Wendy Compton-Ring, Senior Planner; Alan Tiefenbach, Planer II, Long Range

Others: none

2. Communications from the Public: None

3. Approval of Minutes

Approval of Minutes from May 22, 2023, and Meetings for June 5th and June 20th meeting where a quorum of members were present for the financial and development plan preparation.

Motion by Carolyn to approve as written. Seconded by Daniel, no discussion.

Vote: unanimous in favor.

4. Review draft of financial plan for resort tax re-allocation.

Dana reviewed the proposed resort tax document. Ten percent to community housing. \$27 million over 25 years. City council decides use of funds during budget process.

Cameron- make titles more explanative.

Dana – State Law give resort tax back in form of property tax relief. Big second homes paying the big \$.

Rhonda – too bad we can't give to people who live here – would go a long way to affordable housing. It is now going to second home owners and short term rental owners (as well as residents).

Leanette –Need for housing dollars is because of all the short term rentals. Detail and optics are important.

Discussed effect on rents.

Ben - State law limits and likely will continue to.

Dana – Based upon property tax – mills – negative mil. When was approved 25% to property tax relief.

Ben - Voters did pass what's here recently by an overwhelming margin. (tax relief).

Dana - most understand how resort tax works. Staff can only give information.

If this resort tax money wasn't here taxes would go up. But not enough to cover all streets.

Dana reviewed allocations.

Rhonda – for lay person \$130 million on streets. \$27 on housing.

Ben – has group ever talked about why 10%. Does anyone believe too high or too low.

Dana – showed council 5, 8, 10% and affect on streets, parks.

Cameron – people concerned about streets.

Rhonda - Original argument was for streets. We have fixed both of those but now have housing problem.

All discussed – importance of roads, expectations.

Daniel – 10% seems good. If go higher – have to pull from something. Parks and housing are the same.

Rhonda – can go back and ask for more later.

Dana – Ben working on financial gap numbers = local subsidy to make units affordable. Want to show what \$27 million would do.

All discussed not enough money.

Dana – this money would hopefully be leveraged with other funding sources.

Cameron – examples – Trailview has already happened.

Discussed format of document.

Dana asked that everyone sends her their individual marked-up version with edits either by tomorrow to resort tax to see or end of the week in general. The audience for this document is the resort tax committee and then next to City Council. Uses could vary from year to year depending on needs.

Ben – will look to City Housing partners to get the word out as City can't do it.

Leannette it is important to show that things are happening (snowlot) – press, media push, need community trust.

Ben – everyone comfortable with this proposal?

General discussion in favor.

Dana – need to meet after resort tax meeting (this Wednesday at 7:05 am), between 29th and 10th to approve final document that would incorporate any changes that resort tax committee might have. Thursday, July 6th at 3:30 pm. This document needs to be done by July 11th. The Council would approve potentially on August 7th. First look on 17th.

Needs to be partner plan to promote.

All thanked Dana for her work to date.

5. Possible review of the light deed restriction draft.

Dana - Not ready yet. Angie working on and will hopefully attend next regular meeting.

Already have deed-restrictions for Legacy Homes with AMI. Light deed can't include AMI.

6. Other items not on the agenda.

a. Carolyn. Prioritize hiring of STR enforcement staff – is it in budget?

Dana – technically in budget but need funding source to hire – Angie meeting with City Attorneys to see how we can have a business license not called a business license, otherwise would need to increase mils. If can't do licensing would lose about \$300,000. Legislature targeted chartered Cities – can't have business license if State already requires something similar. Looking at fire-safety.

Rhonda – is the Council clear that it is a priority?

Ben – yes Council is clear and that has been direction.

Dana – will know before the final budget is adopted. Other options for funding.

Two new positions are coming from other funding sources so can't replace.

b. Daniel – Will this committee have input over \$420,000 in property tax fund.

Dana – will take proposals. Recommendation comes from this Committee.

Daniel – can we promote to outside groups? How do they know about money? System to apply?

Wendy – RFQ?

Ben – can't imagine the money going to anyone other than one of NP's in this room. No process right now.

Dana- will need criteria.

Daniel – can this committee look at criteria and make recommendation to Council.

Dana- Money is from property tax and in affordable housing fund so no restrictions.

Council could change. Whereas resort tax approved by voters.

Carolyn – could outside group use? – like Trailview?

Dana – if we want to talk about – programs or developments.

Dwarne – if open up money to others - who would police?

Daniel – need to figure out – process and reporting.

c. Leanette - Short term rental and second homes – more to do there?

We talked about last meeting in detail – see minutes.

Rhonda - Could angle sus out legislative position vis a vis landlord tenant act. Definition of tenant.

Dana – 30 day or less not subject to landlord tenant act.

6. Next committee meeting

Monday, July 24th at 4:00 p.m.

7. Adjourned 5:40 pm.

**WHITEFISH COMMUNITY
HOUSING COMMITTEE AGENDA**

Thursday, July 6, 2023, at 3:30 p.m.

City Hall – Whitefish Conference Room

Present: Cameron Blake, Rhonda Fitzgerald, Carolyn Pitman, Daniel Sidder, Leanette Galaz,

Staff: Dana Smith, City Manager; Wendy Compton-Ring, Senior Planner; Luke Sponable, Housing Coordinator/Long-Range Planner,

Others: Two members of the public

1. Call to order
 - a. Meeting was called to order by Daniel at 3:38

2. Communications from the public.
 - a. None

3. Review and possible approval of the draft of financial plan for resort tax re-allocation
Dana - reviewed latest draft.
 - Resort tax committee feedback recommended it be presented as a reallocation of 1% so doesn't affect original allocation of 2% to streets.
 - 2021 vote – council talked about housing being added but we didn't have the plan we have now.
 - Removed Trail View as mostly complete, calculated financial gap, took out
 - Resort Tax Committee recommended to Council and this Committee.
 - July 17th Work session with Council
 - August 7th Public HearingCarolyn – what would cause this to go to voters with future changes.
Dana – Council makes the decision – could relook at in 10 years if new issues/crisis. Last vote secured funding for 20 years.
Leanette – Could we reduce (tax refund) to 15%, put 10% towards housing.
Carolyn, owners are seeing taxes increased, this was part of the original part and how sold to voters.
Dana – likely 10% increase in property taxes
Rhonda – we could give relief to permanent residents.
Daniel - what is average kickback.
Dana - is about a couple hundred per \$500,000.
Cameron – some landlords pass on to tenants - so are getting the benefit.
Daniel – could we have an option to donate rebate to community housing?
Dana – County bills and collects, so could pay what owe to County and write check to give back to City. Doesn't see a way except via a public campaign to donated to Housing Whitefish.
Dakota (public) – politics and status quo got us here and would keep it here.
Leanette – talking about protecting 25% - is status quo.
Cameron – in my case renters are benefiting.

Leanette – that’s not the norm

Rhonda – don’t want resort tax to fail.

Leanette – let’s be creative. Not give to non-residents.

Dana – don’t have way to do that. Of 10% 2% could be put to residents but would require a full-time person. State laws says 5% minimum goes back to property owners. Over collection in future could go back to all categories, right now over collection only goes to property tax relief.

Leanette – would vote for but want to fight against 25% going to property tax relief for non-renters.

Daniel – this would be money that is not there today. If success in a couple of years maybe property tax relief reduction is more palatable.

Carolyn – makes a motion to approve draft,

Rhonda seconds and adds: lets continue to explore rebate going to non-residents.

Carolyn - Negative publicity could revert back to nothing for housing.

Dana – Part of 10% would go to renter support.

Vote all in favor, except Leanette 4-1

Leanette – this is the time to reallocate and not have workers suffering and kickback to out of state.

4. Next committee meeting.
Monday, July 24th at 4:00 p.m.
Adjourn 4:25 pm

When Recorded Return to:
City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

DEED RESTRICTIONS

This Deed Restriction is entered into this _____ day of _____, 20____, between _____ ("the Owner"), the City of Whitefish ("the City), and the Whitefish Housing Authority ("WHA").

This Deed Restriction applies to the real property ("the Property") commonly known as _____ the legal description of which follows:

[Legal Description]

RECITALS

WHEREAS, the Property was annexed by the City by petition pursuant § 7-2-4601 through § 7-2-4625, MCA; and

WHEREAS, the Owner has benefitted from such annexation through the provision of City services; and

WHEREAS, as a condition of the Owner benefitting from annexation through the provision of City services, the City required the Property to be sold to and owned by a Qualified Household; and

WHEREAS, subsequent residents will benefit from the limitations required by this Deed Restriction; and

WHEREAS, the intent of the City and the Owner is to secure and preserve housing for individuals or households who are, or desire to be, full-time residents of the City and to assign to the City and/or the WHA the right to enforce compliance with this Deed Restriction.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency which is hereby acknowledged, the parties agree as follows:

Commented [AJ1]: See Comment directly below.

DEFINITIONS

The following terms shall have the meanings defined herein:

A. "Owner" means a Qualified Household.

B. "Qualified Household" means an individual who has committed to being a full-time resident of Whitefish or a household with at least one member who has committed to being a full-time resident of Whitefish.

COVENANTS

1. **Deed Restrictions 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 City, the WHA, 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 the City, the WHA, their successors and assigns, from enforcing the covenants and compelling compliance.

2. Restrictions on Occupancy.

2.1 **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.

2.2 **Occupancy.** The Owner must occupy the Property as the Owner's primary residence unless the Owner is renting the Property as set forth in Section 9.2. 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.

2.3 **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 sale. If Owner is unable to make the required repairs, the WHA may enter into an agreement with the Owner to make necessary repairs.

Commented [AJ2]: This is the definition we came up with on the ADU deed restriction with the WHA (Lori). The intent was to (1) not limit eligibility to individuals already living in WF because the inability to do so is the problem we are trying to solve; and (2) allow individuals who want to be part of our community to do so, even if they are confined to working somewhere else. Other options include a true "workforce" housing deed restriction requiring one member of the household to work in Whitefish a certain number of hours a week (i.e. Summit County is 30). Downside is it excludes the disabled and the retired, but maybe that's not a problem. Upside is that it is much easier to administer.

Commented [AJ3]: The Committee should discuss long-term rentals. Do we want owner to be able to rent to Qualified Households? I would think so.

Commented [AJ4]: The Committee may want to discuss this provision. It was the former City Manager's preference, but I always thought it was rather heavy handed to dictate how the owner of a property maintains it.

3. Taxes and Assessments.

3.1 Owner Responsibility. The Owner is responsible for the payment of all taxes, governmental assessments, and homeowners' dues/assessments relating to the Property.

3.2 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.

4. **Term.** This Deed Restriction must continue in full force and effect for a period of ninety (90) years after the date of recordation. With each sale or transfer, the Owner must ensure that the purchaser or transferee executes this Deed Restriction 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.

5. Sale of the Property.

5.1 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 to the WHA.

ii. No later than ten (10) days after delivering notice 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.

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.

5.2 Selling the Property. The Owner may sell the Property by selling the Property directly to a Qualified Household located through the WHA or by any other method. The Owner is ultimately responsible for selling the Property, including any real estate commissions and Administration Fee.

5.3 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 one percent (1.0%) of the sale price to defray the actual costs of facilitating the real estate transaction. This provision only applies to all subsequent purchases after initial sale.

6. **Option to Purchase.** To further the purpose of preserving the Property for Qualified Households, upon receiving a Notice of Intent, the WHA or the City, or their successors, must have the right and option to purchase the Property for the sale price. Such option may be exercised by delivery to the Owner of a written Notice of Intent to Purchase

Commented [AJ5]: See comment in Section 6 below.

Commented [AJ6]: See comment in Section 2.3 above.

Commented [AJ7]: See comment directly below.

Commented [AJ8]: Again a preference of the former City Manager the Committee will have to discuss. I struggle with how the City or WHA is helping "facilitate" the transaction other than making sure the property is being sold to a local or wannabe local.

within thirty (30) days of the WHA's receipt of the Notice of Intent. Unless extended by mutual agreement of the Owner and the purchasing party, 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 City or the WHA may assign its purchase option.

Commented [AJ9]: Not sure this makes sense in a light deed restriction.

7. Prohibited Sale/Transfer.

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

7.2 Sales/Transfers Not Prohibited. The following are not considered prohibited sales/transfers: (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 entireties, 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 3.2, 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.

8. Rental of the Property.

8.1 Short-Term Rentals Prohibited: The Owner is prohibited from renting the Property or any room or rooms in the Property to any person or person for term shorter than 30 days.

8.2 Long-term Rentals: The Owner may rent the Property or any room or rooms in the Property to any Qualified Household for a term longer than 30 days.

9. Breach.

9.1 Notice and Cure. Upon violation of any of the provisions of this Deed Restriction, either the City or the WHA 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 City or WHA 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 City or the WHA may declare a default.

9.2 Remedies Upon Default. Upon the declaration of a default, the City or the WHA 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.

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

10. Foreclosure.

10.1 Effect. In the event of foreclosure, acceptance of deed-in-lieu of foreclosure, or any similar action, this Deed Restriction shall remain in full force and effect.

10.2 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.

10.3 Option to Purchase. Within sixty (60) days after receipt of notice, the City and/or the WHA may, but are not obligated to, make any payment required to avoid foreclosure. Upon making such payment, the City and/or the WHA may place a lien on the Property in the amount paid to cure the default and avoid the default and avoid foreclosure, including all fees and costs. The Owner shall execute all documents required to make such lien legally effective.

11. Liability, Insurance, Damage, Destruction, and Improvements.

11.1 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 City and the WHA harmless from any and all claims of liability for injury or damage to person or property from any cause, on or about the Property.

11.2 Insurance. The Owner is responsible for procuring and maintaining appropriate and adequate insurance on the Property.

11.3 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.

11.4 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 12.4 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.

12. General Provisions.

12.1 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 4th Street
Whitefish MT 59937

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

If to Owner:

12.2 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.

12.3 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.

12.4 Waiver. Waiver by the City and/or the WHA of any term or condition of this Deed Restriction, or the failure of the City and/or the WHA 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 City and/or the WHA may grant waivers in the terms of this Deed Restriction, but such waivers must be in writing and signed by the City and/or the WHA before becoming effective.

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

12.6 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.

12.7 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.

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

12.9 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 shall prevail.

12.10 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.

Return to:
City Clerk
City of Whitefish
PO Box 158
Whitefish, MT 59937-0158

RENTAL HOUSING DEED RESTRICTIONS

This Rental Housing Deed Restriction (“Deed Restriction”) is entered into this ___ day of _____, 202__, between _____ (“the Owner”), the City of Whitefish (“the City”), and the Whitefish Housing Authority (“the WHA”).

This Deed Restriction applies to the real property (“the Property”) commonly known as _____ the legal description of which follows:

[Legal Description]

RECITALS

WHEREAS, the Property was annexed by the City by petition pursuant § 7-2-4601 through § 7-2-4625, MCA; and

WHEREAS, the Owner has benefitted from such annexation through the provision of City services; and

WHEREAS, as a condition of the Owner benefitting from annexation through the provision of City services, the City required a certain number of units be maintained for rental by individuals or households who are, or desire to be, full-time residents of the City; and

WHEREAS, subsequent residents will benefit from the rent limitations required by this Covenant; and

WHEREAS, the intent of the City and the Owner is to secure and preserve rental housing for individuals or households who are, or desire to be, full-time residents of the City and to assign to the City and/or the WHA the right to enforce compliance with this Deed Restriction.

NOW THEREFORE, in consideration of the benefits received by the parties, the sufficiency which is hereby acknowledged, the parties agree as follows:

Commented [AJ1]: See Comment directly below.

COVENANTS

1. Number of Units. The Owner agrees it will provide and manage ____ rental units for Qualified Tenants on the Property. "Qualified Tenant" means an individual who has committed to being a full-time resident of Whitefish or a household with at least one member who has committed to being a full-time resident of Whitefish.

Commented [AJ2]: This is the definition we came up with in conjunction with the WHA (Lori) in the ADU deed restriction. The intent was to (1) not limit eligibility to individuals already living in WF because the inability to do so is the problem we are trying to solve; and (2) allow individuals who want to be part of our community to do so, even if they are confined to working somewhere else. Other options include a true "workforce" housing deed restriction requiring one member of the household to work in Whitefish a certain number of hours a week (i.e. Summit County is 30). Downside is it excludes the disabled and the retired, but maybe that's not a problem. Upside it's easier to administer.

2. Location, Configuration and Size of the Rental Units. The type and size of the rental units on the Property shall be as follows:

<u>Unit Type</u>	<u>No. of (sq ft)</u>	<u>No. of Bedrooms</u>	<u>No. of Bathrooms</u>
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The rental units required by this Deed Restriction must have substantially the same equipment and amenities as all other units on the Property. The rental units required by this Deed Restriction must have equal access to enjoyment of all common facilities of the Property as all other units. The location of the rental units required by this Deed Restriction may change in accordance with Paragraph 5.

Commented [AJ3]: I'm not certain we need this. It was more to prohibit the Owner from building sub-par units for affordable units.

3. Certification and Marketing. In accordance with its internal policies and procedures, and applicable state and federal requirements, the WHA will screen potential tenants. The Owner is responsible for all other marketing for the rental units required by this Deed Restriction and for screening and selecting tenants based upon desirability, background and creditworthiness. Nothing herein shall be construed to constitute a representation or guarantee that a Qualified Tenant will be located or that the Owner will be able to rent or lease any rental unit required by this Deed Restriction and neither the WHA nor the City shall be liable if a Qualified Tenant is not located and/or the Owner is unable to rent or lease a rental unit required by this Deed Restriction.

4. Administrative Fee. In order to compensate the WHA for its services performed under this Deed Restriction, the Owner or its property manager shall pay the WHA ____% of the total rents collected from the rental unit required by this Deed Restriction. The Owner or its property manager shall remit the administrative fee to the WHA semi-annually by January 15th of each year for the periods of July through December and by July 15th of each year for the periods of January through June.

5. Annual Recertification. The WHA will perform recertification on each tenant's "anniversary date" (one year from the date of initial certification). If a tenant ceases to meet the definition of "Qualified Tenant," after he/she/it becomes an occupant of one of the rental units required by this Deed Restriction, the Owner must follow the "next available unit rule." This means the next available unit must be rented to a Qualified Tenant.

5. Transfer. The Owner shall inform the City, in writing or via e-mail, thirty days prior to any anticipated transfer of interest in the Property. The Owner shall not transfer its interest in the Property without the express written agreement of the City that the City's housing

interest in the Property will not be jeopardized by such transfer. The new Owner must execute and record a Deed Restriction substantially similar to this Deed Restriction.

6. Foreclosure. The Owner agrees that he/she/it will give immediate notice to the City of a foreclosure notice or any similar documents he/she/they receive from a mortgagee within five (5) days of receipt.

7. Enforcement. The Owner shall exercise reasonable diligence to comply with the requirements of this Deed Restriction and shall correct any noncompliance within sixty (60) days after such noncompliance is first discovered by the Owner or within sixty (60) days after the City or the WHA gives the Owner written notice of noncompliance. If such noncompliance remains uncured after such period, the Owner is in default and the City and/or the WHA may take any one or more of the following steps:

- a. By any suit, action or proceeding at law or in equity, require the Owner to perform its obligations under this Deed Restriction, or enjoin any acts or things which may be unlawful or in violation of this Deed Restriction, it being recognized that the City and/or the WHA cannot be adequately compensated by monetary damages in the event of the Owner's default;
- b. Have immediate access to and inspect, examine and make copies of all books and records of the Owner pertaining to the Property; and
- c. Take other such action at law or in equity as may appear necessary or desirable to enforce this Deed Restriction.
- d. In the event the City and/or WHA files a suit, action or proceeding to enforce the terms of this Deed Restriction, the prevailing party shall be entitled to its attorney fees and costs.

8. Indemnification. The Owner shall defend, indemnify and save harmless the City and the WHA from and against all losses, claims, suits, judgments or liabilities which may be asserted against the City and the WHA arising from or caused by the Owner, the Owner's employees or agents in the negligent performance of this Deed Restriction or any sole negligent or intentional act or omission by the Owner, the Owner's employees or agents. As part of such indemnification obligation the Owner shall pay all costs and attorney's fees incurred by the City and the WHA as a result of such claims or suits. The time of attorneys and legal assistants in the Whitefish City Attorney's Office spent on any such claims or suits shall be paid for in accordance with the prevailing attorney's fees charged in Flathead County for similar services.

9. Maintenance. The Owner shall maintain the rental units required by this Deed Restriction in good, safe and habitable condition, except for normal wear and tear, and in full compliance with all applicable laws, ordinances, rules and regulations of any governmental authority with jurisdiction over matters concerning the Property. The Owner shall maintain and upgrade the rental units required by this Deed Restriction to the same standard and with the same processes and procedures as all other units. The City and the WHA shall have the right, but not

the obligation, to inspect the rental units required by this Deed Restriction prior to initial occupancy and periodically thereafter, upon three business days' notice to the Owner and without unreasonable disruption to the Owner's operations.

Commented [AJ4]: See Comment in Section 2 above.

10. Reporting. The Owner shall comply with any and all annual reporting requirements of the City, the WHA, or any of their assigns or successors.

11. Records. The Owner shall maintain:

- a. Any documentation reasonably required to demonstrate its performance under this Deed Restriction.
- b. Complete records on applicants and tenants sufficient to comply with federal and state fair housing requirements and laws.
- c. The Owner must allow access to its records at any time during normal business hours by the City or the WHA.

12. Lease Provisions. Leases between the Owner and tenants of the rental units required by this Deed Restriction must be for not less than one year. The Owner is responsible for: (1) screening and selecting tenants for desirability, background and creditworthiness; and (2) ensuring that lease/rental agreements do not contain any provision prohibited by federal, state or local law. Lease agreements for rental units required by this Deed Restriction must contain substantially the same terms as the lease agreements for all other units. The City and the WHA have no obligation or duty to enforce the terms of any lease/rental agreement nor does it have any liability for the Owner's or any third-party property manager's enforcement of such terms or failure to enforce such terms.

Commented [AJ5]: Is this appropriate?

13. Owner's Obligations. All property management functions and obligations pertaining to the rental units required by this Deed Restriction are the responsibility of the Owner. The Owner may enter into a property management agreement with a third-party in its discretion at its own expense. All property management agreements covering the Property shall include a provision stating that they are subject to the terms of this Deed Restriction and that, in the event of a conflict, the terms of this Deed Restriction control with respect to the rental units required by this Deed Restriction.

14. Termination of Leases. The Owner or its designee shall have the right to terminate the tenancy or refuse to renew the lease of a Qualified Tenant pursuant to the provisions of the lease/rental agreement. The Owner and its designee shall comply in all aspects with the Montana Residential Landlord and Tenant Act, §§ 70-24-101, *et seq.*, MCA. Neither the City nor the WHA shall be liable in the event the Owner terminates the tenancy or refuses to renew the lease of a Qualified Tenant or in the event the Owner fails to comply with the Montana Residential Landlord and Tenant Act or other applicable laws or regulations.

15. Conversion to Non-Rental Use. In the event the Property is proposed for conversion to condominium, owner-occupied, or non-rental residential use, the Owner must

submit to the City for its approval a plan for preserving the rental units required by this Deed Restriction.

16. No Discrimination. The Owner shall not discriminate on the basis of race, creed, religion, color, sex, sexual orientation, age, national origin, marital status, or presence of any mental or physical disability as set forth by applicant federal, state and local laws in the lease, use or occupancy of the Property or in connection with the employment or application for employment of persons for the operation and management of the Property.

17. Compliance with Law. The Owner shall apply with all applicable laws and regulations of the City, State and Federal governments.

18. Perpetual Covenant. This Deed Restriction shall be perpetual, shall run with the land and in favor of the City, and shall be recorded in the real property records of the Clerk and Recorder of Flathead County.

19. Partial Invalidity. If any provision of this Deed Restriction shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or unenforceability shall not in any way be affected or impaired thereby.

20. No Agency. Nothing in the Deed Restriction shall be deemed to create an agency, partnership, joint venture or employment relationship between the City and the Owner.

21. Waiver. The waiver by any party of any breach or violation of any term or condition of this Deed Restriction or of any provisions, ordinance or law shall not be deemed to be a waiver of such term, condition, ordinance or law.

22. Merger. This Deed Restriction constitutes the entire agreement of the parties relating to the subject matter addressed in this Deed Restriction. This Deed Restriction supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Deed Restriction, whether oral or written.

23. Modification. This Deed Restriction may be supplemented, amended, or modified only by the mutual written agreement of the parties. No supplement, amendment, or modification of this Deed Restriction shall be binding unless it is in writing and signed by all parties.

24. Choice of Law and Venue. This Deed Restriction shall be governed by the laws of Montana and venue shall be in Flathead County, Montana.