

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made this _____ day of _____, 198_, by RONALD E. TOWERY, of Dillon, Montana, hereinafter called "Declarant."

RECITALS:

Declarant makes this Declaration upon the basis of the following facts and intentions:

A. Declarant is the owner of the following described real property located in Beaverhead County, Montana:

A tract of land in the Northwest 1/4 of Section 21, Township 7 South, Range 8 West, P.M.M. Beaverhead County, Montana.

Commencing at the Northwest section corner of Section 21, a brass cap found, the point of beginning, the Northwest corner of Fox Run Subdivision, First Filing. Then along the West Section line of Section 21, S 0° 20' 00" E, 961.07 feet to an iron pin. Then N 86° 55' 42" E, 166.79 feet to an iron pin found. Then S 0° 20' 00" E, 850.00 feet to an iron pin. Then N 84° 38' 30" E, 529.61 feet to an iron pin. Then S 15° 22' 58" E, 395.74 feet to an iron pin. Then S 35° 56' 56" E, 653.45 feet to an iron pin on the East-West mid-section line of Section 21. Then along the East-West mid-section line S 89° 50' 46" E, 900.17 feet to an iron pin. Then N 3° 20' 42" W, 1,680.31 feet to an iron pin. Then S 89° 50' 11" E, 309.64 feet to an iron pin. Then N 0° 09' 50" E, 988.29 feet to an iron pin on the North section line of Section 21. Then along the North section line N 89° 50' 11" W 2,307.78 feet to the point of beginning.

The tract contains 109.33 acres to be known and designated as Fox Run Subdivision, First Filing.

B. Declarant plans to subdivide and develop the above-described property and impose thereon beneficial protective covenants under a general plan of improvement for the benefit of all of such real property, every part thereof and interest therein.

NOW, THEREFORE, Declarant hereby declares that the above-described real property be held, sold, conveyed, encumbered, used, occupied and improved subject to the following easements, restrictions, covenants and conditions, all of which are in furtherance of a plan for subdivision, improvement and sale of said real property and are established for the purpose of enhancing the value, desirability and attractiveness of the real property and every part thereof. All of the easements, restrictions, covenants 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 be for the benefit of each owner of any portion thereof and inure to the benefit of and be binding upon each successor in interest of such owners.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean Fox Run Homeowners' Association, its successors and assigns.

Section 2. "Common Area" shall mean all real property in which the Association owns an interest for the common use and enjoyment of all of the members. Said interest or interests may include, without limitation, estates in fee, estates for a term of years or easements. The common area to be managed by the Association at the time of the conveyance of the first lot is described as:

(a) Roads - All roads shown on the Fox Run Subdivision, First Filing, on file and of record in the office of the Clerk and Recorder of Beaverhead County, Montana.

(b) Park Land - The land designated as Park in Fox Run Subdivision, First Filing, on file and of record in the office of the Clerk and Recorder of Beaverhead County, Montana.

(c) Entrance Sign - located on easement in N.E. corner of Lot 1.

(d) Easements for mail boxes and bus stop structure, N.E. corner lot 1 and N.W. corner lot 29.

Section 3. "Lot" shall mean any lot shown on a recorded subdivision plat of a portion of the properties, except common area.

Section 4. "Member" shall mean any person or entity holding membership in the Association pursuant to its Articles of Incorporation and its By-Laws.

Section 5. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot, including contract purchasers, but excluding contract sellers or those having such interest merely as security for the performance of an obligation; provided, however, that prior to the first conveyance of each portion of the properties for value, owner shall mean Declarant. Prior to such conveyance, Declarant shall have the right to retain such rights incidental to ownership hereunder as it may desire in its discretion.

Section 6. "Properties" and "Project" shall mean the real properties described in A. of the recitals above.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have an undivided interest in and easement of enjoyment in and to the Common Area and shall have use of all common facilities, which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area;
- b. The right of the Association to establish rules and regulations for use of any and all common facilities and open space;
- c. The right of the Association to suspend the voting rights and right to the use of common facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 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 two-thirds (2/3) of all owners agreeing to such dedication or transfer has been recorded.
- e. An easement in the Association in all of the Common Area to carry out the functions, powers and duties of the Association.

Section 2. Declaration of Use. Any owner 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.

Section 3. Easements.

(a) Each lot and the Common Area shall be subject to such rights of way and easements as the Declarant (and the Association after it has acquired title to the Common Area) may grant for installation and maintenance of fences, water lines, sewage disposal, power lines, telephone lines and other utilities. The Declarant specifically reserves the right and power to grant such easements, while title to the Common Area remains in the Declarant and the said Association shall have such right and power after transfer to it of an easement in and to the Common Area. Installations for water and sewer lines and utility lines, including electric power and telephone lines, shall be underground and at the expense of the lot owner.

(b) The Declarant (and the Association after it has acquired title to the common area) specifically reserves an easement for the construction, maintenance and placement of a permanent subdivision entrance sign on an area not to exceed 40' 0" in an East/West direction parallel to Sweetwater Road and 15' 0" in a North/South direction parallel to Fox Ridge Drive located in the Northeast corner area of Lot 1.

(c) The Declarant (and the Association after it has acquired title to the common area) specifically reserves an easement 15' 0" in width, starting at the Northeast corner of lot 1 and the Northwest corner of lot 29 and extending 100' 0" in a Southerly direction on both sides of Fox Ridge Drive for the installation and maintenance of mail boxes and a bus stop structure together with appurtenant turnout and temporary parking area on either lot 1 or lot 29 or both.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is subject to assessment shall be a member of the Association. Class A, Class B, Class C, and Class D memberships shall be appurtenant to and may not be separated from the ownership of any lot subject to assessment.

Section 2. The Association shall have four classes of voting membership.

(a) Class A members shall be all owners of Lots 4 through 30 as shown on the Fox Run Subdivision Plat, First Filing, on file and of record in the office of the Clerk and Recorder of Beaverhead County, Montana. Each Class A member shall be entitled to five votes for each lot owned except where lots are resubdivided as shown on the Plat on file and of record in the office of the Clerk and Recorder of Beaverhead County, Montana. Lots resubdivided shall be entitled to a pro rata share of votes.

(b) The Class B member shall be the owner of Lot 1 and 3 as shown on the said Fox Run Subdivision Plat, First Filing. The Class B member shall be entitled to one vote for each living unit actually developed on said lot, but in any event no less than 10 votes for said lot.

(c) The Class C member shall be the owner of Lot 2, as shown on the said Fox Run Subdivision Plat, First Filing. The Class C member shall be entitled to 30 votes for said lot.

(d) The Class D member shall be the Declarant. Class E membership shall cease and be converted to Class A, B, and/or C membership or memberships (whichever is or are applicable, depending on which of the lots are left unsold at the time) on the happening of the first to happen of the following events:

(1) When the total votes outstanding in Class A, B, and C reach 51% of the vote provided for herein, or

(2) On December 31, 1990.

(e) Declarant may subdivide and develop adjacent lands into residential property. Upon application by Declarant to join the Association, Article III shall be expanded to include the owners of adjacent lots as members of the Association provided:

(1) All classes of members shall be equivalent to present classes except that owners of single family detached lots less than one acre shall have 2 votes for each lot owned and lots of one acre or more shall have 5 votes for each lot owned.

(2) All adjacent lot members eligible for membership shall be governed and bound by all articles of the Homeowners Association including future revisions.

(3) All adjacent lots shall have similar protective covenants.

ARTICLE IV

MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each lot owned within the Properties, hereby covenants, and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a mechanic's lien upon the property against which each such assessment is made, governed and subject to the laws of the State of Montana regarding mechanic's liens and the enforcement thereof. Each such assessment, together with interests, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents on the Properties and for the improvement and maintenance of the Common Area.

Section 3. The Association shall make no annual assessments until after 12-31-82. The maximum assessment per lot which may be made by the Association in the calendar year 1983, shall not exceed \$75.00 per Class A lot. Class B and C lots shall be assessed pro rata to the number of votes held by a member. Thereafter, the maximum annual assessment may be increased each year by not more than 15% of the maximum assessment for the previous year without a vote of the membership. From and after 12-31-83, the maximum annual assessment may be increased by more than 15% by a vote of two-thirds (2/3) of membership who are voting in person or by proxy, at a meeting duly called for this purpose. The amount of the annual assessments shall be fixed by the Board of Directors.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment 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.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all members not less than 10 days nor more than 25 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty-one (51%) of all the votes of all classes of members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be two-thirds (2/3) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments for Class A, B, C and D members must be fixed at a uniform rate for all lots within the respective classes, and shall be collected in a manner prescribed by the Board of Directors. The rates between classes shall not be uniform but instead shall be pro rata to the number of votes held by a member.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all lots on January 1, 1983, or upon annexation of such lots to the properties. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty days in advance of each annual assessment, except that the assessment for the fiscal year 1983 may be fixed at any time during that year. Written notice of the annual assessment shall be sent to every owner or member subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust indenture. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. No residential or other structure and garage, out building or other structure, nor septic tank, well, antenna, or exterior ornament of any kind, or any addition, alteration or remodeling thereof shall be made, erected, altered, placed or permitted to remain upon the properties until plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to a Design Review Committee consisting of three members appointed by the Board of Directors of Fox Run Homeowners' Association and approved in writing by the Committee as to harmony of external design, location in relation to surrounding structures and topography, and the construction and the materials to be used in the construction. At least two of the three committee members shall be members of the Fox Run Homeowners' Association and it is suggested that one of the members have professional qualifications in the area of architecture, design or land planning. In the event the Design Review Committee fails to approve or disapprove such design, location, construction, and materials within sixty (60) days after the detailed plans and specifications have been submitted to it, approval shall not be required and this article

will be deemed to have been fully complied with. Any plans, specifications and proposals so approved, either expressly in writing or by the expiration of the sixty day period hereinabove provided, shall then permit the owner to commence construction in accordance with said plan, but any deviation from said plan which in the judgment of said Committee is a substantial detriment to the appearance of the structure or of the surrounding area shall be corrected to conform with the plan as submitted. Any structure to be erected in accordance with approval so given must be erected and completed within twenty months of approval or new approval obtained. If any structure is begun and is not completed within twenty months of the commencement of construction, and in the judgment of the Design Review Committee is of offensive or unsightly appearance, the said Committee or the Directors of Fox Run Homeowners' Association at the option of either may take such action as may be necessary in its judgment to improve the appearance so as to make the property harmonious with other properties, including completion of the exterior of the structure, screening or covering of the structure or any combination thereof, or similar operations, and the amount of any expenditures made in so doing shall be a lien on the property and may be enforceable by an action at law. The Design Review Committee may act by a majority of its members and any authorization or approval made by the Committee must be signed by a majority of the members thereof.

Section 2. Neither the association, the Design Review Committee, nor the individual members thereof, may be held liable by any person for any damages for any committee action taken pursuant to these covenants, including, but not by way of limitation, damage which may result from correction, amendment, changes or rejection of plans, the issuance of building permits or any delays associated with such action on the part of the Committee.

ARTICLE VI

MINIMUM BUILDING AND USE RESTRICTIONS

Each and every lot on the plat of the Fox Run Subdivision shall be used for the use designated in the Planned Unit Development as follows: (However, see Section 5 as to variances.)

Section 1. Single Family Detached Lots #4 through #30

(a) No improvements whatsoever, other than one (1) single family detached residence and one single barn shall be erected or placed on any single family detached lot. Garages or carports may be constructed, but must either be attached to the residence as an integral part thereof or attached thereto by an arbor or breezeway and shall conform to the architecture thereof. No more than one room in each residence may contain kitchen facilities, except certain facilities may be permitted by agreement of the Design Review Committee as a part of a den or play room. In addition to the single family as provided herein, bonafide domestic servants shall be permitted the use and occupancy of said residence while in the employment of said family.

(b) Each single family detached residence constructed shall not have less than 1,200 square feet of actual main floor living area exclusive of uncovered or roofed porches, terraces, basements, garages and carports.

(c) Single family detached setbacks shall be as follows:

From front yard 75'
From rear yard 75'
The two side yards shall be at least 20' each

(d) Single Family Detached Height Restrictions. No single family detached unit or barn shall exceed a maximum height of 24 feet.

(e) No garage or carport may be greater in height or number of stories than the residence for which it is built. Garages or carports of sufficient size to accommodate not fewer than one car or more than three cars must be provided.

Section 2. Single Family Attached and Mid-Rise Apartment/Condominium Lots #1 and #3.

(a) No improvements other than a combination of single family attached, mid-rise apartment/condominium and recreational facilities shall be erected or placed on Lots 1 and 3. Garages or carports may be constructed provided they conform to the architecture of the building they serve. No more than one room in each residential unit may contain kitchen facilities, except certain facilities may be permitted by agreement with the Design Review Committee as a part of a den or play room. In addition to the single family as provided herein, bonafide domestic servants shall be permitted the use and occupancy of said residential unit while in the employment of said family.

(b) Single Family Attached Units and Mid-Rise, Apartment/Condominium Units on Lots 1 and 3 shall not have less than 650 square feet of actual living floor area exclusive of unroofed or roofed porches, balconies, terraces, basements, garages and carport.

(c) Height Restrictions. No single family attached unit shall exceed a maximum height of 30 feet. No mid-rise apartment/condominium building shall exceed a height of 70 feet.

(d) Recreational facilities, i.e., swimming pool, tennis courts, horseshoe pits, etc. with attendant buildings for equipment and storage may be erected on Lots 1 and 3.

(e) No business facility other than a coin operated laundry may be maintained on Lots 1 and 3.

Section 3. Neighborhood Commercial Area Lot 2.

(a) No improvements other than a commercial facility shall be erected or placed on Lot 2.

(b) The intent of the commercial area is to provide for retail and service activities.

(c) Commercial establishments on Lot 2 shall be limited to five thousand (5,000) square feet, exclusive of parking.

(d) Business shall be conducted in completely enclosed buildings.

(e) Height restrictions: no building shall exceed a maximum height of thirty-four (34) feet.

(f) Off street parking shall be provided in a ratio of 1 parking space for each 200 square feet of commercial area.

Section 4. Covenants Pertaining To All Lots.

(a) No room or rooms in any single family detached unit may be leased to any person; provided, however, that nothing contained herein shall be construed as preventing the renting or leasing of an entire lot together with its improvements as a single family unit to a single family.

(b) No business of any nature shall be conducted on any lot or in any single family detached, attached or high-rise residence constructed thereon, except a coin operated laundry may be maintained on Lots 1 and 3.

(c) No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other livestock of any description shall be kept or maintained on any part of any lot, except for lots 4 through 30 which must be maintained on a non-commercial basis and non-offensive to other lot owners. Residents may keep dogs, cats, or other animals which are bonafide household pets, so long as such pets are not kept for commercial purposes and do not make objectionable noises or odors or otherwise constitute a nuisance or inconvenience to any of the residents of the Fox Run Subdivision. Dogs shall not be allowed to run free.

(d) No activity may be carried on nor allowed to exist upon any lot, which may be noxious, detrimental, offensive, illegal, or constitute a nuisance to any other lot or to the occupants of any lot in the Fox Run Subdivision.

(e) All improvements to be erected on any lot in this Subdivision, regardless of the type or nature of the structure being designed or erected, shall be fully completed within twenty months from the date of the commencement of construction, and all building material and other equipment normally used for the erection of construction of said structure shall be completely removed from the premises within said period of time, provided, however, interior finishing of dwelling houses may extend beyond this period, so long as there are no building materials or other equipment used for the purpose of construction and erection stored on the premises beyond the twenty month period of time herein designated. At their discretion, the Design Review Committee may extend the period of time upon proper application in writing for such an extension.

(f) The owner of each and every lot shall use reasonable care in placing a structure on a lot so as not to obstruct the view from adjoining lots.

(g) Any exterior lighting installed on any lot shall be indirect or of such controlled focus and intensity as not to disturb the residents of adjacent properties.

(h) No temporary house, tent, garage, or outbuilding shall be placed or erected on any part of any lot and no residence placed or erected on any lot shall be occupied prior to completion in accordance with the plans and specifications approved by the Design Review Committee. Necessary temporary buildings for the storage of building materials may be constructed and used during the period of construction. The work

of construction, altering or remodeling of any building or part thereof shall be completed no later than twenty months after the approval for same by the Design Review Committee. Mobile homes may be placed on lots during actual construction and must be removed no later than twenty months after the approval of construction work by the Design Review Committee or new approval obtained.

(i) The owner of a lot may install fences. Owners of lots 4, 6, 8, and 10 may fence their West boundary adjacent to the cemetery boundary if the fencing is of uniform style. The owner of a lot must allow access for utility repair. Repairs to such fences because of utility repairs shall be the responsibility of the owner of such lot. Maximum height of fences shall be five (5) feet, except in the case of patio privacy fences which may be six (6) feet high if patio adjoins house, and they shall be made of materials that conform to the concept of naturalness and shall conform in regard to materials and design as approved by the Design Review Committee.

(j) Declarant reserves ownership of perimeter fencing on lots 11 through 18, 20, and the Park to Declarant and reserves the right to access to maintain said fences. Declarant's ownership of perimeter fencing on lots 11 through 18, 20, and the Park shall cease if adjacent lands are subdivided and developed for residential purposes and ownership of subject fences will then be shared equally between contiguous owners.

(k) No trash or garbage shall be burned except in an approved incinerator. No barbecue or other outdoor cooking facility shall be located nearer than 15 feet from either side of lot lines unless made part of the residence.

(l) Any building placed, erected or maintained upon any lot in Fox Run Subdivision shall be entirely constructed thereon, and the same shall not, or any part thereof, be moved to or from said lot.

(m) No outside toilets shall be placed on any lot except during period of construction.

(n) No derrick or other structure designed for the use of boring for oil or natural gas shall be erected, placed or permitted upon any part of said property, except by Declarant, nor shall any minerals, oil or natural gas be produced or abstracted therefrom except by the Declarant. All rights of minerals, oil and natural gas underlying all lots, common areas and roads are reserved to the Declarant.

(o) No advertising or signs of any character shall be erected, placed, permitted or maintained on any lot or building within Fox Run Subdivision other than:

(1) A name plate of the occupant and a street number;

(2) A "For Sale" sign (maximum size three (3) square feet;

(3) Business identification signs shall be permitted on Lots 1, 2 and 3 but subject to the Design Review Committee.

(p) No elevated tanks of any kind over 4' shall be erected, placed, or permitted on any part of said property without approval of the Design Review Committee. Any tanks to be used in connection with any residence constructed on Fox Run Subdivision, including tanks for the storage of gas, oil, or water, must conform to the specifications and control of the Design Review Committee. All types of refrigerating, cooling, or heating apparatus must be concealed, except those types of refrigerating cooling units which are made specifically for window installation.

(q) All outside radio and television antennae must conform to specifications and control of the Design Review Committee.

(r) The placement, type and quality of all roads within the development shall be determined by Declarant.

(s) No motorized bicycles, trail bikes, motor scooters, snowmobiles, or similar types of recreational vehicles, shall be operated on the property of Fox Run Subdivision except for the purpose of going to or from work and other purposeful travel. Recreation vehicles shall be stored or parked on site in garage or adequately screened from view.

(t) Parking along roads shall be permitted only in those places provided for this purpose.

(u) No building or structure upon any lot may be permitted to fall into disrepair. Buildings or structures must at all times be kept in good condition, adequately painted, or otherwise finished.

(v) Each lot at all times shall be kept in a clean, sightly and wholesome condition. No inoperable motor vehicles, snowmobiles, motorcycles, campers, trailers, boats, trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed on any lot so as to be visible to any neighboring lot or road.

(w) Each owner of a lot agrees for himself, his heirs, assigns, or successors in interest, that he will permit free and reasonable access by the owner of adjacent or adjoining lots containing a divisional wall, fence, hedge, or any other barrier, when such access is essential for the construction, reconstruction, refinishing, repair, maintenance, or alteration of such divisional structure or planting.

(x) Lots 1 through 20, 23, 24 and 30 shall not be further subdivided, except for the purpose of combining portions with an adjoining lot, provided that no additional lots or building site is created thereby and then only with the express permission of the Design Review Committee. Lots 21, 22, 25, 26, 27, 28 and 29 may be subdivided as shown by broken lines on the subdivision plat of Fox Run Subdivision First Filing, filed in the office of the Clerk & Recorder, Beaverhead County, Montana, provided that permission is granted by the governing body of the County of Beaverhead pursuant to the laws of the State of Montana and the ordinances of the county; to facilitate such future subdivision, no permanent improvement shall be located within twenty feet of the broken lines on said lots. Any ownership or single holding by any person comprising the whole of one lot and part or parts of one or more adjoining lots shall, for all purposes of these covenants and restrictions, be deemed a single lot. Not less than one entire lot as originally platted shall be used as a building site.

(y) It is expressly agreed and understood that the Declarant may use any of the lots in the subdivision for a sales office, for model homes or for parking related to such sales office or model homes. Any portion of the subdivision including streets, drives, and other roadways, may be used for sales purposes, guardhouses, security structures, and for other purposes deemed proper by the Declarant.

(z) In the event that a structure is destroyed, wholly or partially, by fire or any other casualty, said structure shall be properly rebuilt or repaired to conform to this declaration or all the remaining structure, including the foundations and all debris shall be removed from the lot.

(aa) Easements and rights of way in perpetuity are hereby reserved for the erection, construction, maintenance, and operation of wires, cable, pipe, conduits and apparatus for the transmission of electricity, telephone, television and radio lines and for the furnishing of water, gas, sewer service, or for the furnishing of other utility purposes together with the right of entry for the purpose of installing, maintaining, and reading gas, electric and water meters, together with the further rights to the Declarant to convey or lease the whole or any portion of such easements, rights of way or right of entry to any person or persons or to any corporation or municipal body, under, along, across, upon and through a strip of land 10 feet in width along the rear and designated side lot lines of all lots in Fox Run Subdivision.

(bb) Declarant reserves the utility easements and rights of way shown on the recorded plat of the subdivision for the construction, addition, maintenance and operation of all utility systems now or hereafter deemed necessary by Declarant for all public utility purposes, including electric, telephone, cable, gas, water and sewer services.

(cc) An underground telephone cable system and electrical power, and natural gas and water may be installed in the subdivision. Each residence in the subdivision shall, at the expense of the owner or builder of the residence, have a trench opened from the residence to the utility easement across the lot upon which the residence is being built, for installation of said utilities, and the owner shall close the trench after installation of the cable. The exact location of the trenches shall be designated by the utility company.

(dd) The Declarant reserves the right to make minor changes in and additions to all easements for the purposes of most efficiently and economically installing utility systems.

(ee) The Declarant reserves the right to develop recreational facilities in the Common spaces of the subdivision.

(ff) All lot owners shall not construct a dwelling on a building site with 12% or more slope. Should the developer or lot owner disagree with this restriction the governing body will reconsider the restriction when additional technical information is provided by a qualified engineer.

(gg) The Design Review Committee, prior to approval of improvements within 400 feet of the West boundary of lot 10, 300 feet of the West boundary of lot 8, and 200 feet of the West boundary of lot 6 and lot 4 shall notify the East Bench Irrigation District to instruct the property owners of potential hazards due to a canal break.

(hh) No permanent improvements shall be made within 15 feet each side of center of gas transmission line on lots 5, 6, 7, 8, 9 and 10.

(ii) Declarant has agreed with the governing body of Beaverhead County to waive the right of protest for a Rural Improvement District for paving the Sweetwater Road from the end of the existing pavement to the entrance to the Subdivision and the creation of a lighting district for the Subdivision. Creation of a Rural Improvement District for paving and lighting is upon the Beaverhead County Commissioner's discretion and may be enacted only after 20 lots have residences constructed thereon. Each owner of a lot agrees for himself, his heirs, assigns, or successors in interest to this waiver for a Rural Improvement District.

Section 5. Varia es. The Design Review Committee may, after notice to the members of the Association and hearing, conditionally approve, deny, or approve a request to modify the minimum Building and Use Restrictions imposed by Sections 1 through 3 of this Article VI, according to the following procedure.

(a) Applications. Applications for modifications shall be delivered to each of the members of the Design Review Committee, either in person or by certified mail. The application shall be accompanied by a fee in an amount sufficient to provide for mailing notice to the membership as provided in (b) below. The Design Review Committee shall cause to be made such investigation of facts bearing on the application as will provide necessary information to assure that the action on each such application is consistent with the intent and a purpose of these Covenants.

(b) Notice of Hearing. Notice of hearing on the application for modifications shall be mailed to each member of the Association by the Design Review Committee at least 15 days prior to the date set for hearing, and shall be accompanied by a copy of the application for modification. The hearing shall be at the appointed time and place, testimony may be taken by the Design Review Committee from persons affected by the modifications and any experts called by either applicant or a member opposed to modification for the purpose of aiding the Design Review Committee in their deliberations.

(c) Rules for Approval. After hearing and prior to approval of any such application for modification, the Design Review Committee shall designate such conditions as will secure substantial compliance with these Covenants from the applicant and shall find as follows:

(i) Such modifications will not be inconsistent with the intent and purpose of these Covenants and the general plan of the subdivision.

(ii) That strict compliance with the provisions of Sections 1 through 3 of this Article VI would create unnecessary hardship or unreasonable situations on a particular property due to unusual or extreme topography, unusual shape of the property, or the prevalence of similar conditions in the immediate vicinity of the property.

(iii) That such modifications will have minimal adverse effect on abutting properties or the permitted uses thereof.

(iv) That the applicant has agreed in writing to be bound by the conditions imposed by the Design Review Committee for granting such modification and, if required by the Design Review Committee, has posted a performance bond in an amount sufficient to insure compliance with the conditions imposed by the Design Review Committee.

(d) Appeal from The Design Review Committee's Decision. An appeal from the Design Review Committee's decision to the membership of the Homeowners' Association may be made by either the applicant or any member of the Association opposing modification. Notice of Appeal shall be in writing and delivered to the President of the Homeowners' Association or a member of the Board within 15 days after action of the decision of the Design Review Committee is rendered. Thereafter, the President or the Board of Directors shall call a special meeting of the membership pursuant to the requirements of the By-Laws of the Homeowner's Association governing special meetings. A quorum for purposes of a special meeting to hear an appeal from

the Design Review Committee's decision shall be made by a majority representing 3/4 of all the votes of each class of membership, who must be present in person or by written proxy. If a quorum is present the proponents and opponents shall then present their respective cases to the membership. If a quorum is not present the meeting shall be adjourned and the decision of the Design Review Committee shall stand. An affirmative vote of 3/4 of the members present and constituting a quorum shall be required to reverse the action taken by the Design Review Committee.

ARTICLE VII

DEDICATIONS

Section 1. Roads. The Declarant specifically dedicates and grants to the Association the roads shown on the Fox Run Subdivision, First Filing, on file and of record in the office of the Clerk and Recorder of Beaverhead County, Montana. The roads within Fox Run Subdivision shall be a public way and maintained by the Association. The Declarant (and the Association after it has acquired title to the roads) irrevocably agree with the Beaverhead County Commissioners whereupon the County, upon its discretion, may accept ownership and responsibility for the roads at any time. All rights of minerals, oil and natural gas underlying all roads within Fox Run Subdivision are reserved to the Declarant.

Section 2. Park Land. The Declarant specifically dedicates and grants to the Association the land designated as Park in Fox Subdivision, First Filing, on file and of record in the office of the clerk and Recorder of Beaverhead County, Montana, to be held in perpetuity for use as parks or playgrounds. All rights of minerals, oil and natural gas underlying the Fox Run Subdivision Park land are reserved to the Declarant. An easement for drilling, operating and maintaining a water well and pipeline in the Fox Run Subdivision Park is reserved to the Declarant.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to so thereafter do.

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

Section 3. Amendment. The covenants and restrictions of this declaration shall run with and bind the land for a term of ten years from the date this declaration is recorded, after which time such covenants shall automatically be extended for successive ten year periods, unless an instrument is recorded, signed by the owners of 66-2/3% of all of the lots within this subdivision, agreeing to revoke or amend said covenants in whole or in part. This declaration may be amended during the first ten year period by an instrument signed by not less than 66-2/3% of the lot owners. Any amendment

RESTRICTIONS TO BE INCLUDED IN DEEDS OF LOTS IN FOX RUN SUBDIVISION

1. Conditions contained in Montana Department of Health approval for Fox Run Subdivision, No 1-82-L1-28 dated September 8, 1982 shall apply and be adhered to.
2. Buyer shall be bound by and comply with the Easements, Restriction, Covenants and Conditions of Fox Run Subdivision, First Filing, on file and record in the office of the Clerk and Recorder of Beaverhead County, Montana which shall run with the property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof and shall be for the benefit of each owner or any portion thereof and inure to the benefit of and be binding upon each successor in interest or such owners.
3. Buyer shall be bound by and comply with the By-Laws of the Fox Run Homeowner's Association.
4. Seller reserves and retains all mineral, gas & oil rights.