

DECLARATION OF PROTECTIVE COVENANTS

THIS DECLARATION is made this _____ day of _____, 200___, by Ronald E. Towery, Trustee of the Ronald E. Towery and Zora R. Towery Marital Property Trust, 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 NE ¼ of Section 21, NW ¼ Section 22, Township 7 south, Range 8 West, P.M.M. Beaverhead County, Montana described as follows:

Commencing at the NW Corner of said section 22; WHICH IS THE TRUE POINT OF BEGINNING OF SWEETWATER ESTATES PHASE II MAJOR SUBDIVISION; thence N.89°46'06"E., along the north line of said section 22, 740.67 feet; thence S.01° 21'43"W., 694.51 feet; thence S.89° 43'30"E., 226.00 feet; thence SOUTH 1716.71 to the centerline of the East Bench Canal; ; thence S.21° 17'37"W., along said centerline, 106.35 feet; thence S.37° 01'51"W., along said centerline, 77.21 feet; thence S.89° 09'58"W., 1072.50 feet; thence N. 57°41'23"W., 74.27 feet to a point on a non tangent curve, said curve having a central angle of 20 23'32" RT., a radius of 1980.84 feet and a radial bearing of N.35°46'41"E.; thence northeasterly along said curve 705.00 feet; thence N31°46'53"W., 37.33 feet to a point on a non tangent curve, said curve having a central angle of 04 55'04" RT., a radius of 2050.00 feet, and a radial bearing of N.62°04'16"E.; thence northeasterly along said curve, 175.95 feet ; thence N.89°57'00"E., 562.24 feet; thence N.22°22'21"W., 260.05 feet; thence N.00° 10'35"E., 262.40 feet; thence N.03°04'04"W., 316.88 feet; thence N.15°05'17"W., 173.80 feet thence N.11°31'29"W 848.76 feet to the north line of said section 21; thence N.89 57'00". along the said north line of said section 21, 587.52 feet to the point of beginning containing 81.14 acres of land.

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-describe 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.

C. Restrictions contained in Article VI, Section 1 (c); (e)(2); (n); (ij); (kk); (ll);(qq); and (rr) cannot be changed without the prior approval of Beaverhead County Governing Body.

ARTICLE 1

DEFINITIONS

Section 1. "Association" shall mean SWEETWATER ESTATES HOMEOWNERS' ASSOCIATION, its successors and assigns.

Section 2. "Lot" shall mean any lot shown on a recorded Sweetwater Estates Subdivision Phase 1 plat, Phase 2 plat, and subsequent phases.

Section 3. "Member" shall mean any person or entity holding membership in the Association pursuant to its Articles of Incorporation and its By-Laws.

Section 4, "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 5, "Properties" and "Project" shall mean the real properties described in A. of the RECITALS above, Prior and subsequent phases when recorded with Beaverhead County.

Section 6, "Common Area" shall mean all real property in which the Association owns an interest for the common use and enjoyment of all 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 Sweetwater Estates Phase 1, Phase 2 Major Subdivision plats and. Subsequent Phases to be included upon recordation by Beaverhead County.
- (b) Entrance Signs and Location – an easement in the NE corner of Lot 1 and/or NW corner of Lot 2 Phase 1.
- (c) Entrance Signs and Location – as easement in the NE corner of Lot 17 and/or NW corner of Lot 18 .
- (c) Easements for mail boxes and bus stop structure, NE corner Lot 1 and NW corner Lot 2 Phase 1.
- (d) Easements for mail boxes and bus stop structure, NE corner Lot 17 and NW corner Lot 18 Phase 2.

Section 7, "Adjacent and/or Adjoining" property owners shall include the owners of COS 730 and COS 515 parcels located west and adjacent to Sweetwater Estates Phase I.

ARTICLE II

PROPERTY RIGHTS

Section 1. "Easements"

(a) Each lot shall be subject to such rights of way and easements as the Declarant may grant for installation and maintenance of fences, water lines, power lines, telephone lines and other utilities. The Declarant specifically reserves the right and power to grant such easements. Installations for water and utility lines, including electric power, telephone lines, natural gas if available, shall be underground and at the expense of the lot owner.

(b) The Declarant 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 20' 0" in a North/South direction parallel to Sweetwater Estates Dr. located in the Northeast corner area of Lot 17 and the Northwest corner area of Lot 18.

(c) Declarant specifically reserves an easement 15' 0" in width, starting at the Northeast corner of lot 17 and the Northwest corner of lot 18 and extending 100'0" in a Southerly direction on both sides of Pioneers View Dr. for the installation and maintenance of mail boxes and a bus stop structure together with appurtenant turnout and temporary parking area on either lot 17 or lot 18 or both.

Section 2. "Waiver"

(a) The Property Owners, by acceptance of a deed therefore, and for their heirs and assigns of any lot in Sweetwater Estates Subdivision waive the right to protest the creation of any Special Improvement District to pave, maintain or upgrade any of the internal subdivision roads that my serve this subdivision.

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.

Section 2. The Association shall have three classes of voting membership. Class A and Class B memberships shall be appurtenant to and may not be separated from the ownership of any lot subject to assessment.

- (a) Class A members shall be all owners of Lots 1 through 16 as shown on the Sweetwater Estates Phase 1 Major Subdivision plat; all owners of Lots 17 through 32 as shown on the Sweetwater Estates Phase 2 Major Subdivision plat; and all owners of subsequent lots on file and of record in the office of the Clerk and Recorder of Beaverhead County, Montana as a part of Sweetwater Estates Subdivision. Each Class A member shall be entitled to 2 votes for each lot owned.
- (b) Class B members shall be all owners owning a second or more lots that are undeveloped. Each Class B member shall be entitled to 1 vote for each additional undeveloped lot owned. Class B membership will cease and be converted to Class A membership upon the sale or development of the Class B lot.

(c) Class C member shall be the Declarant entitled to 4 votes for each lot filed and recorded but unsold. Class C membership shall cease and be converted to Class A membership on the happening of the first to happen of the following events:

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

(2) On December 31, 2014.

(d) Declarant intends to subdivide and develop adjacent lands into residential property. Upon application by Declarant to join the Association, Article III, Section 2 (a) 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.

(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. Each Owner of any lot by acceptance of a deed therefore, 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 lien upon the property against which each such assessment is made, governed and subject to the laws of the State of Montana regarding 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 was imposed.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation; health; safety; welfare of the residents on the Properties; and for the improvement, maintenance, dust and weed abatement of the Roads, Right of Ways, and common area.

Section 3. The maximum assessment per lot which may be made by the Association in the calendar year 2005 shall not exceed \$120.00 per Class A lot and \$60.00 per Class B lot. Thereafter, the maximum annual assessment may be increased each year by not more than 15% of the maximum assessment for previous year without a by vote of the membership. From and after 12-31-05, 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. Class A and B lots shall be assessed *pro rata* to the number of votes held by a member. The amount of the annual assessments and date imposed 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 provided that any such assessment shall have the assent of two-thirds (2/3) of the voters 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 above shall be sent to all members not less than 10 days or 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. All annual and special assessments for Class A members must be fixed at a uniform rate. All annual and special assessments for Class B members must be fixed at a uniform rate of 50% of Class A members. Assessments shall be collected in a manner prescribed by the Board of Directors of the Association.

Section 7. Date of Commencement of Annual Assessments and due dates. The annual assessments provided for herein shall commence as to the initial lot sold and recorded subsequent to filing and recordation herein Covenants with Beaverhead County Recorder and upon annexation of additional 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 2005 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 and 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 or abandonment of his lot.

Section 9. Subordination of 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, 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, including vehicles, boats, RV's, trailers, etc., 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 Sweetwater Estates Homeowner's 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 Sweetwater Estates Homeowners' Association and it is suggested that one of the members have professional qualifications or experience 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 Sweetwater Estates 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

Section 1. Single Family Detached lots #1 through #16 as shown on the Sweetwater Estates Phase 1 Major Subdivision plat; Lots #17 through #31 as shown on the Sweetwater Estates Phase 2 Major Subdivision plat; and subsequent lots on file and of record in the Office of the Clerk and Recorder of Beaverhead County, Montana.

(a) Only one single family dwelling may be constructed on each lot, which shall be a minimum of 1500 square feet on the ground level exclusive of garage, porches, or other additions thereto. 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) A minimum 3 car garage is required and 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 and exterior materials of the dwelling. An attached garage, as prescribed above, shall not be considered another building. A concrete, masonry, or asphalt apron in front of and the width of the garage suitable for the length of an auto together with a walk way to the front door or porch shall be constructed prior to the owner residing on the property or 20 months which ever comes first. Drainage ditches in the road "right of way" shall not be impacted and all driveways to every lot must contain a minimum 10" culvert of sufficient length to extend a minimum (2) two feet on each side of the driveway. Each lot owner shall keep culverts free of weeds and debris so as to not impede drainage. Design Review Committee may waive culvert requirement if warranted due to topography.

(c) A maximum of three (3) buildings may be constructed on subject premises though individual buildings may serve a dual purpose; i.e. guest quarters/shop building; barn/stable building; barn/shop buildings etc.

(d) No single family dwelling or other building shall exceed a maximum height of 30 feet without a variance from the Design Review Committee.

(e)(1) Single Family detached and out buildings setbacks shall be as follows unless a variance from the Design Review Committee is obtained:

From front property line 100'

From rear property line 100'

Sides to property line 50

(f) No business whatsoever shall be conducted on the premises or within the residence except a home business that does not deal with the public at large; i.e. telegraphic, internet, telephony, hobby, crafts, arts, etc. which shall be conducted in completely enclosed buildings. Customers visiting the premises on a regular basis are not permitted.

(g) No room or rooms in any single family detached unit may be rented or 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.

(h) 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 Sweetwater Estates or adjacent parcels. Dogs must remain on owner's premises unless on a leash or under the complete control of the owner. Owners must adequately fence or build a large kennel if they maintain dogs outside. Chaining or tying dogs to restrain them is not adequate to comply with this requirement.

(i) Residents may keep rabbits, poultry or similar birds or fowl for their personal use so long as they are not kept for commercial purposes, do not make objectionable noises or odors or otherwise constitute a nuisance or inconvenience to any of the residents of Sweetwater Estates or adjacent parcels. Coups and containment structures must be located in a barn or screened or blocked from view of neighbors and roads.

(j) Horses, cattle, sheep, goats, llamas, and similar livestock may only be kept on lots containing 3 acres or more. A 3 acre to 4 acre parcel is limited to 2 such animals. A 5 acre or larger parcel is limited to 3 such animals. Adequate lot perimeter fencing shall be installed prior to livestock being permitted on premises, and maintained thereafter. Maintaining the maximum number of livestock permitted as to size of parcel exclusively in a corral or small enclosure on the premises is not permitted.

(k) No activity may be carried on nor allowed to exist upon any lot, which may be obnoxious, detrimental, offensive, illegal, or constitute a nuisance to any adjacent properties or to the occupants of any lot in Sweetwater Estates Phase 1 Major Subdivision; any lot in Sweetwater Estates Phase 2; and subsequent phases.

(l) All improvements to be erected on any lot in Sweetwater Estates Phase 1 Major Subdivision; and any lot in Sweetwater Estates Phase 2; and subsequent phases, 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.

(m) 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. Homes, drain fields, and wells shall be placed in the designated locations shown on the sanitary plats for Sweetwater Estates Phase 1; Sweetwater Estates Phase 2; subsequent phases; and subsequent subdivisions unless an alternate site is approved by the Beaverhead County Sanitarian for drain fields and wells, and the Design Review Committee for home sites.

(n) Any exterior lighting installed on any lot shall be indirect and have full cut-off-deflector to direct light downward so as not to disturb the residents of adjacent properties and shall be activated by manual or motion switches. Exterior lighting shall not be "on" for extended periods.

(o) 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 and tools may be constructed and used only 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.

(p) The owner of a lot may install fences. 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 four (4) feet in front and five (5) feet in the rear and sides. Patio privacy fences 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.

(q) No trash or garbage shall be burned except in an approved incinerator. No barbecue or other outdoor cooking facility shall be located nearer than 35 feet from either side of lot lines.

(r) Any building placed, erected or maintained upon any lot in Sweetwater Estates Phase 1; Phase 2; and subsequent phases shall have a permanent perimeter foundation, be entirely constructed thereon, pre-fabricated or modular of normal construction techniques that meet or comply with Design Review Committee requirements.

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

(t) No advertising or signs of any character shall be erected, placed, permitted or maintained on any lot or building within Sweetwater Estates 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.

(u) No elevated tanks of any kind over 4' shall be erected, placed, or permitted upon any part of said property without approval of the Design Review Committee. Any tanks to be used in connection with any residence constructed in Sweetwater Estates Subdivision, including tanks for the storage of gas, oil, water, or butane must conform to the specifications and control of the Design Review Committee. All types of refrigerating, cooling, or heating apparatus must be concealed.

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

(w) No motorized bicycles, trail bikes, motor scooters, snowmobiles, four wheelers, or similar types of recreational vehicles, shall be operated on the lots, roads, or property of Sweetwater Estates except for the purpose of going to and from work and other purposeful travel. Recreation vehicles shall be garaged or adequately screened from view.

(x) Parking along roads on a regular basis is not permitted.

(y) 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.

(z) Each lot at all times shall be kept in a clean, sightly and wholesome condition. No inoperable motor vehicles, snowmobiles, motorcycles, four wheelers, campers, trailers, boats, trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials or any other similar items shall be permitted to remain exposed on any lot so as to be visible to any neighboring lot, adjoining properties or roads within the subdivision. A maximum of two vehicles may be parked in the driveway or garage apron of the lot. Other operable recreation vehicles and devices must be garaged or screened from other residences, adjoining properties and the roads within the subdivision.

(aa) 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.

(bb) Lots 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. 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.

(cc) 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.

(dd) 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.

(ee) 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 for the furnishing of gas or other utility purposes together with the right of entry for the purpose of installing, maintaining, and reading gas and electric 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 15 wide along the interior boundary of this subdivision and 7.5 feet on each side of interior lot lines, a 60 foot wide unrestricted access and utility easements along Ten Peaks Drive, Ruby Court, Sweetwater Estates Drive and future roads in subsequent phases of Sweetwater Estates Subdivision.

(ff) Declarant reserves the utility easements and rights of way shown on the recorded plats 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.

(gg) Underground utilities shall 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 designated by the utility company for installation of said utilities, and the owner shall close the trench after installation of the utilities.

(hh) 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.

(ii) 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 County Governing Body may reconsider the restriction when additional technical information is provided by a qualified engineer.

(jj) All buildings exceeding 20' X 20' dimensions shall have rain gutters with down spouts to channel rain water and snow melt into underground "French" type drains of sufficient size and length to absorb the normal flow of such water. Surface distribution of water from roofs is not permitted.

(kk) Roofs and windows shall be of non-reflective materials. Exterior materials and colors shall be of natural or composite materials that blend well with the environment of Sweetwater Major Subdivision.

(ll) Hunting and the discharge of firearms and shotguns is not permitted with the exception of pellet guns and 22 caliber guns for disposal of rodents and small nuisance animals. Discharge of guns towards neighboring properties including COS 515 and COS 730 is not permitted and shall be a serious

breach of these Covenants and subject to judicial action initiated by the Declarant and/or Sweetwater Estates Homeowner's Association and subject to applicable State Law concerning the safe discharge of firearms.

(mm) A Beaverhead County septic permit must be obtained prior to any new construction requiring sanitation.

(nn) At the time of occupancy, each lot shall be clearly marked with an address sign that complies with the Beaverhead County Addressing Ordinance.

(oo) Cost associated with enforcing Sweetwater Estates Subdivision covenants shall be a lien against the property of the offending owner and incur and accrue interest at one (1%) percent per month until paid. It shall be lawful for the Declarant, any owner of Sweetwater Estates parcels, and/or Beaverhead County to prosecute proceedings at law or in equity against subject parcel owner or persons either to prevent the violation and/or to recover cost, legal fees, court cost, and damages for such violations. The Governing Body of Beaverhead County is a party to Sweetwater Estates Subdivision Covenants and may enforce the provisions thereof.

(pp) Beaverhead County has required Declarant to develop a water source, retention pond, and a large volume pump with standpipe together with necessary electrical service and control panels for emergency fire fighting purposes. Beneficial use of the water and appurtenances for emergency fire fighting shall be shared with Fox Run Subdivision and Fox Run II. Operating and long term maintenance cost of the joint use emergency firefighting facility shall be borne proportionally by both subdivision Homeowner's Associations. Such proportional percentage of cost sharing shall be determined by declarant or his assigns on an annual basis.

(qq) A noxious weed control management plan has been filed with Beaverhead County by Declarant. Noxious weeds including "Foxtail" grass type weeds shall be controlled by each parcel owner, including their portion of the road "Right of Way" and distribution of weeds shall not be permitted to impact any adjoining property. Declarant, his agent, and assigns; Officers and/or agents of Homeowner's Assn.; and bonafide members or employees of Beaverhead County Weed Control agency or County shall be permitted to enter parcels to inspect for noxious weeds and "Foxtail" grass type weeds. In the event a parcel owner fails to control weeds declared to be noxious by Beaverhead County/Montana State including "Foxtail" grass type weeds prior to seed maturity, the Declarant his agent or assigns, Homeowner's Assn., and/or Beaverhead County Weed Control agency may eradicate or control said weeds by chemical, cultural, mowing, or any appropriate method; invoice each parcel owner not to exceed the then standard rate charged by Beaverhead County, a local commercial/professional applicator, or for actual materials used plus labor and machinery usage.

(rr) Dust abatement for roads in Sweetwater Estates Subdivisions is a "Specific Condition of Approval" by Beaverhead County and shall be a long term road maintenance obligation of the Homeowner's Association.

Section 2. Variances.

(a) The Design Review Committee may make minor variances in the minimum building and imposed Use Restrictions by Sections 1 of this Article VI in connection with the approval process; i.e. building set backs, height, screening, etc., except those restrictions requiring prior approval of Beaverhead County Governing Body.

(b) 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 Section 1 of this Article V, according to the following procedure:

(1) 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)(2) and (c) 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.

(2) 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.

(3) 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:

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

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

(cc) Those modifications will have minimal adverse effect on abutting properties or the permitted uses thereof.

(dd) 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.

(c) 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 members representing $\frac{3}{4}$ 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 $\frac{3}{4}$ 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 roads within Sweetwater Estates Subdivisions shall be a public way and maintained by the Association. The Declarant, its heirs and assigns, and lot owners by accepting these covenants irrevocably agree with the Beaverhead County Commissioners whereupon the County, upon its discretion, may accept ownership and responsibility for the roads at any time.

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 of Protective Covenants. Cost associated with enforcing Project Covenants shall be a lien against the property of the offending owner and incur and accrue interest at one (1%) percent per month until paid. It shall be lawful for the Declarant, any owner of Sweetwater Estates Subdivisions, and/or Beaverhead County to prosecute proceedings at law or in equity against subject parcel owner or persons either to prevent the violation and/or to recover cost, legal fees, court cost, and damages for such violations. The Governing Body of Beaverhead County is a party to these Covenants and may enforce the provisions thereof. 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 other provision judgment or court order shall in no way affect any 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 $66 \frac{2}{3}\%$ of all lots within this subdivision, including subsequent additions, 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 $66 \frac{2}{3}\%$ of the lot owners. Any amendment that would materially alter any of the requirements imposed by the governing body of Beaverhead County, which requirements were made mandatory for the process of final subdivision approval, shall be approved by the governing body of Beaverhead County prior to amendment. Any amendment must be recorded.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this _____ day of _____ 200__.

SWEETWATER ESTATES PHASE 2 MAJOR SUBDIVISION