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Paulette DeHart Clerk & Recorder, Lewis & Clark MT



**FIRST AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
“EL DORADO HEIGHTS”**

This FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS “EL DORADO HEIGHTS” is hereby made and entered into on this 26 day of November, 2019, by the undersigned constituting a majority of the Owners of the Tracts within the El Dorado Heights Subdivision.

WHEREAS, the Declaration of Covenants, Conditions and Restrictions “El Dorado Heights,” was filed on July 15, 1977, at Book 112, Pages 119 through 125 in the office of the County Clerk and Recorder of Lewis and Clark County, Montana.

WHEREAS, ARTICLE XI: AMENDMENT of the Declaration of Covenants, Conditions and Restrictions “El Dorado Heights” allows amendment if two-thirds (2/3) of the Owners of the Tracts agree;

WHEREAS, the El Dorado Heights currently consists of 103 Tracts;

WHEREAS, a secret ballot was distributed by mail to all owners of record of the El Dorado Heights subdivision proposing two amendments to the Declaration of Covenants, Conditions and Restrictions “El Dorado Heights,”

WHEREAS, Amendment #1 proposed to delete the language of Article X and Article XI and insert the following:

ARTICLE X: TERM

These Covenants shall continue to be binding unless Owners of a majority of the Tracts agree by written ballot to amend the Covenants in whole or in part pursuant to Article XI.

ARTICLE XI: AMENDMENT

These Covenants may be amended at any time by the Owners of a majority of the tracts that agree on the amendment(s) by written ballot. Such amendment(s) shall be recorded in the office of the Clerk and Recorder of Lewis and Clark County within thirty (30) days.

WHEREAS, Amendment #2 proposed to delete the language of Article VIII, Section 5 and insert the following:

Section 5. Architectural Control:

(a). Construction materials shall be of natural or man-made materials with the appearance of natural wood or stone for use in the appropriate positions of the structures.

(b). Exterior siding & soffits shall be of natural wood or man-made materials, provided they imitate or replicate natural wood or stone in texture and appearance. Colors shall be earth tones of browns, greens or grays.

(c). Roofing materials shall be of natural or man-made materials provided they imitate or replicate shakes and shingles, or metal such as corrugated, ribbed, or of a shake or shingle design. Surfaces shall be non-glare and non-reflective in earth tone colors of browns, greens or grays.

WHEREAS, the Owners of two-thirds (2/3) of the Tracts adopted Amendment #1 with 71 votes in favor;

WHEREAS, the Owners of two-thirds (2/3) of the Tracts adopted Amendment #2 with 83 votes in favor;

NOW THEREFORE, the undersigned Members hereby amend the Declaration of Covenants, Conditions and Restrictions "El Dorado Heights" and declare that all property described on "El Dorado Heights" shall be held, sold, and conveyed subject to the following **FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS "EL DORADO HEIGHTS"** to be effective upon recording, 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.

**FIRST AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
"EL DORADO HEIGHTS"**

ARTICLE I: DEFINITIONS

- Section 1. "Association" shall mean and refer to a proposed Montana non-profit corporation, its successors and assigns.
- Section 2. "Properties" shall mean and refer to that certain real property hereinafter 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 or the performance of an obligation.
- Section 6. "Declarants" shall mean and refer to Frank L. Askin and Nancy C. Askin, 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.

ARTICLE II: ANNEXATION

The Association may, at any time, annex additional residential properties that border the property within the jurisdiction of the Association, and so add to its membership; provided that such annexation shall have the assent to 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.

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ARTICLE III: MEMBERSHIP

Every person or entity who is an equitable of record owner of any Tract which is subject by covenants, of record to assessment 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. 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.

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 Lewis and Clark 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 the 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 court, 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 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 Declarant for each Tract owned within the properties covenants 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. All undeveloped Tracts owned by the Declarants shall not be subject to assessment until January I, 1979. From and after January I, 1979, all undeveloped Tracts owned by Declarants shall be subject to assessment at one-fifth (1/5) 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 I, 1980, the maximum annual rate shall be Thirty Dollars (\$30.00) per Tract.

- (a). From and after January 1, 1980, the maximum annual assessment may be increased effective January I 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 I, 1978, 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 may 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 often (10) percent the amount of 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 endeavor shall be conducted thereon unless approved in writing by the Homeowners Association. No Tract shall be subdivided so that any residential site contains less than ten (10) acres.

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, bam 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 July 1, 1980. However, recreational vehicles shall be allowed on a temporary basis, if the owner is not contemplating a permanent structure. 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 no less than six hundred fifty (650) square feet. The Association 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 of any other property line. The Declarants shall have the right to permit reasonable modification of this setback requirement. No dwelling shall be located in any gully, ravine, or other natural drainage course.

Section 5. Architectural Control:

- (a). Construction materials shall be of natural or man-made materials with the appearance of natural wood or stone for use in the appropriate positions of the structures.
- (b). Exterior siding & soffits shall be of natural wood or man-made materials, provided they imitate or replicate natural wood or stone in texture and appearance. Colors shall be earth tones of browns, greens or grays.
- (c). Roofing materials shall be of natural or man-made materials provided they imitate or replicate shakes and shingles, or metal such as corrugated, ribbed, or of a shake or shingle design. Surfaces shall be non-glare and non-reflective in earth tone colors of browns, greens or grays.

Section 6. 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, 1981, Declarants and their assigns may place reasonable signs within the property to promote its development.

- Section 7. 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. No junk vehicles, or shanties or any unsightly things shall be allowed to accumulate.
- Section 8. Timber. No timber cutting shall be permitted that materially reduces the aesthetic or scenic value for adjacent Tracts. However, limited timber cutting and brush clearing is permitted if done for the purpose of creating a defensible space from wildfire. This provision is not intended to preclude clearing of a residential site or providing access thereto.
- Section 9. Animals. Horses, cattle, household pets and other farm livestock shall be allowed. Such animals shall be confined within the property of their owner and shall not be permitted to become a nuisance or annoyance to neighbors. If livestock or large dogs are kept on property, owners must fence their property to contain them within their boundaries. The number of animals shall be limited to preclude overgrazing the land.
- Section 10. Nuisances. No noxious or offensive activity shall be carried on or permitted on any Tract; nor shall the property be used in anyway which may endanger the health or safety of, or unreasonably disturb the neighborhood.
- Section 11. 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 12. Utility Easements. A 30' utility easement for utilities' shall be established along all boundaries of each tract and purchasers agree that they will reserve a like easement in the event they resell a smaller tract to a third party.
- Section 13. 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 14. Utilities. The Association shall cooperate with the Montana Power Company to bring electricity to the property, and each member shall pay their pro-rata share within 30 days after written notice. Overhead power lines shall be installed. The owners may petition the county commissioners to create a special improvement district for the purpose of installing said power lines.

Section 15. Easement to Hauser Lake. All Members are entitled to use the facilities in Section 5, Township II North, Range 2 West, on the North Shore of Hauser Lake, for mooring and docking facilities, picnic area, etc. The Associates shall maintain adequate liability insurance and hold owners harmless or any injuries, loss of personal property, etc. Any improvements, care or maintenance after January 1, 1980, shall be the sole responsibility of the Members of the Association.

Section 16. Sapphire Digging on "El Dorado Bar". All Members are entitled to hand dig for gold, sapphires, and other valuable Gem Stones on the designated property in Sections 9 and 10, Township II North, Range 2 West (200 acres plus). The Association shall maintain adequate liability insurance and hold owners of property harmless of any loss of personal property, personal injury, etc. The Association shall establish a set of rules and regulations at its first membership meeting.

ARTICLE IX: ENFORCEMENT

These covenants may be enforced by the Declarant, 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 anyone of the restrictions shall in no way affect other provisions which shall remain in full force and affect. Failure to enforce any provision shall not be deemed a waiver of the right to do so thereafter. However, if a suit is not commenced to enjoin construction of a dwelling house prior to its completion or within thirty (30) days of commencement of construction, whichever is later, said dwelling house shall thereafter be deemed to be in compliance with this Declaration.

ARTICLE X: TERM

These Covenants shall continue to be binding unless Owners of a majority of the Tracts agree by written ballot to amend the Covenants in whole or in part pursuant to Article XI.

ARTICLE XI: AMENDMENT

These Covenants may be amended at any time by the Owners of a majority of the tracts that agree on the amendment(s) by written ballot. Such amendment(s) shall be recorded in the office of the Clerk and Recorder of Lewis and Clark County within thirty (30) days.

IN WITNESS WHEREOF, the undersigned Owners have caused this First Amended Declaration of Covenants, Conditions and Restrictions "El Dorado Heights" to be made and executed pursuant to the original Declaration of Covenants, Conditions and Restrictions "El Dorado Heights."

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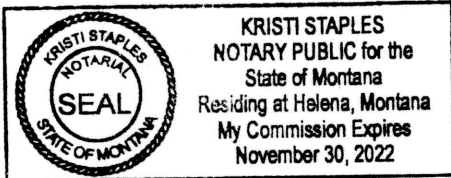
I, Debra Cargile, President of the El Dorado Heights Homeowners Association, hereby affirm that the attached Exhibit 1 displaying the proposed language of Amendment # 1 and Amendment # 2, as well as a secret ballot, was submitted to the Members of the El Dorado Heights subdivision by mail. I further affirm that of the 103 secret ballots distributed, 71 votes were returned in favor of Amendment # 1 and 83 votes were returned in favor of Amendment # 2. A complete copy of the secret ballots returned and the signatures gathered are attached as Exhibit 2 and Exhibit 3.

Debra Cargile
Debra Cargile, President

STATE OF MONTANA)
 : ss.
County of Lewis & Clark)

On this 26 day of November, 2019, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared Debra Cargile known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal on the day and year first above written.



Kristi Staples
NOTARY PUBLIC FOR THE STATE OF MONTANA



Eldorado Heights Home Owners Association
 5499 Huotari Lane, Helena, MT 59602



www.edh-hoa.com | EHHOA@hotmail.com

FIRST AMENDED DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 "EL DORADO HEIGHTS"

November 26, 2019

NOT INCLUDED -

- Exhibit 1: Voter Pamphlet
- Exhibit 2: COPIES OF all received Marked Secret Ballots
- Exhibit 3: COPIES OF all received &/or signed Ballot envelopes

note: copies are available upon request! from EHHOA.



2019 Covenant
 Amendments
 Voter
 Pamphlet

Eldorado Heights
 Home Owners
 Association

EL DORADO HEIGHTS HOMEOWNERS ASSOCIATION
 Secret Ballot needs to be received by Tuesday
 October 29, 2019 - 8 PM

SECRET BALLOT
 EHHOA Covenant Amendments

1. TO VOTE, PLACE AN X IN THE APPROPRIATE BOX FOR EACH AMENDMENT.
 2. DO NOT MAKE ANY IDENTIFYING MARKS. DO NOT CROSS OUT OR USE CORRECTION FLUID.

AMENDMENT #1
 ARTICLE X, TERM & ARTICLE XI, AMENDMENT

FOR AGAINST

AMENDMENT #2
 ARTICLE VIII PROTECTIVE COVENANTS Section 5.

FOR AGAINST

See Voter Pamphlet for complete description of proposed amendments.

EXHIBIT 2



POSTAL CARRIER:
DO NOT DELIVER TO THIS ADDRESS
 (see other side)

VOTER'S AFFIDAVIT

I, the undersigned, hereby swear/affirm that I am entitled to vote in this election, that I have not voted another ballot for this lot/tract and that the address listed on this envelope is my correct address (or if it is not, my correct mailing address is _____)

I understand that attempting to vote more than once for this tract is a violation of the Covenants of the HOA. I further understand that failure to complete the information below will invalidate my ballot.

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11-26-2019 Debra Cargile