



EMERALD HEIGHTS SUBDIVISION

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

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

0636650 to 0636655  
0493839, 0975833  
0782551, 0853046  
0636657 to 0636661  
0636663 to 0636674  
0636678 to 0636681

This Amended and Restated Declaration, made this 23<sup>rd</sup> 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 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 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 ½%) 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 ½%) , 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.

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.