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STATE OF MONTANA - COUNTY OF BEAVERHEAD ss

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Lynora D. Clinton County Recorder

Hildreth III Subdiv. File Deputy Recorder

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## DECLARATION OF PROTECTIVE COVENANTS

HILDRETH HOMES SUB-DIVISION III

HOMEOWNERS ASSOCIATION

The undersigned, being the owners of all the real property hereinafter described in Article One of this Declaration, hereby adopt the following Declaration of Protective Covenants pertinent to and effecting the use, regulations, restrictions, reservations, easements and development of that certain real property described in Article One.

It is the intent of the undersigned that the real property shall be held, transferred, sold, conveyed and occupied subject to covenants, conditions, restrictions, regulations, easements and reservations hereinafter described in detail and set forth each and all of which shall be binding upon and shall apply to any and all owners of any parcels or tracts of the herein described real property, and to any and all heirs, assigns grantees, personal representatives and/or successors in interest thereto.

I.

Property Subject to this Declaration  
of Protective Covenants

The real property which is and shall be conveyed, transferred, occupied and sold subject to the conditions, covenants, restrictions, regulations, reservations and easements, as set forth in the various clauses and covenants of this Declaration, is located in the County of Beaverhead, State of Montana, and more particularly described as that area designated Hildreth Sub-division III, phase I.

II.

## General

The real property described in Paragraph I is subject to the conditions, restrictions, regulations, reservations, and easements hereby declared to insure the best use and most appropriate development and improvement of each building site thereof; and to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property and preserve it so far as is practicable the natural beauty of such property and to prevent the erection of such structures built of improper or unsuitable materials; to insure the highest and best

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use and development of said property; and to encourage and secure the erection of attractive buildings thereof and in general to provide adequately for a high quality of improvements on said property. The property hereinbefore described is specifically subject to the declarations contained in this Declaration, particularly as hereinafter set forth.

III.

Definitions

1. "Association" shall mean Hildreth Sub-division III Phase I, Homeowners Association, its successors and assigns, which may be incorporated as a Montana non-profit corporation, with its members as the lot owners.

2. "Member" shall mean any person or entity owning or purchasing a lot in Hildreth Sub-division Phase I. Each lot owner shall be a member of the Association and agrees to abide and be bound by these covenants, and the Articles of Incorporation, By-laws and Resolutions of the Association.

3. "Owners" shall mean the recorded owner (including with limitations the grantors) whether one or more persons or entities, of the fee simple title to any lot, except that (1) where lot has been sold by grantors under an agreement for deed, the buyer thereunder (provided he is not in default under said agreement) and not the grantors shall be deemed to be the owner and (2) the term owner shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

4. "Lot" shall mean and refer to any plot of land designated numerically and shown upon any recorded subdivision map of the property with the exception of the common elements.

5. "Dwelling Unit" shall mean and refer to a modular, mobile home, custom built home or portion thereof, providing separate cooking, eating, sleeping and living facilities for family and its residence.

6. "Family" shall mean and refer to the spouse of an owner and all other members of the immediate family of an owner residing with an owner.

7. "Mobile Home" shall mean a manufactured home or transportable structure designed for long-term residential occupancy to be used with or without a permanent foundation as a dwelling unit when connected to sanitary facilities. It is expressly declared that the intent of this definition is that the mobile home placed on the

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lot is one that may be moved from time to time at the convenience of the owner. Mobile home includes a manufactured building which is produced in a factory and designed and constructed for transportation to a site for installation and use when connected to required utilities. This may consist of either an individual building or modular for accommodation with other elements to form a building on the site.

The mobile home must be certified as meeting the mobile home construction and safety standards of the Department of housing and Urban Development.

8. "May" is permissive.
9. "Shall" is mandatory.

#### IV.

#### Homeowners Association

It is the intention of the undersigned that an Association be formed and be called "Hildreth Sub-division III, phase I - Homeowners Association, but for convenience shall be referred to in this document as the "Association".

The Association shall be formed by the owners of various lots within the development to care for, protect and maintain the open areas and any other matters which may serve the development so that the same will be maintained for the benefit of the development of the owners of the individual lots therein.

Every owner of a lot shall be a member of the Association. Every person or entity who is the owner of a fee or equitable title in a lot or living unit, or who is subject to an assessment, either present or future, by the Association, pursuant to the provision of any instrument relating to such assessment, shall automatically become a member of the Association.

For the purpose of determining membership, such ownership shall be deemed to have vested upon delivery of a duly executed deed or contract for deed to the buyer.

Foreclosure on a contract or repossession for any reason of a lot or unit sold under contract shall terminate the buyer's membership, whereupon all rights to such membership shall revert to the seller.

Each member of the Association shall have the right to vote as provided in the By-Laws of the Association. THE By-Laws of the Association are incorporated by reference and expressly made a part of the covenants.

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V.

## Land Use Regulations

1. All laws, rules and regulations of any government or agency under whose jurisdiction the land lies are considered to be a part of and enforceable hereunder and all the owners of said lands shall be bound by such laws, rules and regulations.

2. No lot shall be further subdivided or reduced in size from lots shown on the official plat of Hildreth Sub-division III, on file and of record with the Clerk and Recorder of Beaverhead County.

3. The invalidation of any one of the covenants or agreements contained herein by a judgement or a court order or by law shall in no way affect any of the other provisions which shall remain in full force and effect.

4. All dwelling placed on said lots shall be at least twelve (12) feet in width and shall be mobile homes, modular homes, manufactured housing or custom built homes. Dwellings shall be at least 600 square feet in living area excluding basements, additions and other buildings located on the lot. The developer shall have the right to approve or disapprove all dwellings before they are located or constructed on the lot.

5. Principal and accessory structures placed on said lots shall be at least ten (10) feet from either side of the lot lines of said lot. No awnings, porches, decks, or other structures or buildings whether attached or unattached to the primary dwelling shall be closer than ten (10) feet from either side or closer than fifteen (15) feet from the back of the property line. All structures shall have set backs from the front lot line of not less than thirty (30) feet nor more than (40) feet and parallel or perpendicular to the street. Porches or decks may be added to the street side of a dwelling but can not extend closer than twenty-five (25) from the front lot line. Decks or porches may be added to the side or back of the dwelling but shall not violate the side or back setbacks standards. All additions, changes, or alterations to the outside of any structure on the lot must have the approval of the developer until the sub-division is 60% sold out. After which time approval must obtained by at least 75% of the Homeowners within the sub-division or by the committee elected by the Homeowners association according to the by-laws in affect at the time the change request is made

6. Any additions to the dwelling units, or other buildings permitted to be constructed on said lot, shall be built and painted in such manner as to be harmonized with the dwelling unit in place. Final approval shall rest with the governing body at the time whether it be the developer or the Homeowners association.

7. Only one dwelling shall be permitted on one lot, but in addition to the dwelling unit, each lot owner may provide a structure to be used as a garage, workshop, storage shed, or animal shelter. Said structure shall have a plan submitted and approved by the governing body at the time and shall be subject to regulations five and six above

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8. The construction of the dwelling unit, or any addition thereto, shall be completed within one hundred and twenty (120) days from the time the construction of the same is started, and included within this restriction is the requirement that a dwelling unit or mobile or modular home construction shall be skirted and finished in a harmonizing, color within sixty (60) days of installation of such dwelling unit. Skirting shall be of either vinyl or steel prefinished or like material. No plywood or bales shall be allowed for skirting.

9. Each lot shall be landscaped with a minimum of three (3) trees planted on the lot, two (2) of which shall be planted along the street frontage. All deciduous trees shall be of minimum of two (2) feet calipers. All coniferous trees shall be a minimum of (5) feet in height. Trees shall be kept in a living condition or replanted. In addition to the above requirements, the lots may be landscaped with hedges, shrubs, and fences. Fences will be done in a neat and workmanship like manner and with the approval of the governing body at the time the fence is started. Fences shall be completed within 120 days of commencement. Barbed, page, or welded wire shall not be permitted. Stone, Vinyl, chainlink, wood, pole, cinder block, brick or other approved materials may be used.

9a. Road maintenance shall be the responsibility of the homeowners association. The road shall be graded not less than twice per year. Each owner shall pay his or her proportionate share of the costs for said maintenance in like manner of section VIII of this same document referring to the water distribution system.

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be landscaped with hedges, shrubs and fences. Fences will be done in a neat and workmanship like manner with approval of the Association.

10. No lot or the improvements thereon shall be used for the purpose of carrying on or conducting commercial business.

11. Trash, old machinery or equipment, or unlicensed or inoperable automobiles shall not be stored or permitted to accumulate on said lots.

12. No mobile home shall have features, or use colors or color combinations that would be incompatible in the residential neighborhood.

13. The exterior covering material shall extend to the ground. If a solid concrete or masonry perimeter foundation is used, the exterior covering material shall extend below the top of the foundation.

14. The exterior covering and roofing materials of the garage(s), carport(s) and accessory buildings shall be compatible with the materials on the main structures.

15. The finish floor shall be a maximum of 24 inches above the exterior finish grade of the lot, or similar to the conventionally built homes in the surrounding area.

16. Each lot owner shall provide two (2) paved, concrete or graveled off-street parking spaces. No on street parking shall be permitted.

17. Cats, dogs and other indoor household pets may be allowed in the subdivision subject to the following conditions:

A. All animals or fowl shall be kept for the sole use and enjoyment of the lot owner and not for commercial use or any type, and shall not exceed two animals of each species, without written approval of 75% of the residents in the subdivision.

B. Animal(s) raised as a 4-H project are not allowed.

C. All dogs and cats are to be kept upon the lot of the owner or custodian of such animals, and not be allowed to stray or run loose. Any other household pets are to be kept in the house is fish, birds, hamsters etc.

D. All animals or fowl must be properly cared for and in such a manner to prevent such animals or fowl from becoming a nuisance to others and so as to avoid offensive noises and odors.

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E All animals and fowl in the subdivision are subject to Beaverhead County animal control ordinances.

18. No permanent outside signs are allowed except for name and address only.

19. Trash containers shall be hidden from view. When put out for pickup, they shall be placed in an animal-proof rack.

20. No vehicular access from lots one and 44 phase I, and lots one and 32 phase II directly to Laknar Lane shall be permitted.

#### VI Parks

Seller agrees to initially provide the park lands of Phase I, but the Association shall maintain, add to or replace such equipment as needed. Seller agrees that parks shall originally have an underground sprinkler system and a sand box. All other facilities, equipment and maintenance will be the responsibility of the Association.

#### VII. Easements

Easements for drainage, electricity, telephone, lighting, water, sewer, cable television, and all other utilities, pedestrian traffic or any other service or utility shall be and are hereby reserved.

#### VIII. Sewer and Water Distribution System

1. No residence shall be permitted on any lot that does not have sanitary facilities hooked up to a sewer disposal system in accordance with the state plumbing code and local health requirements. Any additional bathroom facilities placed in any other building must be hooked up to the sanitary system in accordance with the state plumbing code and local requirements.

2. Declarants are the owners of the water distribution system, including certain wells, electrical pumps and buried water lines now situated or to be constructed and installed by declarants in the above named subdivision. Each lot owner shall pay his or her proportionate share of the costs of furnishing, operating, installing, servicing, including replacement and repairs of said water system, which costs shall be equitable and subject to the approval of the Public Service Commission for the State of Montana.

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IX.

Enforcement, Applicability, and Change

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which item said covenants shall automatically be extended for successive periods of ten (10) years unless changed in whole or in part as hereafter stated.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violating or attempting to violate any covenant; and the legal proceedings may be either to restrain violation of the covenants or to recover damages or both. In the event of any action to enforce these covenants the prevailing party shall be entitled to costs and reasonable attorney's fee to be set by the court. Any lot owner, declarant or the Association, or the Board of Beaverhead County Commissioners may enforce these covenants.

The failure by the declarant hereto or of any subsequent lot owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that covenant or any other covenant thereafter or to collect damages for any subsequent breach of covenants.

Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other covenants or provisions, all of which shall remain in full force and effect.

In any conveyance of the above-described real property or of any tract thereon, it shall be sufficient to insert a provision subject to the restrictions and covenants verbatim or in substance in said deed. All of the above-described real property and lots shall be subject to the restrictions and covenants set forth whether or not there is a reference to the same in a deed of conveyance.

A breach of any of the foregoing restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any tract or portion of the real property or any improvement thereon. However, the said restrictions and covenants shall be binding upon and inure to the benefit of any subsequent owner whose title thereto was acquired by foreclosure, trustee, sale or otherwise.

Any change of covenants shall be effective upon the filing and recording of such an instrument in the office of the Beaverhead County Clerk and Recorder. Any change in these covenants shall not affect existing structures or uses of the lots.



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X.

Amendments

These covenants or any portion thereof may be amended, terminated or modified at any time by the written consent, duly executed, acknowledged and recorded with the office of the Clerk and Recorder of Beaverhead County, Montana, by the owners of at least seventy-five percent (75%) of the lots in the subdivision. However, these covenants may not be repealed or amended without the prior written consent of the Board of Beaverhead County Commissioners, Beaverhead County, Montana.

Any change of covenants shall be effective upon the filing and recording of such an instrument reflecting such change in the office of the Beaverhead County Clerk and Recorder. Any change in these covenants shall not affect existing structures or uses of the lots.

XI.

Variances

Application for a variance to any portion of these protective covenants shall be made in writing to the Board of Directors of the Homeowners Association. Consideration shall be given each request by the Board of Directors and approval or disapproval given in writing within thirty (30) days of request. Approval or disapproval shall apply only on a case by case basis.

XII.

Severability

A determination of invalidity of any one or more of the covenants hereof by judgment, order or decree of a court, shall not affect in any manner the other provisions hereof, which shall remain in full force and effect.

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IN WITNESS WHEREOF, the declarants have executed this instrument  
this 19<sup>th</sup>  
day of Jan, 1994 <sup>ERH</sup>

Clayton Hildreth

Christine Hildreth

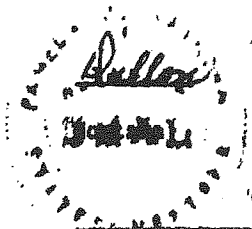
Ray Hildreth

STATE OF MONTANA )

COUNTY OF BEAVERHEAD )

On this 19<sup>th</sup> day of January, 1994, before me, a Notary  
Public for the State of Montana, personally appeared  
Clayton Hildreth, Christine Hildreth, Ray Hildreth  
known to me to be the persons who executed the within and foregoing  
instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
official seal as of the day and year first above written.



(NOTARIAL SEAL)

Notary Public for the State of

Residing at Beaverhead, Montana  
My commission expires -