

Restrictions, limitations, or preferences, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent that such

VOL 59 PAGE 339

ELK MEADOWS RANCHETTES

DECLARATION OF RESTRICTIONS, COVENANTS, AND CONDITIONS

THIS DECLARATION MADE This 11th day of June, 1974, by RICHARD H. WILLIAMS, JAMES G. LACKMAN, and ROYAL J. McMURDIE, as Trustees, hereinafter called Declarants.

WITNESSETH:

WHEREAS, Declarants are the equitable owners of Section 13, Township 15 North, Range 22 West, P.M.M., in Missoula County, Montana, hereinafter referred to as Elk Meadows Ranchettes; and

WHEREAS, Declarants desire to place restrictions, covenants, and conditions upon said real property for the use and benefit of themselves as present owners and for the future owners thereof;

NOW THEREFORE, Declarants hereby declare that all the property described above shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property as a highly desirable rural development. These restrictions, covenants, conditions and easements shall run with the real 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 inure to the benefit of and be binding upon each successor in interest of the owners thereof.

ARTICLE I: DEFINITIONS

Section 1. "Association" shall mean and refer to Elk Meadows Ranchettes Homeowners Association, a proposed Montana non-profit corporation, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such other real property as is now or may hereafter be brought within the jurisdiction of the Association.

Section 3. "Tract" shall mean and refer to any plot of land as originally surveyed for description of the Properties to be evidenced by the conveyance from Declarants with the exception of dedicated streets and road easements. In the event a tract is subdivided or other than a tract as originally conveyed by Declarants is used as a dwelling location, such location as modified shall thereafter be considered as a Tract. Any recorded document, to include a deed, mortgage, or notice of purchasers interest, indicating such change shall be deemed to establish the modified Tract.

Section 4. "Member" shall mean and refer to every person or entity who is a Member of the Association.

Section 5. "Owner" shall mean and refer to the equitable owner, whether one or more persons or entities, of any Tract 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.

Section 6. "Declarants" shall mean and refer to Richard H. Williams, James G. Lackman, and Royal J. McMurdie, as Trustees, their successors and assigns if such successors or assigns should acquire more than one undeveloped Tract from Declarants for the purpose of development.

Section 7. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Members of the Association.

The Association may, at any time, annex additional residential properties that border property within the jurisdiction of the Association, and so add to its membership; provided that 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 an equitable or record owner of any Tract which is subject by covenants of record to annexation by the Association, 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 Tract which is subject to assessment by the Association. Ownership of such Tract shall be the sole qualification for membership.

ARTICLE IV: VOTING

All Members shall be entitled to One (1) vote for each Tract in which they hold the interest required for membership. When more than one person holds such interest in any Tract, the vote for such Tract 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 Tract.

ARTICLE V: PURPOSES

The Association shall represent the Owners and serve them in accordance with the provisions of this Declaration. Its services may include maintenance of road easements, coordination with Hindsoula County concerning any special improvement districts and maintenance of related systems or projects, and providing such other services and representation as are authorized or permitted in accordance with the provisions of this Declaration.

ARTICLE VI: RECREATIONAL FACILITIES

Section 1. Facilities. The Association may obtain property to provide recreational or other facilities to include parks, swimming pools, tennis courts, or other such facilities for the common benefit of the Owners. However, assessments for such purposes shall be restricted as herein provided.

Section 2. Members' Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area and such easements shall be appurtenant to and shall pass with the title to every assessed Tract, subject to the following provisions:

- (a) The right of the Association to provide reasonable restrictions on use of the Common Areas for the overall benefit of its Members. Such restrictions may include limiting the number of guests of Members allowed to use the Common Area and restricting or prohibiting the use of motorized vehicles on the Common Area;
- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

- (c) 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.
- (d) 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 Tract remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.
- (e) 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 Owners of two-thirds (2/3) of the Tracts has been recorded, agreeing to such dedication or transfer;
- (f) 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 with or without charge.

Section 3. Delegation of Use. Any Member may delegate 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, in accordance with the governing procedures of the Association.

ARTICLE VII: ASSESSMENTS

Section 1. Creation of Personal Obligation. The Declarants for each Tract owned within the Properties, covenant to; and each other Owner of any Tract, by acceptance of a deed or contract for purchase of any Tract within the Properties, whether or not it shall be so expressed in said deed or contract, is deemed to covenant and agree to; and shall 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 of each Tract 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 in the Properties and in particular for the improvement and maintenance of the Properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, and of the homes situated upon the Properties.

Section 3. Rate of Assessments. Both annual and special assessments must be fixed at a uniform rate per Tract except as otherwise provided herein. However, all undeveloped Tracts owned by the Declarants shall be subject to assessment at one-fourth (1/4) of the amount of the fixed assessment.

Section 4. Annual Assessments. Assessments shall be fixed annually by the Board of Directors of the Association. Payment of assessments shall be in periodic installments at such intervals as established by the Board of Directors. Until January 1, 1977, the maximum annual rate shall be Fifty Dollars (\$50.00) per Tract.

- (a) From and after January 1, 1977, the maximum annual assessment may be increased effective January 1 of each year in proportion to the annual rise, if any, in the Consumers Price

Index as published for the preceding month of July by the United States Department of Labor.

- (b) From and after January 1, 1977, the maximum annual assessment may be increased above that established by the Consumers Price Index formula, or decreased to a different basis (subject to subsequent adjustment by the Consumers Price Index formula), provided that any such change shall have the assent of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose. These limitations shall not apply to any change in the assessments incident to a merger or consolidation in which the Association is authorized to participate under its Articles of incorporation.
- (c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessments at an amount not in excess of the maximum allowable.

Section 5. Road Maintenance Charges. In addition to other assessments provided for herein, the Association shall levy a special assessment each year for the purpose of paying for road maintenance charges at their actual costs. This assessment shall be levied at a uniform rate for all Tracts adjoining the non-dedicated road easements.

Section 6. Special Assessments for Capital Improvements. In addition to other assessments authorized herein, 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 purchases, construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary 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 7. Commencement of Assessments. The Board of Directors of the Association is authorized to make the initial assessments at such time as it determines appropriate. The Board of Directors shall fix the amount of the annual assessment against each Tract in advance of each annual assessment period. Special assessments shall be billed as deemed appropriate by the Board of Directors, but not more often than each quarter. Written notice of each assessment shall be sent to every Owner subject thereto at least thirty (30) days before the due date as 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 Tract have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Non-payment 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 attorney's fees for such action.

Section 9. 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) All properties owned by the Association; 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 devoted to dwelling use shall be exempt from said assessments.

ARTICLE VIII: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development of the Properties. They shall constitute a covenant running with the land for each Tract within the Properties.

Section 1. Land Use. All Tracts in the above described property shall be used for residential purposes only, except as hereinafter provided. No business, trade, manufacture, or other commercial activity shall be conducted thereon. No Tract shall be subdivided so that any residential site contains less than five (5) acres. Removal of gravel shall be permitted, provided the land is subsequently contoured.

Section 2. Buildings. No buildings shall be erected, altered, placed, or permitted to remain on any Tract other than a single family dwelling, a private garage, and related out buildings. No multiple-family dwelling shall be placed on said premises. No temporary structure, trailer, mobile or other portable home, basement, tent, shack, garage, barn or other out building shall be used as a residence on said premises except as follows: One factory mobile home may be placed on a Tract by an owner only and used as a temporary residence thereon by owner pending construction of a permanent single family dwelling of conventional construction and materials provided, however, that no mobile home shall be allowed to remain upon any Tract and shall be removed therefrom, from and after October 1, 1977. All structures constructed upon any Tract shall be completed as to external appearance within one year of commencement of construction.

Section 3. Building Size. The ground floor area of the main dwelling house shall be not less than eight hundred (800) square feet for a two story house and one thousand (1000) square feet for a one story house. The Architectural Control Committee shall have the right in its absolute discretion to permit exceptions to this section provided the proposed house site is in a secluded area or otherwise naturally adapts itself to a non-conforming size or type structure.

Section 4. Building Location. No building shall be located on any Tract closer than one hundred (100) feet to any street or roadway easement nor closer than fifty (50) feet to any other property line. The Architectural Control Committee shall have the right to permit reasonable modifications of this setback requirement but not to exceed twenty percent of the setback requirement. No dwelling shall be located in any gully, ravine, or other natural drainage course.

Section 5. Architectural Control. No dwelling, house, garage, barn, shed, lean-to, or other out building, fence enclosure, pen, corral, or other structure shall be erected, placed or altered on any Tract until the construction plans and material specifications, along with the proposed site therefor, have been submitted to, and approved by, the Architectural Control Committee as to materials, size, design, harmony of external design with existing, or previously approved structures in the surrounding area, and location of the structure on the Tract and with respect to topography and the finished grade elevation. Said Committee shall consist of the Board of Directors of the Association, or such special committee as may be appointed by said Board.

Section 6. Architectural Control Committee Approval. Approval or disapproval by the Architectural Control Committee shall be in writing. The Committee

shall keep and maintain a Journal containing the minutes of all its meetings, a copy of all Resolutions of Approval or Disapproval, and otherwise recording all its acts and doings, and said Journal shall be open to inspection by any Owner upon request at reasonable times and places. In the event the Committee fails or refuses to act within thirty (30) days after the proposed plans and specifications of any structure are submitted to it, 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, provided, however, that said Committee shall not adopt or substitute a policy of non-action as the equivalent of approval or disapproval. If no suit is commenced to enjoin construction of a non-conforming dwelling house or other structure prior to its completion or within thirty (30) days of the time construction is commenced, whichever is the longer, said dwelling house or other structure shall thereafter be deemed to be in compliance with this Declaration.

Section 7. Signs. No advertising signs (except a small "For Sale" sign), billboards, or unsightly objects shall be erected, placed, or permitted to remain on any Tract. Until December 31, 1978, Declarants and their assigns may place reasonable signs within the property to promote its development.

Section 8. Maintenance. Each property Owner shall provide exterior maintenance. The premises, improvements, and appurtenances shall be maintained in a safe, clean, neat, and orderly condition. No rubbish or other waste shall be allowed to accumulate on the property. All containers for the storage and disposal of garbage shall be kept in a clean and orderly condition.

Section 9. Timber. No timber cutting shall be permitted that materially reduces the aesthetic or scenic value for adjacent Tracts. This provision is not intended to preclude clearing of a residential site or providing access thereto.

Section 10. Animals. Only normal family pets, and cattle and horses may be kept on the premises. Such animals shall be confined within the property of their owner and shall not be permitted to become a nuisance or annoyance to neighbors. The number of animals shall be limited to preclude overgrazing of the land.

Section 11. Nuisances. No noxious or offensive activity shall be carried on or permitted on any Tract; nor shall the property be used in any way which may endanger the health or safety of, or unreasonably disturb the neighborhood.

Section 12. Road Easements. Certain access routes and roads within the properties may be established by easement without being dedicated. The Declarants or their assigns may dedicate such routes and roads.

Section 13. Utility Easements. Easements for utilities are reserved for a width of fifteen feet along each side of every Tract.

Section 14. Sanitary Restrictions. The Owner of any property shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal, and air pollution.

Section 15. Utilities. All main utility lines shall be underground, provided, however, that in the event that the Missoula Electric Cooperative cannot obtain materials for underground installation for service to owners when and as needed, the Association shall allow overhead power lines to be installed.

Section 16. Springs. The interest of Declarants in water rights on the springs located on the Properties are hereby reserved and shall be assigned to the Association for the common benefit of the Owners. The Association may permit Owners of Tracts to utilize the water for domestic use subject to subsequent development for all the Properties.

These covenants, and all parts thereof, may be enforced by the Declarants, the Association, or the Owner of any Tract by an appropriate proceeding at law or in equity, and may include proceedings to enjoin the violation and recover damages. Invalidation of any one of the restrictions shall in no way affect other provisions which shall remain in full force and effect. Failure to enforce any provision shall not be deemed a waiver of the right to do so thereafter. The offending Owner is obligated to pay costs of suit including reasonable attorneys fees expended by the Association to enforce this Declaration.

ARTICLE X: TERM

The covenants shall be binding until January 1, 1990, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the Owners of a majority of the Tracts has been recorded agreeing to change the covenants in whole or in part.

ARTICLE XI: AMENDMENT

These covenants may be amended by an instrument signed by the Owners of two-thirds (2/3) of the Tracts which have been recorded, agreeing to such amendment.

IN WITNESS WHEREOF, this document has been executed the day and year first above written.

Richard H. Williams
Richard H. Williams, Trustee

James G. Lackman
James G. Lackman, Trustee

Royal J. McHardie
Royal J. McHardie, Trustee

STATE OF MONTANA)
COUNTY OF MISSOULA) ss

On this 14th day of June, 1974, before me the undersigned, a Notary Public for the State of Montana, personally appeared Richard H. Williams, James G. Lackman, and Royal J. McHardie, as Trustees, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

Return:
Richard H. Williams
Box 1124
Missoula
Narvin King
Notary Public for the State of Montana
Residing at Missoula, Montana
My commission expires: August 3, 1976



3492104
I received and filed this instrument for record on the 10th day of June, 1974 at 2:20 o'clock P.M. and it is recorded in Vol. 57 of Micro Records of the County of Missoula, State of Montana, on page 323 Fee: 7.00
Filed LA Return to _____
Address _____
Witness my hand, Dorothy L. Hood, County Recorder
6722-221-2 _____ Deputy