

CLERK AND RECORDER BY *Betty T. Lund* *Colleen Reynolds*

*Re: Heritage Place  
Dan Pendergast  
295 Fairgrounds Rd  
Hamilton MT 59840*

COMPARED

DECLARATION OF RESTRICTIVE COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS

FOR

HERITAGE PLACE

an Addition to the City of Hamilton

located in the NW $\frac{1}{4}$  of Section 30,

Township 7 North, Range 20 West, P.M.M.

Ravalli County, Montana

This Declaration of Restrictive Covenants, Conditions, Restrictions, and Easements for Heritage Place, hereinafter referred to as the "Declaration", is made this 21 day of May, 1993, by DANIEL H. PENDERGAST and NANCY L. PENDERGAST, Husband and Wife, hereinafter referred to as the "Declarants".

RECITALS

A. Declarants are the record owners of a tract of land located in and being a portion of the North One-Half of Section 30, Township 6 North, Range 20 West, P.M.M., Ravalli County, Montana, being more particularly described and shown on Certificate of Survey No. 4508, records of Ravalli County, Montana.

B. Declarants plan to subdivide and develop a portion of said real property for residential homesites, townhouses, multifamily apartments, and other portions for commercial uses.

C. This Declaration is intended to be applicable to the single family residential portion of Heritage Place only and is specifically designated as not applicable to Lots 80 and 81, inclusive, which have been set aside for multifamily apartments, Lot 94, which has been set aside for mini-storage uses, Lot 95, which has been set aside for a private parking lot, or to Lots 82 through 87, inclusive which is the townhouse development.

NOW, THEREFORE, the Declarants hereby declare that this Declaration is for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property for the benefit of all of the property described herein and the owners thereof, their heirs, successors, grantees, and assigns. This Declaration shall run with the land and shall be binding on all

parties having or acquiring any right, title or interest in the described properties, or any part thereof, and shall inure to the benefit of each owner thereof. Said restrictions establish and impose a general plan for the improvement and development of said property described herein and the adoption and establishment of covenants, conditions, charges, liens, easements and restrictions upon said land and upon any and all structures placed, to be placed, constructed or to be constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any of said units, or property or position thereof, shall be and is subject to these covenants, conditions, charges, liens, restrictions and easements as follows:

#### ARTICLE I

##### Definitions

Section 1. "Association" shall mean and refer to HERITAGE PLACE HOMEOWNERS' ASSOCIATION, a Montana non-profit corporation, its successors and assigns.

Section 2. "Subject Properties" shall mean and refer to Lots 1-79, inclusive, and Lots 88-93, inclusive, of Heritage Place, according to the recorded plat or plats thereof and associated Common Areas.

Section 3. "Common Area(s)" and "Common Elements" shall by synonymous and are as defined as all real property shown on any recorded plat of the property in which the Association owns or shall acquire an interest for the common use and enjoyment of its members. Said interest may include, without limitation, estates in fee, estates for a term, or easements. The term common area and/or common elements shall not include any platted lot unless the Association is the owner thereof or any portion of the property which has been dedicated to and accepted by the City of Hamilton or County of Ravalli, or other public authority which has thereby assumed the obligation to maintain the same.

Section 4. The term "Lot" shall mean and refer to one or more of the separately designated and legally described freehold estates shown, numbered and designated on the recorded plat of Heritage Place, enumerated in Section 2 of this Article I.

Section 5. The term "Manufactured Home" is defined as double wide mobile homes and modular homes built to the standards of the National Mobile Home Construction and Safety Standards Act of 1974. Housing units built to these standards shall have an official H.U.D. sticker affixed to them. Inspection occurs at the factory.

Section 6. "Factory Built Home" is defined as any building constructed off-premises that does not bear a H.U.D. sticker or



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qualify as a recreational vehicle or park trailer. It must bear a Montana sticker certifying it meets UBC, UPC, NEC, and UMC standards as per ARM §8.70.502. Such buildings are not made to be readily moveable and are designed to be used on a permanent foundation.

Section 7. "Institutional Holder" is a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency. Reference to a mortgage or a mortgagee shall also include a Deed of Trust and a beneficiary under a Deed of Trust.

Section 8. "Lease" means any agreement for the leasing or rental of a unit.

Section 9. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 10. "Owner" shall mean the record Owner (including without limitation to the Declarants), whether one or more persons or entities, of the fee simple title to any lot except that (1) where a lot has been sold by Declarants on an installment sale basis pursuant to a security instrument, the buyer thereunder (provided he/she/they are not in default under said security instrument), and not the Declarants or Grantors, shall be deemed to be the Owner, and (2) the term Owner shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

Section 11. "Development" shall mean and refer to the recorded plat of Heritage Place, a major subdivision.

*Section 12 -  
Landscape -*

## ARTICLE II

### Construction and Use Requirements

Section 1. The following declarations are supplemental and in addition to the Heritage Place Development Plan, and all applicable land use laws, ordinances, and regulations now or hereafter made applicable to the subject property in the City of Hamilton and/or County of Ravalli.

Section 2. The subject property shall be used exclusively as a residential subdivision and no other uses shall be permitted, except for churches. The requirements herein made applicable to "homes" shall also be applicable to any churches.

Section 3. Each home shall have a minimum width of twenty-three (23) feet, a minimum length of forty (40) feet, and be of new construction. Any exceptions must be approved by the Board of

Directors of the Association. All homes must be set on a permanent concrete foundation.

Section 4. Each home must have exterior siding that is either approved hardboard, wood, hardboard lap siding, or other siding approved by the Board of Directors of the Association.

Section 5. The roofs of the homes shall be of a textured coating of either wood, asphalt shingles, built-up asphalt singles, stone aggregate, or other similar materials. In no event shall the roofs be of exposed metal or aluminum. No equipment or machinery (i.e. air conditioning units or evaporative coolers) shall be placed on the roof of homes, awnings, or carport.

Section 6. The individual lots shall have a washed gravel or paved driveway at the expense of the Lot Owner, within six (6) months of occupancy.

Section 7. No storage sheds or similar buildings shall be allowed on a Lot except those which have exterior siding of the same color and material as the individual home.

Section 8. All structures shall be located on a Lot so as to conform with the Heritage Place Development Plan of the City of Hamilton.

Section 9. Lots <sup>53</sup>27 through <sup>62</sup>62, inclusive, shall be improved with either one manufactured home, or one factory built home as hereinbefore defined, or one custom built home. Lots 63 through Lots 67 shall be improved with either one factory built home as hereinbefore defined or one custom built home. In addition any Lot may be improved by a private garage or carport.

Section 10. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, their heirs, successors and assigns, to maintain during the period of construction and sale of said project, upon such portion of the Subject Properties as Declarants, their heirs, successors or assigns may authorize, a temporary office convenient or incidental to the construction and sale of said project. No rent shall be paid for such use.

Section 11. No noxious or offensive activity may be carried on or permitted on any Lot or the Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, nor shall any part of the Subject Properties be used for business or commercial purposes with the exemption of home occupations involving no employees outside of the residents, no advertising signs, and limited customer/client traffic consistent with the residential character of the neighborhood, to



be approved in advance by the Board of Directors of the Homeowners Association. Provided, however, the foregoing restrictions shall not apply to the business activities of the Developer, other agents and assigns, and/or the Association in furtherance of its powers and purposes as herein set forth.

Section 12. No vehicle or other personal property shall be left parked in any public street right of way within the Development except those belonging to the temporary houseguests of the Owners. All vehicles kept within the development shall be operative. In no instance shall a parked vehicle, trailer, R.V., boat, A.T.V., motorcycle, etc., be allowed to constitute a traffic hazard nor shall such units be allowed to remain parked on any public street right of way for more than thirty (30) days in succession.

Section 13. No animals, fish or birds of any kind shall be raised, bred or kept on the premises, except that commonly accepted household pets may be kept, provided that such pets are not kept, bred or maintained for any commercial purposes and the number of pets shall be limited to no more than four (4) domestic animals not to exceed a combined weight of 150 pounds, that are household pets per dwelling. Owners shall keep any such pets confined within their respective Lots and any such pets shall be kept on a leash at any time the pets are off of the Lot of such Owner. Owners shall be responsible for sanitary removal of all animal waste material.

Section 14. Rubbish, trash, or garbage shall be kept in appropriate containers and stored out of sight until the date of pickup by a trash collection service. No rubbish, trash, or garbage shall be burned on the premises. Incinerators of every kind are prohibited, except for wood heating stoves within the residences.

Section 15. Natural gas, electric, power, telephone, water, sewer, cable television, and other utility or service lines (used for the general benefit of the Owners) and other utility or service lines of every kind or character (whether now or hereafter invented or used) shall be placed and kept underground up to the walls of the buildings on the lots (except to the extent, if any, such underground placement may be prohibited by law, or by the nature of the service to be rendered, such underground placements prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every lot and the common areas, as well as to the distribution lines located in the streets or elsewhere in the subdivision. However, the foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers.

Section 16. Any fences cannot exceed four (4) feet in height, except for backyard or sideyard dog kennels, and shall be constructed of appropriate and attractive materials of a uniform texture and color, as approved by the Board of Directors, and such fences shall be maintained in good and attractive condition by the Lot owners.

Section 17. No "FOR SALE" or "OPEN HOUSE" sign shall exceed 18" x 24" in size. Said sign shall be displayed utilizing a single or double vertical post sign support not to exceed forty-two (42) inches in height when installed.

Section 18. The respective lots and homes thereon shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days, or (b) any rental if the occupants of the lots are provided any customary hotel services, such as room service for food and/or beverage, mail service, furnishing linen and like, or bellboy service. Other than the foregoing limitations, the Owners of the respective Lots shall have the absolute right to lease the same, provided that the lease is in writing and made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and further subject to the By-laws attached hereto.

Section 19. Each Lot owner shall plant and maintain at least one (1) shade tree on their respective Lot within six (6) months of occupancy. Shade tree is herein defined as a tree that is expected to reach a height of fifteen feet (15') or more when fully mature. Lot owners shall keep their trees pruned and maintained so as to not constitute a hazard to vehicular traffic or pedestrians.

Section 20. No light shall be emitted from any Lot which is unreasonably bright. No dusk to dawn security/mercury lights on tall poles will be allowed.

Section 21. No snowmobiles, motor bikes and other off road vehicles may be used on the property, except as required to access or exit the site.

Section 22. No TV satellite dish in excess of 4' in width shall be placed on any lot, nor shall same be mounted on the roof or otherwise affixed to any structure on any lot.

Section 23. No TV antenna or other communication equipment may be erected on any lot, nor mounted or affixed to any structure on any lot, that exceeds 36" above the roof line of the highest structure on any lot.



ARTICLE III

Homeowners' Association

Section 1. The Declarants, pursuant to this Declaration, shall create a Montana non-profit corporation which will be responsible for maintaining and administering the common areas and elements, including any common recreational facilities located thereon; and will have the general responsibility for administering and enforcing the terms, covenants and conditions of this Declaration. The corporation shall be known as HERITAGE PLACE HOMEOWNERS' ASSOCIATION.

Section 2. Membership in the Association, except for membership of the Declarants and the first Board of Directors, shall be limited to owners of Lots in the development. An Owner of a lot shall, automatically upon becoming an Owner of a Lot, be a member of the Association and shall remain a member of the Association until such time as his/her ownership ceases for any reason, at which time his/her membership in said Association shall automatically cease. Ownership of a Lot shall be the sole qualification and criteria for membership in the Association.

Section 3. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such Lot and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure or mortgage of record and/or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his/her name to the purchaser of such unit, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership for the purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

Section 4. The Owner of each Lot shall be entitled to one (1) membership in the Association, and there shall be no more than one (1) membership for each Lot, regardless of the number of Owners thereof, which membership shall be the subject of all of the provisions of the Association's By-laws.

Section 5. There is attached hereto and incorporated herein by this reference, as Exhibits A and B respectively, the corporation's Articles of Incorporation and By-laws.

Section 6. Any management agreement, other than the management agreement between the Association and the Declarants,

pertaining to the subject property, shall be terminable by the Association for cause upon thirty (30) days' written notice thereof, and the term of any agreement shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods.

#### ARTICLE IV

Section 1. The Association shall have two (2) classes of voting membership.

Class A. Class A members shall be those Owners as defined in Article I, Section 10, with the exception of the Declarants. A Class A member shall be entitled to one (1) vote for each Lot owned by said member, as provided above.

Class B. The Class B member shall be the Declarants. The Class B members shall be entitled to a total of three (3) votes for each Lot in which they hold the interest required for membership by Article I, Section 10, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever first occurs:

(a) When the total votes outstanding in the Class A membership within all phases of the subject properties equal the total votes outstanding in Class B membership, or

(b) Fifteen (15) years from the date of execution of this Declaration.

Section 2. In the event any Lot Owner shall be in arrears of the payment of any amounts due under any of the provisions of this Declaration for a period of twenty (20) days, or shall be in default in the performance of any of the terms of this Declaration for a period of twenty (20) days, said Lot Owner's right to vote as a member of the Association shall be suspended and shall remain suspended until all payments are brought current and all defaults remedies.

#### ARTICLE V

##### Property Rights

Section 1. "Member's Easements of Enjoyment". Every member shall have a right and easement of enjoyment in and to the common areas and elements, and such easement shall be appurtenant to and



shall pass with the title to each and every Lot. It is expressly acknowledged and agreed by all parties concerned that this Article V is for the mutual benefit of all members of the Association and is necessary for the protection of said Owners. It is understood and agreed that the right of use and enjoyment of the Common Areas and elements may be exercised by any person legally in possession of a Lot in a manner not in violation of the provisions hereof, but nothing herein shall be deemed to alter or amend the definition of "Owner" under Article I, Section 10 hereof, or to affect the provisions of Article III hereof with respect to voting rights. Such rights and easements of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by the Board of Directors and which may include, but shall not be limited to:

- a) The right of the Association to limit the number of guests of members;
- b) The right of the Association to set reasonable use restrictions including without limitation, hours of use and noise control.
- c) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas, proportionate to the cost to maintain, repair, and administrate such facility.
- d) The right of the Association to borrow money.

Section 2. "Declaration of Use". Any member may delegate, in accordance with the By-laws, his right of enjoyment to the Common Areas and facilities to the members of his immediate family, his tenants or contract purchasers who reside on the property.

Section 3. "Title to the Common Areas". The Declarants hereby covenant for themselves their heirs and assigns, that they will convey fee simple title to the common elements to the Association upon its incorporation.

#### ARTICLE VI

##### Covenant for Maintenance and Property Tax Assessments

Section 1. "Maintenance". Maintenance, upkeep and repairs of individual Lots, structures on that Lot, patios and storage areas shall be the sole responsibility of the respective Owners. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements may be taken by the

Board of Directors or by its duly delegated representatives, as it may deemed to be in the best interest of all parties in carrying out the purpose of this Declaration. The powers, rights and duties of the Association and the Board of Directors shall be as contained in this Declaration, and as may be adopted by its By-laws not inconsistent herewith.

Section 2. "Creation of the Lien and Personal Obligation of Assessments". Each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agrees to pay to the Association:

- a) Regular assessments or charges, and
- b) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The monthly and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due, but such personal obligation and liability of the Owner shall not be deemed to limit or discharge the charge on the land and continuing lien upon the property against which such assessment is made.

Section 3. "Purpose of Assessments". The assessments levied by the Association shall be used exclusively for the purpose of payment of property taxes and assessments on Association property, promoting the recreation, health, safety and welfare of the residents in the development and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the Lots situated upon the property.

Section 4. "Establishment, Basis and Maximum of Assessments". Declarants and the Owner of each Lot, for themselves, their heirs, successors and assigns, further covenant that each such Lot shall be subject to an assessment in an amount to be determined by the Association in the following manner:

- a) Such Lot's share of the actual cost to the Association of all taxes, assessments, repair, construction, replacement and maintenance of the general



common elements, and other facilities and activities, including but not limited to mowing grass, caring for grounds, sprinkler system, ponds and other charges required by this Declaration of Covenants, Conditions and Restrictions;

b) Such Lot's share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the establishment and maintenance of a reserve for repairs, maintenance liability insurance policies, legal fees, accounting fees, management fees and other charges normal and customary to the maintaining and administering of the subject real properties;

c) Such Lot's share of such additional sum as the Board of Directors of the Association shall determine to be necessary to meet the primary purposes of the Association;

d) Such Lot's share shall be the same as its undivided interest in the common elements of the total amount determined under Subparagraphs (a), (b) and (c) above.

Section 5. The amount to be shared among the members of the Association pursuant to Section 4, Subparagraphs (a), (b), and (c) above, shall be established annually by the Board of Directors based upon an annual report prepared by the Board of Directors.

Section 6. Until the end of the first fiscal year immediately following the closing of the sale of the first Lot, the maximum monthly assessment shall be Thirty-Five and No/100 (\$35.00) Dollars per Lot. From and after the end of said first fiscal year, the maximum monthly assessment may be increased by an amount up to ten (10%) percent per annum, effective the first day following the end of such fiscal year by a majority vote of the duly elected Directors of the Association so acting at any regular or special meeting of the Directors. Any greater annual increase in the maximum assessment shall require a majority vote of the Association members as set forth in Section 7 following.

Section 7. "Special Assessments". In addition to any other assessments authorized by this Declaration, the Association's Board of Directors shall have the right and power to provide for the construction of additional recreational and other common facilities, or the alteration, demolition, or removal of existing recreational and other common facilities, from time to time, as in their discretion appears to be in the best interests of the Association and the project. Any such alterations, demolition, removal, construction, improvements or additions, increasing the

Owners' monthly assessments over the then maximum limitation, shall be authorized by an affirmative vote of three-fourths (3/4ths) of the Board of Directors at a duly called meeting at which a quorum is present, and ratified and approved by the affirmative vote of sixty-six (66%) percent of the Association members present at a duly called meeting at which a quorum is present.

Section 8. The monthly assessment and any special assessments shall be set by the Association's Board of Directors at a meeting of the Board of Directors called pursuant to the Associations By-laws.

Section 9. "Uniform Rate of Assessments" Both monthly and special assessments must be fixed at a rate for all Lots as to the assessments for the general common elements based on each Lots' respective undivided interest in the common elements. All of these assessments must be collected on a monthly basis. Quarterly, semi-annual, and/or annual prepayments are permissible.

Section 10. "Effect of Non-Payment of Assessments and Remedies of the Association". Each Lot Owner, for himself or herself, their heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period he/she is an Owner, he/she will remit these charges directly to the management corporation, or to such other party or parties as directed by the Association's Board of Directors.

a) Any assessment which is not paid when due shall be delinquent. Each Lot Owner further agrees that these charges, if not paid within twenty (20) days after the due date, the assessment shall bear interest from the date of delinquency at the per annual maximum legal rate of interest permitted by Montana law, and shall become a lien upon said Owner's Lot and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of any first mortgage.

b) Each such Owner expressly vests in the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of all other Lot Owners, shall have the power to bid in an



interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event any person, corporation or association authorized to enforce the provisions of this Declaration employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners and parties against whom the action is brought shall pay all attorneys' fees and costs thereby incurred by said enforcing party in the event the enforcing party prevails in any such action.

c) That in the event any member of the Association refuses to pay his/her maintenance fee or cares for his/her property, etc., the other members shall have the power to have and make repairs and collect the required fee, and upon refusal to pay within thirty (30) days from the filing the required affidavit with the County Recorder of Ravalli County, State of Montana, stating the amount therein and to whom it was paid and the date, such amount shall constitute a lien against said Lot.

Section 11. No owner of a Lot may exempt himself or herself from liability for his/her contribution toward the common expense by waiver of the use of enjoyment of any of the common elements or by the abandonment of his/her Lot.

Section 12. At such time as the regular monthly assessments equal the monthly expenditures incurred in the management or the project for three (3) consecutive months, the Association shall create and maintain thereafter a reserve fund for replacement of the common element components. The reserve fund shall be funded by collecting an amount equal to three (3) months' regular assessments from each of the Lot Owners at the time of the creation of the reserve fund, and as additional Lots are sold, the purchasers thereof shall pay the reserve fund assessment at the time the purchasers obtain title through escrow. The maintaining of a reserve fund does not prevent the Association from levying special assessments for replacement or additions to the common element components.

Section 13. The Declarants, or their heirs, successors or assigns, shall not be liable for any of the charges or assessments herein provided for all property and unsold Lots held by the Declarants in Fee Simple Title, except in the event that Declarants shall become the fee Owners of any Lot following the forfeiture or foreclosure of a Lot Owner's interest therein, the Declarants shall then be liable for the assessments provided for in this Article.

Section 14. The City of Hamilton, Montana is not responsible or liable for and will not accept maintenance of any private utilities, irrigation/drainage facilities, landscaped areas or common elements located within this project, now or at any time in the future.

Section 15. The Declarants shall subsidize the cost of maintenance of the project in accordance with the terms of the management agreement set forth in Article VIII.

#### ARTICLE VII

##### Architectural Committee

Section 1. "Committee Composition". The Architectural Committee shall consist of three (3) persons, none of whom shall be required to be an architect, or a member or officer or director of the Association or to meet any other particular qualifications. The Declarants shall appoint the first Architectural Committee members who shall remain in office until the initial meeting of the Association, at which time the Board shall have the right to appoint such members. Notwithstanding the foregoing, so long as the Declarants hold for sale any Lot in the project, the Declarants shall be entitled to appoint a total of two (2) Committee members. The Board shall have the right to abolish the Architectural Committee and take over all of its duties as well as to appoint, remove and replace the members of same and may, in its discretion, from time to time, increase or decrease the size of the Architectural Committee; provided, however, that in no event shall the size of the Architectural Committee be less than three (3).

Section 2. "Duties". It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to insure that any and all improvements constructed on the project by anyone other than the Declarants conform to plans approved by the Architectural Committee, to adopt Architectural Committee rules and to carry out all other duties imposed on it by this Declaration.

Section 3. "Plans and Approval". Excepting the interiors of the homes, no new construction, replacement, addition or alteration of a building, structure, home, fence or drainage facilities shall be effected on any Lot until the plans, specifications and plot plan showing the location and nature of such replacement, addition, alteration or removal have been submitted to and approved in writing by the Architectural Committee.

Plans and submittals thereof shall be approved and/or disapproved within thirty (30) days. Failure of the Architectural



Committee to respond to submittal or resubmittal of plans within such period shall be deemed to be an approval of such plans as submitted or resubmitted. All approved construction plans must be fully completed on the exterior within one (1) year of the commencement of construction.

Section 4. "Meetings and Compensation". The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of the members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any provision of this Declaration. The Committee shall keep and maintain a written record of all action taken by it in such meetings or otherwise. Members of the Architectural Committee shall not receive any compensation for services rendered.

Section 5. "Architectural Committee Rules". The Architectural Committee may from time to time, in its sole and absolute discretion, adopt, amend and repeal by unanimous vote or unanimous written consent, rules and regulations, to be known as "Architectural Committee Rules". Said rules shall interpret and implement this Declaration by setting forth standards and procedures for Architectural Committee review and the guidelines for architectural design, replacements and buildings, landscaping, color schemes, exterior finishes and materials and other similar features which are recommended for use within the project.

#### ARTICLE VIII

##### Management Agreement

The Declarants hereby reserve the right to manage the project and enter into a management agreement with the Association, subject to the following terms and conditions:

- a) The Declarants shall maintain and otherwise manage all common property, including but not limited to the landscaping and common and limited parking areas located upon the above-described properties. The Declarants shall use a reasonable standard of care in providing for the repair, management and maintenance of said property, so that said project will reflect a high pride of ownership.
- b) All assessments provided for in Article VI shall be collected by the Declarants, and said funds shall be used to pay for the cost of managing the project. Declarants shall prepare and provide the Association with annual budgets and financial statements for the operation and

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management of the project.

c) Said management agreement shall continue in full force and effect until six (6) months after the date the last Lot shall be sold by the Declarants, or the expiration of five (5) years from the date of execution of this Declaration, whichever occurs sooner.

d) Upon expiration of the management agreement between Declarants and the Association, the Association shall be free to enter into any other contracts or agreements for management of the project.

*Establishment* ARTICLE IX  
Maintenance of Lots

*define*  
*to*

Section 1. Each owner shall be responsible for the landscaping, weed control, upkeep and maintenance of his/her Lot and home located thereon, his/her patio and driveways, and for the upkeep and maintenance of all other areas, features or parts of his/her Lot and property and that area between an exterior Lot boundary and the paved surface of the street abutting the Lot not otherwise maintained by the Association. An owner shall do no act nor any work that will impair the structural soundness or integrity of the adjoining Lots and homes located thereon, or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or other owners. Each owner must plant at least one shade tree on their Lot which will reach a mature height of fifteen (15) feet or more and all grass will be kept mowed by the Lot owner.

Section 2. The Association has the right of reasonable entry upon the individual Lots to effect emergency repairs, and other duties which, pursuant to this Declaration, are to be performed by the Lot Owners.

*Section 3 - to place a lien against property to bring up to standard*

ARTICLE X

Damage or Destruction of Property

Section 1. In the event any common area or elements are damaged or destroyed by an Owner or any of his/her guests, tenants, licensees, agents or members of his/her family, such Owner does hereby irrevocably authorize the Association to repair said damaged element, and the Association shall repair said damaged element in good workmanlike manner in conformance with the original plans and specifications. The Owner shall then repay the Association the amount actually expended for such repairs and any costs and



expenses incurred in connection therewith.

Section 2. Each Lot Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon said Owner's Lot and shall continue to be such a lien until fully paid. Said charges shall bear interest from the date of delinquency at the per annum maximum legal rate authorized by Montana law. The amount of principal and interest owed by said Owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Montana.

Section 3. Each such Owner, by his/her acceptance of a deed to a lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including those specified in Article VI, Section 10, and such power hereby expressly grants to the Association a power of sale in connection with such lien.

Section 4. Nothing contained in this Article shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this Article been inserted.

Section 5. In the event of a dispute between an Owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the Owner addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one (1) chosen by the Board of Directors, one (1) chosen by the Owner, and these two (2) arbitrators shall then choose a third (3rd) arbitrator. If the two (2) arbitrators cannot agree as to the selection of the third (3rd) arbitrator, then by any Judge of the District Court of Ravalli County, Montana. A determination by any two (2) of the three (3) arbitrators shall be binding upon the Owner and the Association, who shall share the cost of arbitration equally. In the event one (1) party fails to choose an arbitrator from the other party, then said other party shall have the right and power to choose both arbitrators.



ARTICLE XI

Insurance

The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the Common Areas and structures thereon sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insurable hazard and shall also obtain a board form public liability policy covering all common elements and buildings, and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Board of Directors as Trustee for each of the Lot Owners. It shall be the individual responsibility for each Owner, at his/her own expense, to provide, as he/she sees fit, fire, liability, theft and any other insurance covering his/her Lot and home attached thereon, or any other improvements he/she might make on his/her personal property. In the event of damage or destruction by fire or other peril to any property covered by the insurance written in the name of the Board of Directors, the Board of Directors shall, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. Nothing herein shall be construed as affecting any right an institutional mortgage holder may have to any insurance proceeds. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3rd) of the members of the Board of Directors, or an agent duly authorized by the Board of Directors. The Board of Directors shall contract with any licensed contractor who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all Lot Owners of the damage building to make up any deficiency, except that the special assessment shall be levied against all Lot Owners as established by Article VI, Section 7, to make up any deficiency or repair or rebuilding of the common elements. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the Association's Reserve Fund, subject to aforesaid entitlement of a mortgagee to insurance proceeds. The Declarants, so long as they are the managers of the



project or owed any funds by the Association, shall be a named insured on any insurance policies obtained by the Association pursuant to this Article.

#### ARTICLE XII

##### Easements

There is hereby created a blanket easement upon, across, over and under the above-described premises, excepting the Lots, for ingress, egress, installation, replacing, repairing and maintaining all utility and service liens and systems, including but not limited to, water, sewer, gas, telephone, electricity, television cable, or communication liens and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said property and (subject to the requirements of Article II, Section 5) affix and maintain wires, circuits and conduits on, in and under the common elements. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities or services lines may be installed or relocated on said premises except as initially programmed and approved by the Declarants of said premises or thereafter approved by the said builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easement on said premises.

#### ARTICLE XIII

##### Rights and Duties of First Mortgagee

Section 1. Notwithstanding and prevailing over any other provisions of this Declaration, of the Association's By-laws, or any rules, regulations or management agreements, the following provisions shall apply to and benefit each holder of a first mortgage (which is hereby deemed to include Deeds of Trust, Trust Indentures or Contracts for Deeds), upon a Lot:

a) The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenants, restriction, regulation, rule, Association, By-laws, or management agreements, except for those matters which are enforceable in injunction or other equitable actions, nor requiring the payment of money, except as herein provided.

b) During the pendency of any proceeding to foreclosure the first mortgage, including any period of redemption,

the first mortgagee (or any receiver appointed in such action) may but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to the obligation to pay for all assessments and charges accruing thereafter in the same manner as any Owner.

c) The first mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the Lot foreclosed may be treated as an expense common to all the units, which expense may be collected by prorate assessments against all the Lots, and which prorate assessment be enforced as a lien against each Lot in the manner provided for other assessments authorized in this Declaration. Any such unpaid assessment shall nevertheless continue to exist as the persona obligation of the defaulting Owner of the respective Lot to the Association, and the Board of Directors shall use reasonable efforts to collect the same from the Owner even after he/she is no longer a member of this Association. There shall be a lien upon the interests of the first mortgagee or other party which acquires title to the mortgaged Lot by foreclosure suit or by equivalent procedures and for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the Lot free and clear of any right of redemption.

Section 2. Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) to receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (c) written notice of all meetings of the Association on the same basis as a Low Owner and be permitted to designate a representative to attend all such meetings.

Section 3. In the event of a substantial damage to or destruction of any Lot and mobile home located thereon, or any part of the common elements, or condemnation or eminent domain type



proceeding, the institutional holder of a first mortgage on a Lot shall be entitled to timely written notice of such damage or destruction or such condemnation or eminent domain type proceeding or proposed acquisition. Any proceeds therefrom shall be subject to the rights of an institutional holder of a first mortgage.

#### ARTICLE XIV

##### General Provisions

Section 1. "Binding Effect and Enforcement". The covenants, conditions, charges, liens, reservations, easements and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in any Lot on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these restrictions may be enforced by any one or more of the following:

- a) The Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association monies in pursuit thereof; or
- b) The Owner of any Lot; or
- c) The City of Hamilton.

Section 2. "Effect of Liens". Any person who acquires title to a Lot, except through delivery of a Sheriff's Deed as a result of foreclosure, shall take title to such Lot subject to any recorded lien hereof for all charges pursuant to this Declaration that have accrued prior to such acquisition of title, and subject to the lien hereof for all said charges that the breach of any of said restrictions may be enjoined, abated, or reviewed by appropriate proceedings, notwithstanding any lien or existence of any such mortgage. The personal obligation to pay the annual or special assessments as provided in Article VI of this Declaration shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title, or unless prior to such transfer of title, as evidenced by the records of the Ravalli County Clerk and Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing. All instruments of conveyance of any interest of all or any part of said Lots may contain the restrictions herein by reference to this Declaration. However, the terms and conditions of this instrument shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this Declaration in the deed or other instrument of conveyance. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain violating



or to recover damages, or both; provided, however, that a violation to these restrictions, or one or more of them, shall not affect the lien of any mortgage now of record or which may hereafter be placed of record upon said Lot, or any part thereof. In the event the Declarants, or the Association, employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner, Owners, and parties against whom the action is brought shall pay all attorneys' fees and costs thereby incurred by any such enforcing party prevailing any such action. Nothing herein shall be deemed to indicate that damages at law shall constitute an adequate remedy for violation of a restriction herein.

Section 3. "Waiver or Abandonment". The waiver of, or failure to enforce any breach or violation of any restriction herein contained, shall not be deemed to be a waiver or abandonment of such restriction, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected herein (or having the right to enforce these restrictions) had knowledge of the breach or violation. No restriction contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such restrictions pursuant to Article XIV, Section 7 herein.

Section 4. "Equal Treatment of Owners". Except as otherwise specifically provided herein, these restriction shall be equally applied to all Owners without discrimination.

Section 5. "Severability". The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase, sentence, clause, paragraph, or section had not been inserted.

Section 6. "Gender". The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provision hereof apply either to corporations or individuals, men or woman, shall in all cases be assumed as though in each case fully expressed.

Section 7. "Topical Headings". The marginal or topical headings of the paragraphs contained in this Declaration are for



MAY 27, 1993

COUNTY OF RAVALLI  
4:25PM BOOK 203 DEEDS

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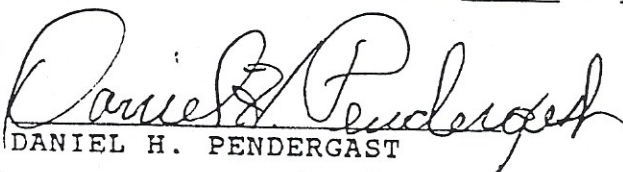
convenience only and do not define, limit or construe the contents of the paragraphs of this Declaration.


Section 8. "Amendment". These restrictions shall remain in full force and effect for a period of thirty (30) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then Owners of not less than two-thirds (2/3rds) of the Lots in the project, which said instrument shall be recorded in the office of the Ravalli County Clerk and Recorder, State of Montana, within ninety (90) days prior to the expiration of the initial effective period hereof or any ten (10) year extension.

Section 9. "Indemnification of Directors". the Association shall indemnify and hold harmless any and all persons who may serve at any time as directors or officers of the Association for any and all liability by reason of being or having been directors or officers of the Association except to the extent such liability, damage or injury is covered by any type of insurance. This indemnification shall not apply to willful misconduct in the performance of duty as a director or officer. This indemnification shall include all expenses incurred including attorneys' fees and costs in defending litigation and all amounts paid in payment or settlement of bona fide claims against the Association. This indemnification shall be in addition to the other rights to which said directors or officers may be entitled under Montana law, and pursuant to the By-laws of the Association or by vote of the members.

Section 10. After the date hereof, each party who acquires any interest in all or any part of the property described herein, further agrees that upon such acquisition of any interest in all or part of the real property, said acquiring party shall look only to the subsequent property Owner or Owners acquiring an interest in said property for any performance or relief deemed equitable or necessary for the enforcement of the covenants, conditions and restrictions contained herein.

IN WITNESS WHEREOF, Declarants have caused their names to be hereunder affixed this 21 day of May, 1993.

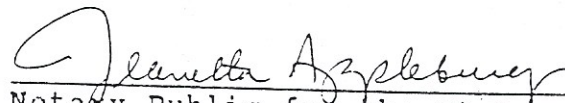
  
DANIEL H. PENDERGAST

  
NANCY L. PENDERGAST

STATE OF MONTANA )  
County of Ravalli ) ss.

On this 21 day of May, 1993, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Daniel H. Pendergast and Nancy L. Pendergast, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

  
Notary Public for the State of Montana  
Residing at Victor, MT  
My Commission Expires Dec 11, 1993

