

SAFECO

SAFECO TITLE INSURANCE COMPANY OF IDAHO
27 SECOND STREET
PO BOX 879
KALISPELL, MONTANA 59901

(408) 755 7600

June 7, 1978
Order No. MI-43456

STATE OF MONTANA)
)
County of Flathead)

At the request of Emerald Heights Development, I, Alice Attoberry, a licensed abstracter within the meaning of the provisions of Chapter 21, Title 66 of the Revised Codes of Montana (1947) have searched our Tract Indices of County records as to the following property:

See Schedule "A" attached

As of June 2, 1978 at 8:00 A.M., I find the last deed of record runs to Amelia J. Norgaard.

I have also searched our General Index for Judgements and income Tax liens against Amelia J. Norgaard, and as of the above date I find: NONE

I further find no liens, mortgages or claimants of record, EXCEPT as follows:

1.
General taxes for the year 1978.
2.
Taxes, charges and assessments not yet certified to the County Treasurer for collection.
3.
Reservations in United States Patent.
4.
Unrecorded Contract for Deed by and between Amelia J. Norgaard as vendor, and Gary C. Tallman and Wayne K. Shanahan as vendees, constructive notice given by Notice of Purchaser's Interest recorded March 24, 1976 under Recorder's Fee No. 2846 in Book 594, page 410 records of Flathead County, Montana.
5.
Unrecorded Contract for Deed by and between Gary C. Tallman and Wayne K. Shanahan as vendors, and Jerry L. Bass and Julie M. Bass, husband and wife as vendees, constructive notice given by Notice of Purchaser's Interest recorded December 21, 1977 under Recorder's Fee No. 18582 in Book 632, page 705 records of Flathead County, Montana, And Vendees interest now held of record by Carl A. Oakland and Marlene C. Oakland, by Warranty Deed recorded May 12, 1978 under Recorder's Fee No. 6652 in Book 641, page 290 records of Flathead County, Montana.

MI-43456
page 2

Liability hereunder limited to amount paid for this report.



CONSENT TO PLATTING

Pursuant to Section 11-3865, R.C.M. 1947, as revised, the undersigned, AMELIA J. NORGAARD, GARY C. TALLMAN and WAYNE K. SHANAHAN, Sellers and buyers in that certain Notice of Purchaser's Interest recorded March 24, under Recorder's Fee No. 2846 in Book 594, page 410, records of Flathead County, Montana, hereby consent to the platting and dedication of the lands included within the annexed plat of EMERALD HEIGHTS.

IN WITNESS WHEREOF, said parties have caused their names to be subscribed thereto, on this 14th day of June, 1978.

Amelia J. Norgaard
AMELIA J. NORGAARD

Gary C. Tallman
GARY C. TALLMAN

Wayne K. Shanahan
WAYNE K. SHANAHAN

STATE OF MONTANA)
County of Flathead) ss.

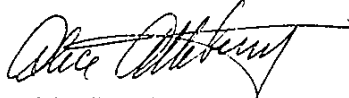
On this 14th day of June, 1978, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared Amelia J. Norgaard, Gary C. Tallman and Wayne K. Shanahan, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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

Charles F. [Signature]
Notary Public for the State of Montana
Residing at Whitefish
My Commission expires 1-5-79

5.
Unrecorded Contract for Deed by and between Gary C. Tallman and Wayne K. Shanahan as vendors, and Jerry L. Bass and Julie M. Bass, husband and wife as vendees, constructive notice given by Notice of Purchaser's Interest recorded December 21, 1977 under Recorder's Fee No. 18582 in Book 632, page 705 records of Flathead County, Montana, And Vendees interest now held of record by Carl A. Oakland and Marlene C. Oakland, by Warranty Deed recorded May 12, 1978 under Recorder's Fee No. 6652 in Book 641, page 290 records of Flathead County, Montana.

Liability hereunder limited to amount paid for this report.



Subscribed and sworn to before me this 7th day of June 1978.



Notary Public for State of Montana

SCHEDULE "A"

That portion of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12, Township 30 North, Range 22 West, M.P.M., Flathead County, Montana described as follows:

Beginning at the Southeast corner of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, which point is also the Northeast corner of that parcel shown on Certificate of Survey No. 3685; thence along the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ also being the North line of the aforesaid parcel
South 89° 50' 21" West a distance of 767.06 feet to a point; thence
North 30° 00' 00" West a distance of 163.48 feet to a point; thence
South 60° 00' 00" West a distance of 285.00 feet to the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, also being the North line of the aforesaid parcel; thence along the South line of the NE $\frac{1}{4}$ SE $\frac{1}{4}$, also being the North line of the aforesaid parcel
South 89° 50' 21" West a distance of 110.46 feet to the Northwest corner of the Aforesaid parcel, which point is on the Easterly line of U.S. Highway No. 93; thence along the Easterly line
North 0° 23' 32" East a distance of 60.00 feet to a point on a 340.00 foot radius curve concave Northwesterly having a radial bearing of North 0° 23' 32" East; thence
Northeasterly along the curve thru a central angle of 30° 23' 32" a distance of 180.35 feet to a point; thence
North 60° 00' 00" East a distance of 206.78 feet to a point; thence
North 0° 23' 32" East a distance of 1108.81 feet to a point on the Southerly line of Montana State Highway No. 40, which point is on a 1830.00 foot radius curve concave Southwesterly having a radial bearing of South 2° 16' 46" West; thence along the Southerly line of the Highway
Southeasterly along the curve thru a central angle of 25° 22' 14" a distance of 810.32 feet to a point; thence continuing along the Southerly line of the Highway
South 62° 21' 00" East 79.02 feet to the East line of Section 12; thence along the East line
South 0° 00' 42" East a distance of 1070.14 feet to the point of beginning,

EMERALD HEIGHTS
P.O. Box 298
Lakeside, Montana 59922

June 21, 1978

County Commissioners
Flathead County
P.O. Box 1000
Kalispell, Montana 59901

re: Emerald Heights Sub-Division

Gentlemen:

It is our intention to create a Homeowners Association for the maintenance of all roads, right-of-ways, parks and water systems within the boundaries of Emerald Heights, Whitefish, Montana. Each homeowner will be assessed for his share of the taxes and maintenance of these common areas.

We the undersigned hereby accept responsibility for this action.

Sincerely,

Jerry L. Bass
Jerry L. Bass

Julie M. Bass
Julie M. Bass

Carl A. Oakland
Carl A. Oakland

EMERALD HEIGHTS
DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS DECLARATION, made this 00th day of June, 1978, by Jerry and Julie Bass, Carl and Marlene Oakland, hereinafter referred to as Declarant,

W I T N E S S E T H :

WHEREAS, the Declarant has filed a plat of certain lands in Flathead County, Montana, known as Emerald Heights with the Clerk and Recorder of said county, on the 00th day of June, 1978.

WHEREAS, the Declarant is the owner of all the lots in said Emerald Heights and desires to place covenants, conditions, and restrictions upon said lots for the use and benefit of themselves, as present Owners, and for the future owners thereof;

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, and conditions shall run with the real property 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.

ARTICLE I: DEFINITIONS

Section 1. "Association" shall mean and refer to Emerald Heights Homeowners Association, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain property described herein as Emerald Heights. "Properties" shall also mean and refer to any addition of real properties as may hereafter be brought within the jurisdiction of the Association, excepting that such reference shall in no way subject such additions to the Protective Covenants hereinafter set forth. All future additions to Emerald Heights, although being a part of the Association, shall have their own Protective Covenants in keeping with Declarants overall plan of development.

Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4. "Single Family Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties designated for one single - family dwelling.

Section 5. "Multi-Family Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties designated for multi-family dwellings, such as condominiums and four-plexes.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is a part of the Properties, including buyers under a contract for deed and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

ARTICLE II: ANNEXATION

Other Properties. The Association may, at any time, annex additional residential properties and common areas; and so add to its membership; provided that any such annexation shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

ARTICLE III: MEMBERSHIP

Every person or entity who is a record owner of any Lot which is

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

ARTICLE VI: ASSESSMENTS

Section 1. Assumption of Personal Obligation. The Declarant, for each Lot owned within the Properties, covenants to, and each other Owner of any Lot by acceptance of a deed or contract for purchase of any Lot within the Properties, whether or not it shall be so expressed in said deed or contract, is deemed to covenant and agree to; be a member of, and subject to the assessments and duly enacted by-laws and other rules of the Association. Each assessment shall be the personal obligation of the Owner or Owners of each Lot as of the date of assessment. This personal obligation shall not pass to successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties, and for the facilities devoted to the use and enjoyment of the Common Area.

Section 3. Uniform Rate of Assessment. Both annual and special assessments for all Lots may be collected on an annual basis. Both annual and special assessments must be fixed at a uniform rate for Single-Family Lots, and also a uniform rate for Multi-Family Lots. The assessments for Single-Family Lots and Multi-Family Lots need not necessarily be the same.

Section 4. Maximum "Annual" Assessment. Assessments shall be Annual or Special. Both the annual and the special (if any) assessments shall be fixed annually by the Board of Directors of the Association. Payment of all assessments shall be in periodic installments at such intervals as established by the Directors of the Association in keeping with the by-laws thereof.

Section 5. Commencement of Assessments. The Board of Directors of the Association is authorized to make the first "annual" assessment at such time as it determines appropriate. Such first "annual" assessment shall be adjusted according to the number of months remaining in the calendar year. However, no assessment shall be made prior to the conveyance of the Common Area. The Board of Directors shall fix the amount of each "annual" or "special" assessment against each Lot at least thirty (30) days in advance of each "annual" assessment period. Written notice of the assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. If the assessment is such as requires a vote of the members, this shall be done before the assessment becomes effective. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment by any assessment therein stated to have been paid.

Section 6. Nonpayment of Assessment. Any assessments, or installment payments on assessments, which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency at the rate of eight (8) percent per annum. The Association may bring an action at law to collect the amount of the assessment, together with interest, costs, and reasonable attorneys' fees for such action.

Section 7. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- a. All properties dedicated to and accepted by a public authority or agency;
- b. The Common Area; and
- c. All properties owned by a charitable organization exempt from taxation by the laws of the State of Montana. However, no land or improvements owned by a charitable organization and devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII: PROTECTIVE COVENANTS

The following Protective Covenants are designed to provide a uniform plan for the development of the Common Area.

Other Properties. The Association may, at any time, annex additional residential properties and common areas, and so add to its membership; provided that any such annexation shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

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ARTICLE III: MEMBERSHIP

Every person or entity who is a record owner of any Lot which is subject by covenants of record to assessment by the Association, whether in Emerald Heights or in any additions thereto, including buyers under a contract for deed and contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. All members of the Board of Directors of the Declarant, shall be considered as landowners for purposes of Association membership, and shall therefore be members of the Association, so long as the Declarant owns one or more Lots which are subject by covenants of record to assessment by the Association.

ARTICLE IV: VOTING

All members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, as in the case of condominium owners, the vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. However, so long as one of the members of the Board of Directors of the Declarant remains a member of the Association, they shall be entitled to one (1) vote per person because of such position as a director.

ARTICLE V: PROPERTY RIGHTS

Section 1. Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- b. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagees in said properties shall be subordinate to the rights of the homeowners hereunder.
- c. The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- d. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members representing two-thirds (2/3) of the entire number of outstanding votes has been recorded, agreeing to such dedication or transfer.
- e. The right of the Association, by resolution approved by two-thirds (2/3) of the members of the Board of Directors to grant easements under any common area to any public authority, or utility without charge.

vacation by the laws of the State of Montana. However, no land or improvements owned by a charitable organization and devoted to dwelling use shall be exempt from said assessments.

ARTICLE VII: PROTECTIVE COVENANTS

The following Protective Covenants are designed to provide a uniform plan for the development of Emerald Heights. They shall constitute a covenant running with the land for each Lot within said Emerald Heights, excepting for the Common Areas.

Section 1. Architectural Control Committee. The "Architectural Control Committee" shall consist of the Board of Directors of the Association, or of a special "Architectural Control Committee" of at least three (3) or more persons appointed by the Board, all of whom must be member of the Association.

Section 2. Architectural Control. All Owners intending to construct a dwelling or build any type structure whatever upon any Lot, shall first submit their plans and specifications, in writing, to the Architectural Control Committee. No dwelling house or other structure shall be erected, placed, or altered on any Lot until the construction plans and specifications along with the proposed site therefor have been approved in writing by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and location of the structure with respect to topography and finish grade elevation.

Section 3. Approval by Committee. Approval or disapproval by the Architectural Control Committee must be in writing. In the event the Committee fails to act within 30 days after the proposed plans and specifications of any structure have been submitted, in writing, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of an entire dwelling, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with.

Section 4. Land Use and Building Type. No residential Lot shall be used except for residential purposes, and no business, trade, or manufacture shall be conducted thereon. All structures shall be constructed of new materials. However, suitable used materials such as used brick or beams may be utilized provided that advance approval has been obtained from the Architectural Control Committee as herein provided. No old buildings, mobile homes, and trailer houses, whether intended for use in whole or in part as the main residential structure or for use as a garage or other outbuilding, shall be moved upon any Lot.

Section 5. Building Site. No single family Lot shall have more than one dwelling house located upon it and no Lot shall be divided. However, the Architectural Control Committee is authorized to approve exceptions to this section, and permit a Lot to be divided or a structure to be built on portions of two or more Lots, when in its discretions such action is considered in the interests of the Owners of the Properties.

Section 6. Building Size of Single Family Structures. The ground floor area of the main structure exclusive of open porches, basements, and garages, shall be not less than 1,200 square feet.

Section 7. Building Size of Multi Family Structures. Each unit shall be not less than 960 square feet, exclusive of open porches, basements and garages.

Section 8. Setback Lines. No building shall be located on any Lot closer than 10 feet to the front street line, or closer than 10 feet to either side lot line, or closer than 10 feet to the rear lot line. Where other than a Lot as dedicated is utilized as a single building site, the side lot lines shall refer only to lot lines bordering the adjoining property owners. Notwithstanding anything to the contrary, the Architectural Control Committee shall have the right to permit reasonable modifications of the setback requirements when in its discretion such action is considered in the interests of the Owners of the Properties.

Section 9. Fences. Fences will be permitted to provide privacy or safety for a play area, patio, or pool. No fence shall exceed 6 feet in height. No fence of any kind, whether for privacy, safety or boundary purposes, shall be constructed on any Lot until after the height, type, design, and approximate location therefor shall first have been approved by the Architectural Control Committee in writing.

Section 10. Trees. No cutting down of trees greater than 4-inches in diameter shall be permitted. With the exception of clearing for a building site or driveway.

Section 11. Sewage. No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Montana State Department of Health, and the County of Flathead, Montana, and until such design and system has been first approved by the Architectural Control Committee, in writing.

Section 12. Garbage. All garbage cans used in connection with any dwelling erected upon the above described premises shall either be sunk in the ground to ground line or if the dwelling has a garage rather than a carport, the garbage may be kept in the garage. No garbage cans shall be maintained which are not of a suitable type and which do not have a cover sufficient to prevent the escape of any noxious odors from such can. If there is no garage, then garbage cans must be either sunk in the ground or placed in an enclosure completely screened from view. However, on garbage pick-up days, garbage cans may be exposed to view for the convenience of the garbage collector.

Section 13. Easements. Easements for installation and maintenance of utilities, TV cables, and drainage facilities are reserved as shown on the recorded plat. No building of any kind shall be erected, placed or permitted to remain on such easements.

Section 14. Nuisances. No noxious or offensive activity shall be carried on or permitted upon any of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood; nor shall the premises be used in any way or for any purpose which may endanger the health or safety of or unreasonably disturb the residents of any Lot. Outdoor barbecues are not considered nuisances under this section.

Section 15. Temporary Structures and Vehicles. No structures of a temporary character, or trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. No mobile homes, trucks exceeding 2 1/2 ton capacity, trailer, or unsightly vehicles shall at any time be parked or allowed to remain on any of said Lots or along curbs. Camp trailers, pickup trucks carrying campers, campers for pickup trucks not in use, and boats and boat trailer and motor homes will be permitted only if stored in a garage or stored behind the rear building line of the dwelling, so as not to be an eyesore.

Section 16. Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed or permitted to remain on any Lot. However, an exception is permitted for one small "For Rent" or "For Sale" sign per Lot. However, for a period of 15 years from the date of this Declaration, the Declarant shall be permitted to place signs upon and within the unsold Properties to promote the development of the Emerald Heights Area.

Section 17. Commercial Usage Prohibited. No store, office, business, manufacture, commercial enterprise, hospital, sanitarium, rest home, theater, or saloon of any kind, or anything of the nature thereof, shall be carried on or conducted on any residential Lot. However, for a period of 15 years from the date of the Declaration the Declarant shall be permitted to maintain within the area a sales office in either a model home or a specially constructed building, to be utilized for the purpose of promoting the development of Emerald Heights.

Section 18. Exterior Maintenance. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structures; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. Each Owner of a lot that is vacant shall maintain the grounds to preclude weeds, underbrush and other un-

ARTICLE X: AMENDMENT

This Declaration may be amended by an instrument signed by the Owners of two-thirds (2/3) of the Lots in Emerald Heights which has been recorded, agreeing to such amendment.

IN WITNESS WHEREOF, the Declarant has executed this instrument this 22nd day of June 1978.

Jerry L. Bass
Jerry L. Bass

Julie M. Bass
Julie M. Bass

Carl A. Oakland
Carl A. Oakland

Marlene C. Oakland
Marlene C. Oakland

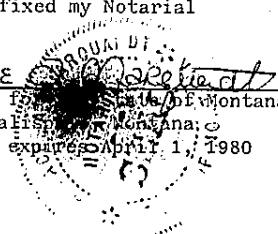
By: _____

STATE OF MONTANA)
County of Flathead) ss.

On this 20th day of June, 1978, before me, the undersigned, a Notary Public for the State aforesaid, personally appeared Jerry L. Bass, Julie M. Bass, Carl A. Oakland and Marlene C. Oakland, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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

- 7 -
Candace
Notary Public for the State of Montana
Residing at Kalispell, Montana
My Commission expires April 1, 1980



STATE OF MONTANA, }
County of Flathead } ss.

Filed for record at the request of Jerry Bass
this 29th day of June 1978 at 9:01 o'clock AM and recorded in VOL. 645
PAGE 487 Records of Flathead County, State of Montana. Ethel L. Smith
Fee \$ 14.00 Pd
RECEPTION NO. 9586 Flathead County Clerk and Recorder
RETURN TO Jerry Bass Donna Peterson
By 333, Home, Mt 59122
COPIED
COMPARED

sales office in either a model home or a specially constructed building, to be utilized for the purpose of promoting the development of Emerald Heights.

BOOK 645 PAGE 492

Section 18. Exterior Maintenance. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structures; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. Each Owner of a lot that is vacant shall maintain the grounds to preclude weeds, underbrush and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner, which expense the Owner agrees to pay. The full amount shall be due and payable within thirty (30) days after the Owner is billed thereof. If the Owner fails or refuses to pay the full amount within the 30 days, the Association may then hire an Attorney to collect the balance owing on the expenses. Such entry on the Lot by the Association shall not be deemed a trespass.

Section 19. Water Systems. No individual or private wells or water systems shall be permitted or allowed upon any Lot.

Section 20. Vehicles. There shall be no washing or repairing of vehicles in the streets at any time.

Section 21. Burning of Trash. There shall be no burning of leaves or trash on the paving of any street.

Section 22. Utility Connection Costs. The Owner of each Lot shall pay all utility connecting costs, including those for television cable, and water systems.

Section 23. Animals and Pets. No animal or fowl, domestic or wild, except cats, dogs, or household birds such as canaries, shall be kept on the properties or in any of the structures thereon, and in no event may any animals or fowl be raised or cared for on a commercial basis. All pets must be leashed or fenced in.

Section 24. Boundary Control Monuments. The Declarant has caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of such Lots to immediately provide for professional replacement of any survey monuments that are removed, lost or obliterated from his Lot.

ARTICLE VIII: ENFORCEMENT

Section 1. Interested Parties. The Association or any Owner, shall have the option and right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of the Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by the Association or by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE IX: TERM

The provisions of this Declaration shall be binding for a term of twenty-five (25) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive period of ten (10) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots in Emerald Heights has been recorded, agreeing to change this Declaration in whole or in part.

New Covenants
filed 3-15-74

BOOK 666 PAGE 726

EMERALD HEIGHTS SUBDIVISION

(SE $\frac{1}{4}$, Sec. 12, T 30 N., R 27 W.)

AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This AMENDED DECLARATION, made this 14th day of March, 1979, by CARL A. OAKLAND, MARLENE C. OAKLAND, and W. E. STREETER, collectively referred to as Declarants and Owners, with the specific concurrence of two-thirds (2/3) of all lot owners in said Subdivision;

W I T N E S S E T H :

WHEREAS, the Declarants have filed a plat of certain lands in Flathead County, Montana, known as Emerald Heights with the Clerk and Recorder of said County, on the 20th day of June, 1978;

WHEREAS, Declarants are the owners of more than two-thirds (2/3) of the lot in said Emerald Heights Subdivision, and desire to place covenants, conditions and restrictions upon said lots for the use and benefit of themselves, as present Owners, and for the future owners thereof;

NOW, THEREFORE, Declarants hereby declare that all of the properties described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property 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.

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487

ARTICLE I.: DEFINITIONS

SECTION 1: "Association" shall mean and refer to Emerald Heights Homeowners Association, Inc., its successors and assigns.

SECTION 2: "Properties" shall mean and refer to that certain property described herein as Emerald Heights. "Properties" shall also mean and refer to any addition of real properties as may hereafter be brought within the jurisdiction of the Association, excepting that such reference shall in no way subject such additions to the Protective Covenants hereinafter set forth. All future additions to Emerald Heights, although being a part of the Association, shall have their own Protective Covenants in keeping with Declarants' overall plan of development.

ARTICLE IV: VOTING

All members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, as in the case of condominium owners, the vote for such lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. However, so long as one of the Declarants remains a member of the Association, he shall be entitled to one (1) vote per person because of such position as a director.

ARTICLE V: PROPERTY RIGHTS

SECTION 1: MEMBERS' EASEMENTS OF ENJOYMENT. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- B. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder.
- C. The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members representing two-thirds (2/3) of the entire number of outstanding votes has been recorded, agreeing to such dedication or transfer.

SECTION 3: "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

SECTION 4: "Single Family Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties designated for one single-family dwelling.

SECTION 5: "Multi-Family Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties designated for multi-family dwellings, such as condominiums and four-plexes.

SECTION 6: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is a part of the Properties, including buyers under a contract for deed and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

ARTICLE II: ANNEXATION

OTHER PROPERTIES: The Association may, at any time, annex additional residential properties and common areas; and so add to its membership; provided that any such annexation shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

ARTICLE III: MEMBERSHIP

Every person or entity who is a record owner of any Lot which is subject by covenants or record to assessment by the Association, whether in Emerald Heights or in any additions thereto, including buyers under a contract for deed and contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership. All members of the Board of Directors of the Declarants, shall be considered as landowners for purposes of Association membership, and shall therefore be members of the Association, so long as the Declarants own one or more Lots which are subject by covenants of record to assessment by the Association.

- E. The right of the Association, by resolution approved by two-thirds (2/3) of the members of the Board of Directors to grant easements under any common area to any public agency, authority, or utility without charge.
- F. The right of individual members to the exclusive use of automobile parking spaces near and convenient to such member's Lot. Assignment, reassignment, and general control of such spaces shall be under the authority of the Board of Directors of the Association.

SECTION 2: DELEGATION OF USE. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE VI: ASSESSMENTS

SECTION 1: CREATION OF PERSONAL OBLIGATION. The Declarants, for each Lot owned within the Properties, covenants to, and each other Owner of any Lot by acceptance of a deed or contract for purchase of any Lot within the Properties whether or not it shall be so expressed in said Deed or contract, is deemed to covenant and agrees to be a member of, and subject to the assessments and duly enacted By-Laws and other rules of the Association. Each assessment shall be the personal obligation of the Owner or Owners of each Lot as of the date of assessment. This personal obligation shall not pass to successors in title unless expressly assumed by them.

SECTION 2: PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties, and for the facilities devoted to the use and enjoyment of the Common Area.

SECTION 3: UNIFORM RATE OF ASSESSMENT. Both annual and special assessments for all Lots may be collected on an annual basis. Both annual and special assessments must be fixed at a uniform rate for Single-Family Lots. Each individual condominium unit will be assessed an equal, pro-rata share with any single-family Lots for water, roads and maintenance of all Common Areas. At such time as twenty-five (25) Lots in the Subdivision are sold (single-family and multi-family), then all Lot Owners and each individual condominium unit owner will pay an equal, pro-rata share in the cost of paving and maintenance of all roads in the Subdivision.

SECTION 4: MAXIMUM "ANNUAL" ASSESSMENT. Assessments shall be Annual or Special. Both the annual and the special (if any) assessments shall be fixed annually by the Board of Directors of the Association. Payment of all assessments shall be in periodic installments at such intervals as established by the Directors of the Association in keeping with the By-Laws thereof.

SECTION 5: COMMENCEMENT OF ASSESSMENTS. The Board of Directors of the Association is authorized to make the first "annual" assessment at such time as it determines appropriate. Such first "annual" assessment shall be adjusted according to the number of months remaining in the calendar year. However, no assessment shall be made prior to the conveyance of the Common Area. The Board of Directors shall fix the amount of each "annual" or "special" assessment against each Lot at least thirty (30) days in advance of each "annual" assessment period. Written notice of the assessments shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. If the assessment is such as requires a vote of the members, this shall be done before the assessment becomes effective. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment by any assessment therein stated to have been paid.

SECTION 6: NONPAYMENT OF ASSESSMENT. Any assessments, or installment payments on assessments, which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency at the rate of EIGHT (8%) PER CENT, per annum. The Association may bring an action at law to collect the amount of the assessment, together with interest, costs, and reasonable attorneys' fees for such action.

SECTION 7: EXEMPT PROPERTY. The following property subject to this Declaration shall be exempt from the assessments created herein:

- A. All properties dedicated to and accepted by a public authority or agency;
- B. The Common Area; and
- C. All properties owned by a charitable organization exempt from taxation by the laws of the State of Montana. However, no land or improvements owned by a charitable organization and devoted to dwelling use shall be exempt from said assessments.

SECTION 5: BUILDING SITE. No single family Lot shall have more than one dwelling house located upon it and no Lot shall be divided. However, the Architectural Control Committee is authorized to approve exceptions to this section, and permit a Lot to be divided or a structure to be built on portions of two or more Lots, when in its discretion such action is considered in the interests of the Owners of the Properties.

SECTION 6: BUILDING SIZE OF SINGLE FAMILY STRUCTURES. The ground floor area of the main structure, exclusive of open porches, basements, and garages, shall be not less than 1,200 square feet.

SECTION 7: BUILDING SIZE OF MULTI-FAMILY STRUCTURES. Each unit shall not be less than 960 square feet, exclusive of open porches, basements and garages.

SECTION 8: SETBACK LINES. No building shall be located on any Lot closer than 10 feet to the front street line, or closer than 10 feet to the rear lot line. Where other than a Lot as dedicated is utilized as a single building site, the side lot lines shall refer only to lot lines bordering the adjoining property owners. Notwithstanding anything to the contrary, the Architectural Control Committee shall have the right to permit reasonable modifications of the setback requirements when in its discretion such action is considered in the interests of the Owners of the Properties.

SECTION 9: FENCES. Fences will be permitted to provide privacy or safety for a play area, patio, or pool. No fence shall exceed 6 feet in height. No fence of any kind, whether for privacy, safety or boundary purposes, shall be constructed on a Lot until after the height, type, design and approximate location therefor shall first have been approved by the Architectural Control Committee in writing.

SECTION 10: TREES. No cutting down of trees greater than 4 inches in diameter shall be permitted. With the exception of clearing for a building site or driveway.

SECTION 11: SEWAGE. No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Montana State Department of Health, and the County of Flathead, Montana, and until such design and system has been first approved by the Architectural Control Committee, in writing.

ARTICLE VIII: PROTECTIVE COVENANTS

666 PAGE 73.

The following Protective Covenants are hereby adopted as a uniform plan for the development of Emerald Heights. The same shall constitute a covenant running with the land for each of the lots in said Emerald Heights, excepting for the Common Area.

SECTION 1: ARCHITECTURAL CONTROL COMMITTEE. The "Architectural Control Committee" shall consist of the Board of Directors of the Association, or of a special "Architectural Control Committee" of at least three (3) or more persons appointed by the Board, all of whom must be members of the Association. Until such time as a majority of the Lots are sold, and such an "Architectural Committee" formed, the Declarants shall constitute such an "Architectural Control Committee".

SECTION 2: ARCHITECTURAL CONTROL. All Owners intending to construct a dwelling or build any type structure whatever upon any Lot, shall first submit their plans and specifications, in writing, to the Architectural Control Committee. No dwelling house or other structure shall be erected, placed, or altered on any lot until the construction plans and specifications along with the proposed site therefor have been approved in writing by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and location of the structure with respect to topography and finish grade elevation.

SECTION 3: APPROVAL BY COMMITTEE. Approval or disapproval by the Architectural Control Committee must be in writing. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure have been submitted, in writing, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of an entire dwelling, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with.

SECTION 4: LAND USE AND BUILDING TYPE. No residential lot shall be used except for residential purposes, and no business, trade, or manufacture shall be conducted thereon. All structures shall be constructed of new materials in place on the lot. However, suitable used materials such as used brick or beams may be utilized provided that advance approval has been obtained from the Architectural Control Committee as herein provided. No old buildings, mobile homes, and trailer houses (whether single or double width), whether intended for use in whole or in part as the main residential structure or for use as a garage or other outbuildings, shall be moved upon any Lot.

SECTION 12: GARBAGE. All garbage cans used in connection with any dwelling erected upon the above-described premises shall either be sunk in the ground to ground line or if the dwelling has a garage rather than a carport, the garbage may be kept in the garage. No garbage cans shall be maintained which are not of a suitable type and which do not have a cover sufficient to prevent the escape of any noxious odors from such cans. If there is no garage, then garbage cans must be either sunk in the ground or placed in an enclosure completely screened from view. However, on garbage pick-up days, garbage cans may be exposed to view for the convenience of the garbage collector.

SECTION 13: EASEMENTS. Easements for installation and maintenance of utilities, TV cables and drainage facilities are reserved as shown on the recorded plat. No building of any kind shall be erected, placed or permitted to remain on such easements.

SECTION 14: NUISANCES. No noxious or offensive activity shall be carried on or permitted upon any of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood; nor shall the premises be used in any way or for any purpose which may endanger the health or safety of or unreasonably disturb the residents of any Lot. Outdoor barbecues are not considered nuisances under this Section.

SECTION 15: TEMPORARY STRUCTURES AND VEHICLES. No structures of a temporary character, or trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. No mobile homes, trucks exceeding 2½ tons in capacity, trailer, or unsightly vehicles shall at any time be parked or allowed to remain on any of said Lots or along curbs. Camper trailers, pickup trucks carrying campers, campers for pickup trucks not in use, and boats and boat trailer and motor homes will be permitted only if stored in a garage or stored behind the rear building line of the dwelling, so as not to be an eyesore. However, on two (2) Lots in the Subdivision, as needed, there may be stored such equipment as is necessary to maintain the water lines and roads in said Subdivision; said storage to be discreet, and hidden from view of roads as much as is possible.

SECTION 16: SIGNS. No advertising signs, billboards, or unsightly objects shall be erected, placed or permitted to remain on any Lot. However, an exception is permitted for one small "For Rent" or "For Sale" sign per Lot. However, for a period of fifteen (15) years from the date of this Declaration, the Declarants shall be permitted to place signs upon and within the unsold Properties to promote the development of the Emerald Heights area.

SECTION 17: COMMERCIAL USAGE PROHIBITED. No store, office, business, manufacture, commercial enterprise, hospital, sanitarium, rest home, theater, or saloon of any kind, or anything of the nature thereof, shall be carried on or conducted on any residential Lot. However, for a period of fifteen (15) years from the date of the Declaration, the Declarants shall be permitted to maintain within the area a sales office in either a model home or a specially constructed building, to be utilized for the purpose of promoting the development of Emerald Heights.

SECTION 18: EXTERIOR MAINTENANCE. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structures; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. Each Owner of a Lot that is vacant shall maintain the grounds to preclude weeds, underbrush and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within thirty (30) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner, which expense the Owner agrees to pay. The full amount shall be due and payable within thirty (30) days after the Owner is billed thereof. If the Owner fails or refuses to pay the full amount within the thirty (30) days, the Association may then hire an Attorney to collect the balance owing on the expenses. Such entry on the Lot by the Association shall not be deemed a trespass.

SECTION 19: WATER SYSTEM. Emerald Heights Homeowners Association shall be responsible for supplying water in the Subdivision. No individual or private wells or water systems shall be permitted or allowed upon any lot. Lot Owners shall pay for hook-up and maintenance of the individual service lines from homes to the water mains in the streets. The Owners Association will be responsible for the central water system and water mains throughout the Subdivision. The Owners Association shall not be responsible or liable to any water user except and unless it is proven that the said Owners Association has negligently installed, maintained or operated such water system.

SECTION 20: VEHICLES. There shall be no washing or repairing of vehicles in the streets at any time.

SECTION 21: BURNING OF TRASH. There shall be no burning of leaves or trash on the paving of any street.

SECTION 22: UTILITY CONNECTION COSTS. The Owner of each Lot shall pay all utility connection costs, including those for television cable, and water systems.

SECTION 23: ANIMALS AND PETS. No animal or fowl, domestic or wild, except cats, dogs or household birds such as canaries, shall be kept on the properties or in any of the structures thereon, and in no event may any animals or fowl be raised or cared for on a commercial basis. All pets must be leashed or fenced in.

SECTION 24: BOUNDARY CONTROL MONUMENTS. The Declarants have caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of such Lots to immediately provide for professional replacement of any survey monuments that are removed, lost or obliterated from his Lot.

ARTICLE VIII: ENFORCEMENT

SECTION 1: INTERESTED PARTIES. The Association or any Owner shall have the option and right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of the Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by the Association or by any Owner to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2: SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

ARTICLE IX: TERM

The provisions of this Declaration shall be binding for a term of twenty-five (25) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots in Emerald Heights has been recorded, agreeing to change this Declaration in whole or in part.

ARTICLE X: AMENDMENT

This Declaration may be amended by an instrument signed by the Owners of two-thirds (2/3) of the Lots in Emerald Heights which has been recorded, agreeing to such amendment.

DECLARANTS:

Carl A. Oakland
CARL A. OAKLAND

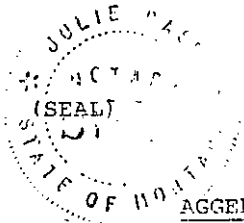
Marlene C. Oakland
MARLENE C. OAKLAND

W. E. Stretter
W. E. STREETER

STATE OF MONTANA)
: ss.
County of Flathead)

On this 7th day of May, 1979, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared CARL A. OAKLAND, MARLENE C. OAKLAND and W. E. STREETER, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same.

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



Julie Bass
Notary Public for the State of Montana
Residing at Kalispell
My Commission expires Nov 7, 1981

ACCEPTED:

Anders H. Horkanson
ANDERS (NMJ) HORKANSON

K. B. McMillan
K. B. McMillan

Julie Bass

D.W. Jenkins
D.W. Jenkins

R. McMillan
ROSS A. McMILLAN

Lynn F. McMillan
LYNN F. McMILLAN

-11-

STATE OF MONTANA, } ss Emerald Hts.
County of Flathead }
Filed for record at the request of Emerald Hts.
this 8 day of May, 1979 at 12:05 o'clock P M and recorded in VOL. 666
PAGE 726 Records of Flathead County, State of Montana.
Fee \$ 22.00 Pd.

RECEPTION NO. 6477

RETURN TO Carl Oakland
Box 1307 Kalispell Mt.

Lris L. Hindman
Flathead County Clerk and Recorder
Deane Adams
Deputy

9626916430

EMERALD HEIGHTS SUBDIVISION

(SE1/4, Sec. 12, T 30 N., R 22W.)

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

0630650 to 0630655
0493839, 0975833
0782551, 0853040
0630657 to 0630661
0630663 to 0630674
0630678 to 0630681

This Amended and Restated Declaration, made this 23rd day of September, 1996, with the specific concurrence of two-thirds (2/3) of all lot owners in said Subdivision;

WITNESSETH:

Whereas, the Declarants have filed a plat of certain lands in Flathead County, Montana, known as Emerald Heights with the Clerk and Recorder of said County, on the 20th day of June, 1978;

Whereas, Declarants are the owners of more than two-thirds (2/3) of the lots in said Emerald Heights Subdivision, and desire to place covenants, conditions and restrictions upon said lots for the use and benefit of themselves, as present Owners, and for the future owners thereof;

Now, Therefore, Declarants hereby declare that all of the properties described above shall be held, sold and conveyed, subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions shall run with the real property 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.

Article I: Definitions

Section 1: "Association" shall mean and refer to Emerald Heights Homeowners Association, Inc., its successors and assigns.

Section 2: "Properties" shall mean and refer to that certain property described herein as Emerald Heights. "Properties" shall also mean and refer to any addition of real properties as may hereafter be brought within the jurisdiction of the Association, excepting that such reference shall in no way subject such additions to the Protective Covenants hereinafter set forth. All future additions to Emerald Heights, although being a part of the Association, shall have their own Protective Covenants in keeping with Declarants' overall plan of development.

Section 3: "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

Section 4: "Single Family Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties designated for one single-family dwelling.

Section 5: "Multi-Family Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties designated for multi-family dwellings, such as condominiums and four-plexes.

Section 6: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is a part of the Properties, including buyers under a contract for deed, but excluding those having such interest merely as security for the performance of any obligation.

Article II: Annexation

Other Properties: The Association may, at any time, annex additional residential properties and common areas; and so add to its membership; provided that any such annexation shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Article III: Membership

Every person or entity who is a record owner of any Lot which is subject by covenants or record to assessment by the Association, whether in Emerald Heights or in any additions thereto, shall be a member of the Association; provided, however, that in the case of a sale under a contract for deed, the buyer, and not the record owner, shall be a member of the Association. The foregoing is not intended to include the persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the Lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

Article IV: Voting

All members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds an interest in any Lot, as in the case of condominium owners, the vote for such Lot shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Article V: Property Rights

Section 1: Members' Easements of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

- A. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- B. The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder.
- C. The right of the Association to suspend the voting rights and right to use of the recreational facilities by a member for any period during which any assessment against his Lot remain unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations; provided, however, that no such suspension shall take effect until the member has received at least thirty (30) days prior written notice of the proposed suspension, and the reasons therefor, and has an opportunity for an informal hearing before the Board of Directors.
- D. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members representing two-thirds (2/3) of the entire number of outstanding votes has been recorded, agreeing to such dedication or transfer.
- E. The right of the Association, by resolution approved by two-thirds (2/3) of the members of the Board of Directors to grant easements under any common area to any public agency, authority, or utility without charge.
- F. The right of individual members to the exclusive use of automobile parking spaces near and convenient to such member's Lot. Assignment, reassignment, and general control of such spaces shall be under the authority of the Board of Directors of the Association.

Section 2: Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Article VI: Assessments

Section 1: Creation of Personal Obligation. Each Owner of any Lot by acceptance of a deed or contract for purchase of any Lot within the Properties whether or not it shall be so expressed in said Deed or contract, is deemed to covenant and agree to be a member of, and subject to the assessments and duly enacted By-Laws and other rules of the Association. Each assessment shall be the personal obligation of the Owner or Owners of each Lot as of the date of assessment. This personal obligation shall not pass to successors in title unless expressly assumed by them.

Section 2: Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties, and for the facilities devoted to the use and enjoyment of the Common Area.

Section 3: Uniform Rate of Assessment. Both annual and special assessments for all Lots may be collected on an annual basis. Although annual and special assessments may be set at different rates for the four (4) categories of developed residential lots, undeveloped residential lots, developed condominium lots, and undeveloped condominium lots, all assessment within these four (4) categories shall be uniform.

Section 4: Fixing of Assessments. Assessments shall be Annual or Special. Both the annual and the special (if any) assessments shall be fixed annually by the Board of Directors of the Association. Payment of all assessments shall be as established by the Directors of the Association in keeping with the By-laws thereof.

Section 5: Commencement of Assessments. The Board of Directors shall fix the amount of each "annual" or "special" assessment against each Lot at least thirty (30) days in advance of the annual meeting of members, and written notice of the assessments shall be sent to every Owner subject thereto at the time that the annual membership meeting notice is sent. Before any assessment becomes effective, it must be ratified by the members at the annual meeting of the members. If an assessment is not ratified, the Board of Directors shall resubmit a revised assessment until membership ratification occurs. The due dates shall be established by the Board of Directors. The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment by any assessment therein stated to have been paid.

Section 6: Nonpayment of Assessment. Any assessments, or installment payments on assessments, which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall bear interest from the date of delinquency at the rate of One and One-Half Percent (1 1/2%) per month. The Association may bring an action at law to collect the amount of the assessment, together with interest, costs, and reasonable attorneys' fees for such action. In addition, the Association shall be entitled to record a lien against the Lot responsible for the delinquent assessment, in the full amount of the assessment, together with interest, reasonable collection costs and attorneys fees, shall be entitled to foreclose such lien, and shall be entitled to recover its reasonable costs and attorneys' fees as well as any other damages allowed by law or equity.

Section 7. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments created herein:

- a. All properties dedicated to and accepted by a public authority or agency;
- b. The Common Area; and
- c. All properties owned by a charitable organization exempt from taxation by the laws of the State of Montana. However, no land or improvements owned by a charitable organization and devoted to dwelling use shall be exempt from said assessments.

Article VII: Protective Covenants

The following Protective Covenants are designed to provide a uniform plan for the development of Emerald Heights. They shall constitute a covenant running with the land for each Lot within said Emerald Heights, excepting for the Common Area.

Section 1: Architectural Control Committee. The "Architectural Control Committee" shall consist of the Board of Directors of the Association.

Section 2: Architectural Control. All Owners intending to construct a dwelling or build any type structure whatever upon any Lot, shall first submit their plans and specifications, in writing, to the Architectural Control Committee. No dwelling house or other structure shall be erected, placed, or altered on any Lot until the construction plans and specifications along with the proposed site therefor have been approved in writing by the Architectural Control Committee as to the quality of workmanship and materials, harmony of external design with existing structures, and location of the structure with respect to topography and finish grade elevation.

Section 3: Approval by Committee. Approval or disapproval by the Architectural Control Committee must be in writing. In the event the Committee fails to act within thirty (30) days after the proposed plans and specifications of any structure have been submitted in writing, or in any event, if no suit to enjoin the construction has been commenced prior to the completion of an entire dwelling, no specific approval shall be required for such structure and the pertinent provisions of this Declaration shall be deemed to have been fully complied with.

Section 4: Building Type. All structures shall be constructed of new materials in place on the lot. However, suitable used materials such as used brick or beams may be utilized provided that advance approval has been obtained from the Architectural Control Committee as herein provided. No old buildings, mobile homes, and trailer homes (whether single or double width), whether intended for use in whole or in part as the main residential structure or for use as a garage or other outbuildings, shall be moved upon any Lot.

Section 5: Building Site. No single family Lot shall have more than one dwelling house located upon it and no Lot shall be divided. However, the Architectural Control Committee is authorized to approve exceptions to this section, and permit a Lot to be divided or a structure to be built on portions of two or more Lots, when in its discretion such action is considered in the interest of the Owners of the Properties.

Section 6: Building Size of Single Family Structures. The ground floor area of the main structure, exclusive of open porches, basements, and garages, shall not be less than 1,200 square feet.

Section 7: Building Size of Multi-Family Structures. Each unit shall not be less than 960 square feet, exclusive of open porches, basements, and garages.

Section 8: Setback Lines. No building shall be located on any Lot closer than 10 feet to the front street line, or closer than 10 feet to the rear lot line. Notwithstanding anything to the contrary, the Architectural Control Committee shall have the right to permit reasonable modifications of the setback requirements when in its discretion such action is considered in the interests of the Owners of the Properties.

Section 9: Fences. Fences will be permitted to provide privacy or safety for a play area, patio, or pool. No fence shall exceed 6 feet in height. No fence of any kind, whether for privacy, safety or boundary purposes, shall be constructed on a Lot until after the height, the design and approximate location therefor shall first have been approved by the Architectural Control Committee in writing.

Section 10: Trees. No cutting down of trees greater than 4 inches in diameter shall be permitted, with the exception of clearing for a building site or driveway; provided, however, that upon written application from an Owner the Architectural Control Committee may permit the cutting of trees greater than 4 inches in diameter for any reason determined by the

Committee to be appropriate.

Section 11: Sewage. No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the Montana State Department of Health, and the County of Flathead, Montana, and until such design and system has been first approved by the Architectural Control Committee, in writing.

Section 12: Garbage. All garbage cans used in connection with any dwelling erected upon the above-described premises shall either be sunk in the ground to ground line or if the dwelling has a garage rather than a carport, the garbage may be kept in the garage. No garbage cans shall be maintained which are not of a suitable type and which do not have a cover sufficient to prevent the escape of any noxious odors from such cans. If there is no garage, then garbage cans must be either sunk in the ground or placed in an enclosure completely screened from view. However, on garbage pick-up days, garbage cans may be exposed to view for the convenience of the garbage collector.

Section 13: Easements. Easements for installation and maintenance of utilities, TV cables and drainage facilities are reserved as shown on the recorded plat. No buildings of any kind shall be erected, placed or permitted to remain on such easements.

Section 14: Nuisances. No noxious or offensive activity shall be carried on or permitted upon any of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood; nor shall the premises be used in any way or for any purpose which may endanger the health or safety of or unreasonably disturb the residents of any Lot. Outdoor barbecues are not considered nuisances under this Section.

Section 15: Temporary Structures and Vehicles. No structures of a temporary character, or trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently. No mobile homes, trucks exceeding 2½ tons in capacity, trailer, or unsightly vehicles shall at any time be parked or allowed to remain on any of said Lots or along curbs. Camper trailers, pickup trucks carrying campers, campers for pickup trucks not in use, and boats or boat trailer and motor homes will be permitted only if stored in a garage or stored behind the rear building line of the dwelling, so as not to be an eyesore. However, on two (2) Lots in the Subdivision, as needed, there may be stored such equipment as is necessary to maintain the water lines and roads in said Subdivision; said storage to be discreet, and hidden from view of roads as much as is possible.

Section 16: Signs. No advertising signs, billboards, or unsightly objects shall be erected, placed or permitted to remain on any Lot. However, an exception is permitted for one small "For Rent" or "For Sale" sign per Lot.

Section 17: Commercial Usage Prohibited. No residential lot shall be used except for residential purposes, and no store, office, business, manufacture, commercial enterprise, hospital, sanitarium, rest home, theater, or saloon of any kind, or anything of the nature thereof, shall be carried on or conducted on any residential Lot; provided, however, that a residential lot may be used for a home occupation if such use qualifies as a permissible home occupation under the Flathead County Zoning Ordinances. Any Lot Owner conducting a home occupation shall promptly notify the Board of Directors, in writing, of the nature of the home occupation.

Section 18: Exterior Maintenance. Each Owner of a Lot on which there is a structure shall provide exterior maintenance upon such Lot and structure to include painting and repairing the structure; maintaining the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. Each Owner of a Lot that is vacant shall maintain the grounds to preclude weeds, underbrush and other unsightly growths; and not permitting refuse piles or other unsightly objects to accumulate or remain on the grounds. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within thirty (30) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner, which expense the Owner agrees to pay. Such entry on the Lot by the Association shall not be deemed a trespass. The full amount shall be due and payable within thirty (30) days after the Owner is billed thereof, and shall bear interest after such date at the rate of ONE AND ONE-HALF PERCENT (1 1/2%), PER MONTH. If the Owner fails or refuses to pay the full amount within the thirty (30) days, the Association may then bring an action at law to collect the amount owing, together with interest, costs, and reasonable attorneys' fees for such action. In addition, the Association shall be entitled to record a lien against the Lot responsible for the expense, in the full amount of the expense, together with interest, reasonable collection costs and attorneys' fees, shall be entitled to foreclose such lien, and shall be entitled to recover its reasonable costs and attorneys' fees as well as any other damages allowed by law or equity.

Section 19: Water System. Emerald Heights Homeowners Association shall be responsible for supplying water in the Subdivision. No individual or private wells or water systems shall be permitted or allowed upon any lot. Lot Owners shall pay for hook-ups and maintenance of the individual service lines from homes to the water mains in the streets. The Owners Association will be responsible for the central water system and water mains throughout the Subdivision. The Owners Association shall not be responsible or liable to any water user except and unless it is proven that the said Owners Association has negligently installed, maintained or operated such water system.

Section 20. Vehicles. There shall be no washing or repairing of vehicles in the streets at any time.

Section 21: Burning of Trash. There shall be no burning of leaves or trash on the paving of any street.

Section 22: Utility Connection Costs. The Owner of each Lot shall pay all utility connecting costs, including those for television cable, and water systems.

Section 23: Animals and Pets. No animal or fowl, domestic or wild, except cats, dogs or household birds such as canaries, shall be kept on the properties or in any of the structures thereon, and in no event may any animals or fowl be raised or cared for on a commercial basis. Owners keeping pets must at all times comply with all applicable Flathead County Ordinances.

Section 24: Boundary Control Monuments. The Declarants have caused survey monuments to be placed on the corners of each Lot. It shall be the responsibility of the Owner of such Lots to immediately provide for professional replacement of any survey monuments that are removed, lost or obliterated from his Lot.

Article VIII: Enforcement

Section 1: Interested Parties. The Association or any Owner shall have the option and right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of the Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. In any such action, the Association shall be entitled to recover its reasonable attorneys' fees and costs. Failure by the Association or by any Owner to enforce such provision shall in no event be deemed a waiver of the right to do so thereafter.

Section 2: Severability. In validation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Article IX: Term

The provisions of this Declaration shall be binding for a term of twenty-five (25) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots in Emerald Heights has been recorded, agreeing to change this Declaration in whole or in part.

9626916430

Article X: Amendment

This Declaration may be amended by the vote of the Owners of two-thirds (2/3) of the Lots in Emerald Heights. The Association's records shall reflect which lots voted in favor of any amendment. In order to be effective, an amendment, certified by the President of the Association to have been properly adopted by the members, must be recorded with the Flathead County Clerk and Recorder.

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

John Novak
Signature

8 + 9 *oh*
Lot or Tract No.

STATE OF MONTANA)
) :ss
County of Flathead)

On this 8th day of September, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared John Novak, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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



Kaye A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

John Novak
Signature

8 + 9 *oh*
Lot or Tract No.

STATE OF MONTANA)
) :ss
County of Flathead)

On this 8th day of September, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared John Novak, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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



Kaye A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

Harold R. Schneider
Signature

13
Lot or Tract No.

STATE OF MONTANA)
County of Flathead) :SS

On this 4th day of April, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Harold R. Schneider, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she/they~~ executed the same.

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



Kay A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

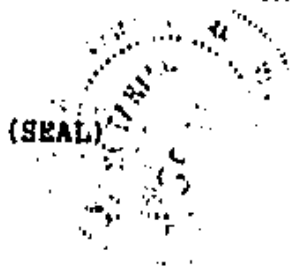
John J. Brown
Signature

11 & 12
Lot or Tract No.

STATE OF MONTANA)
County of Flathead) :SS

On this 27 day of August, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared John S. Brown, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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



Kay A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

John Cate
Signature

30 *etc*
Lot or Tract No.

STATE OF MONTANA)
) :SS
County of Flathead)

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared John Cate, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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



Kaye A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

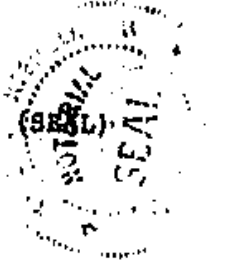
June Bennett
Signature

#27 *etc*
Lot or Tract No.

STATE OF MONTANA)
) :SS
County of Flathead)

On this 19th day of March, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared June Bennett, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/she/they executed the same.

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



Kaye A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

Michael D. Cochran
Signature

25
Lot or Tract No. *dr*

STATE OF MONTANA)
County of Flathead) :SS

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Michael D. Cochran, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she~~ executed the same.

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



Kaye A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

Marion Schrowsky
Signature

14-15
Lot or Tract No. *dr*

STATE OF MONTANA)
County of Flathead) :SS

On this 29 day of March, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Marion Schrowsky, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she~~ executed the same.

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



Kaye A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

Donald Weisfeld
Signature

17
Lot or Tract No. *ok*

STATE OF MONTANA)
County of Flathead) :88

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Donald Weisfeld, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she/they~~ executed the same.

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



Kay A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

Vanessa Weisfeld
Signature

17
Lot or Tract No. *ok*

STATE OF MONTANA)
County of Flathead) :88

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Vanessa Weisfeld, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same.

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



Kay A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

Brenda Somersille
Brenda Somersille

28 & 29
Lot or Tract No. 28 & 29

STATE OF MONTANA)
County of Flathead)

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Kev and Brenda Somersille, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that ~~he/she~~/they executed the same.

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



Kay A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

Michael W. Robinson
Signature

26
Lot or Tract No.

STATE OF MONTANA)
County of Flathead)

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Michael W. Robinson, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she~~/they executed the same.

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



Kay A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

The undersigned members of the Emerald Heights Homeowners Association approve the Amended and Restated Declaration presented to the members at the January 14, 1996, membership meeting, and consent to our signatures being attached to such document for recording with the Clerk and Recorder of Flathead County, Montana.

Terrence C. Gauthier
Signature

24 ^{dr}
Lot or Tract No.

STATE OF MONTANA)
County of Flathead)

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Terrence C. Gauthier, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she/they~~ executed the same.

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



Kyle A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

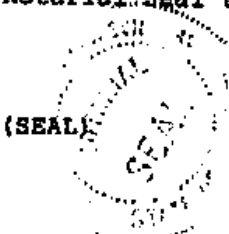
Carol S. Gauthier
Signature

24 ^{dr}
Lot or Tract No.

STATE OF MONTANA)
County of Flathead)

On this 14 day of January, 1996, before me, the undersigned, a Notary Public in and for the state aforesaid, personally appeared Carol S. Gauthier, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he/~~she/they~~ executed the same.

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



Kyle A. Robinson
Notary Public for the State of Montana
Residing in Whitefish
My Commission expires 3/26/99

STATE OF MONTANA. }
County of Flathead } SS

Recorded at the request of Emerald Heights HOA
this 25th day of Sept, 1996 at 4:43 o'clock PM and recorded in the records of Flathead County, State of Montana.

Susan St. Anselmi
(Flathead County Clerk and Recorder)

Jason Schreiner
(Deputy)

INDEXED
RECEPTION NO. 962691430
RETURN TO Emerald Hght HOA
150 W. Emerald

Whitefish 701-59937-8445
CLERK REC'D

Re: Election Dept.
800 S. Main
Kalispell, MT
59901



Paula Robinson, Flathead County MT by SS

200800025361

Page: 1 of 6

Fees: \$0.00

9/10/2008 1:02 PM

BYLAWS OF EMERALD HEIGHTS HOA COUNTY WATER AND/OR SEWER DISTRICT

The duly elected Directors of the Emerald Heights HOA County Water and/or Sewer District hereby adopt the following bylaws. It is the intent of these bylaws to conform to the Montana Constitution, statues, regulations and laws of the State of Montana, and particularly to conform to MCA, Title 7, Chapter 13, Parts 22 and 23. In the event that any bylaw is inconsistent with Montana Law, then Montana Law shall take precedence.

ARTICLE I Name and Location

Section 1: The name of this Water District, formed under MCA Title 7, Chapter 13, Parts 22 and 23 shall be Emerald Heights HOA County Water and/or Sewer District.

Section 2: Its principal offices for purposes of meetings shall be 150 W Emerald Drive, Whitefish MT 59937, and the mailing address shall be: Emerald Heights HOA County Water and/or Sewer District, PO Box 534, Whitefish MT 59937.

ARTICLE II Purpose

Section 1: It is the duty of the District and each Director to pursue the feasibility of constructing and maintaining a water system within the District.

ARTICLE III Directors and Officers

Section 1: The Board of Directors shall consist of five members. The nomination, election, and appointment of the Board of Directors and/or elective officers shall be in the manner provided by the statutes found in Parts 22 and 23, Chapter 13, Title 7, MCA.

Section 2: All five of the Directors are to be elected pursuant to MCA. § 7-13-2222. The election of the Directors shall be held every two years with the election for local government officials.

Section 3: The term of office for elected Directors shall be four years from the date of election, except at the first regular election of the District, three of the Directors will have two-year terms so that terms are staggered.

Section 4: Candidates for the Board of Directors shall follow the petition process as provided in MCA § 7-13-2241.



Section 5: All Directors, either elected or appointed, hold office until the regular election or appointment of their successors.

Section 6: Any vacancy of the Board of Directors shall be filled by an appointment made by the remaining Directors until the next election for Board members.

Section 7: Any Director, whether elected or appointed, must either own or lease real property located within the District, or be a resident of the District (see MCA § 7-13-2233).

Section 8: Eligible voters for the election of Directors are registered voters who either own real property or reside within the District. When a corporation owns real property within the District, an officer of the corporation may cast a vote on behalf of the corporation.

Section 9: The Board shall choose three of its members to hold the following three offices. All members, whether elected or appointed, are eligible for these offices. The Board shall hold annual elections for the positions of President, Vice President and Secretary/Treasurer.

PRESIDENT: The President shall preside at all meetings of the Board of Directors and shall have a general charge over the affairs of the District, subject to the Board of Directors. The President shall sign all contracts on behalf of the District and perform other duties that may be imposed by the Board of Directors. The President shall also appoint Board Members to committees as may be necessary for the affairs of the District.

VICE PRESIDENT: The Vice President shall fulfill the duties of the President in the President's absence.

SECRETARY/TREASURER: The Secretary/Treasurer shall oversee the keeping of the minutes of the proceedings of all meetings of the Board and shall have custody of all books and papers of the District and shall be responsible for all financial records of the District. The Secretary/Treasurer shall be responsible for collection of water charges, and sending notices of such to members of the District. The Secretary/ Treasurer shall be charged with the duty of installing and maintaining a system of accounting that shall at all times show the financial condition of the District. The Secretary/Treasurer shall draw warrants and pay demands made against the District when such demands have been first approved by at least three members of the Board (see MCA § 7-13-2279).

Section 10: Signatures of any two of the three officers are required on checks written on District accounts.

Section 11: Each board member may receive a monthly salary not to exceed \$80.00.



Section 12: The Board shall indemnify each Director from any and all liability for acts and omissions accomplished as a member of this Board within the scope and authority of their duties while serving on this Board.

Section 13: The Board of Directors, as soon as practicable, shall appoint by a majority vote operators as deemed necessary for management of the system. No Director shall be eligible for this position (see MCA § 7-13-2277(1)).

Section 14: The operators shall receive such compensation as the Board shall determine, and shall serve at the pleasure of the Board (see MCA § 7-13-2277(2)).

Section 15: The duties of the operators shall be as follows:

Operators shall have full control of the maintenance, operation, and construction of all work and systems of District. The operators shall perform such other duties as may be imposed on the operators by the Board. The operators shall report to the Board in accordance with such rules as it may adopt.

Section 16: The operators, and all other employees or assistants of the District who may be required to do so by the Board of Directors, shall give bonds to the District conditioned for the faithful performance of their duties as the Board from time to time may provide.

ARTICLE IV Meetings

Section 1: Regular meetings of the Directors shall be held on the second Thursday at 7:00 pm of each month at a place to be designated by the Chairman of the Board of Directors (see Article I, Section 2) at 150 W Emerald Drive, Whitefish MT 59937, or at such other place as the Board of Directors shall by resolution appoint.

Section 2: Special meetings may be called by the Chairman or any two Directors.

Section 3: If there is no pertinent business to be considered at a regular meeting, the President may cancel the meeting by notifying each Director at least 48 hours prior to the time set for such meeting. If any Director objects, the meeting shall take place.

ARTICLE V Conduct of Business

Section 1: All legislative sessions of the Board of Directors, whether regular or special, shall be open to the public (see MCA § 7-13-2274(1)).



Section 2: A majority of the Board shall constitute a quorum for the transaction of business (see MCA § 7-13-2274(2)).

Section 3: No Director shall sit in hearing or vote on any matter in which he/she is personally or financially interested (see MCA § 2-2-125).

Section 4: The order of business shall be:

- (a) Roll call;
- (b) Approval of the minutes;
- (c) Financial report;
- (d) Public hearings/public input;
- (e) Old business;
- (f) New business;
- (g) Adjournment.

Section 5: The Board shall act only by ordinance and resolution (see MCA § 7-13-2274(3)).

Section 6: Procedures relating to ordinance and resolutions are as follows:

- (a) The ayes and nays shall be taken upon passage of all ordinances or resolutions and entered upon the journal of the proceedings of the Board of Directors. No ordinance or resolution shall be passed or become effective without the affirmative votes of at least a majority of the total members of the Board.
- (b) The enacting clause of all ordinances passed by the Board shall be in these words: **"Be it ordained by the Board of Directors of the Emerald Heights HOA County Water and/or Sewer District as follows:"** (see MCA § 7-13-2275(2)).
- (c) All resolutions and ordinances shall be signed by the Chairman of the Board and attested by the Secretary/Treasurer of the Board (see MCA § 7-13-2275(3)).

Section 7: The fiscal year shall begin 01/01 and end 12/31 of the same calendar year.

ARTICLE VI Amendments

Section 1: These bylaws may be amended or added to at any regular meeting by an affirmative vote of a majority of the total members of the board.



Section 2: Bylaws may not be amended, repealed or added to at special meetings.

**ARTICLE VII
Powers and Duties**

Section 1: The powers listed in this section shall be exercised by the governing Board of Directors, who are elected and appointed according to Montana statute (see MCA § 7-13-2217(2)).

Section 2: This District, being incorporated as provided in Parts 22 and 23 of Chapter 13, Title 7, MCA, shall have power to:

- (a) Have perpetual succession;
- (b) Sue and be sued;
- (c) Adopt a seal and alter it at pleasure;
- (d) Take by grant, purchase, gift, devise, or lease, and to hold, use, enjoy, and to lease or dispose of real and personal property of every kind, within or without the District, necessary to the full exercise of its powers;
- (e) Make contracts, employ labor, and do all acts necessary for the full exercise of the foregoing powers (see MCA § 7-13-2217(1)(a), (b), (c), (d), (e));
- (f) Construct, purchase, lease or otherwise acquire and operate and maintain water lines and waterworks, and rights useful or necessary to store, conserve or drain water for purposes beneficial to the District.


Section 3: Powers related to District Finances: This District shall have the power to:


- (a) Accept funds and property or assistance (financial or otherwise) from federal, state and other public or private sources to aid the construction or maintenance of sewer development projects;
- (b) Cooperate and contract with the state or federal government in furnishing assurance for and meeting local cooperation requirements for any project involving control, conservation or use of water;
- (c) Borrow money and incur indebtedness and issue bonds or other evidence of such indebtedness (see MCA §§ 7-13-2321 through 2330).
- (d) Cause taxes to be levied in the manner provided by statute (see MCA § 7-13-2221 (1) through (4)).

Section 4: Establishment of charges for services: The Board of Directors shall fix all water rates and shall oversee the collection of water charges. These rates are intended to pay for the operating expenses of the District, interest on any bonded debts, and as far as possible, provide a sinking fund for the payment of principal on any debts as they become due (see MCA § 7-13-2221 (1) through (2)).

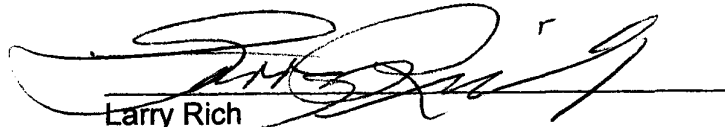
Section 5: The Board of Directors may add land to the District, exclude land from the District, or correct erroneous property description (see MCA §§ 7-13-2340 through 2348).

WE, the undersigned, being all the directors of the Emerald Heights HOA County Water and/or Sewer District, hereby adopt the foregoing as the bylaws of the said District this 8 day of May, 2008.


Michael W Robinson


Allen Wolf

 5/8/08
Andrew Eckstrom


Larry Rich


Kelly Beatty



Paula Robinson, Flathead County MT by SS

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