

**PROTECTIVE COVENANTS AND RESTRICTIONS FOR
EL-MAR ESTATES PHASES I, I-WEST, II,
II-SUPPLEMENT I, III, AND IV**

This Declaration of Protective Covenants and Restrictions is made this 10th day of November, 1997 by the undersigned owners of real property located in El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV. Witnesseth the Protective Covenants and Restrictions for the various Phases of El-Mar Estates have been duly adopted and recorded in the office of the Missoula County Clerk and Recorder by several separate Declarations and Amendments.

The undersigned owners of real property located in El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV desire to comprehensively consolidate and amend all of the Protective Covenants and Restrictions applicable to any real property located within the various Phases of El-Mar Estates.

These Protective Covenants and Restrictions are adopted pursuant to the provisions of Article VII, Section 16 of the Restated Declaration of Protective Covenants and Restrictions for El-Mar Estates recorded in Book 99 of Micro Records at Page 650 as amended by a document recorded in Book 393 of Micro Records at Page 625.

The Protective Covenants and Restrictions hereby adopted shall apply to all lots located within El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV and shall amend, replace and supersede all prior statements, declarations or amendments of Protective Covenants or Restrictions applicable to any real property in any Phase of El-Mar Estates.

NOW THEREFORE, the undersigned owners of real property located in El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV hereby make, declare and impose the following limitations, restrictions, regulations and uses upon all real property within El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV, each a subdivision of Missoula County, Montana. The Protective Covenants and Restrictions recited herein shall run with the land and bind all present and future owners of any real property located within El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV. All real property located within El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV is and shall be held, transferred, sold, conveyed and occupied subject to these Protective Covenants and Restrictions.

**ARTICLE I
DEFINITIONS**

Section 1. As used herein the following words and terms shall have the following meanings unless in context specifically provided otherwise:

- a. "Association"-EL-MAR HOMEOWNER'S ASSOCIATION, a non-profit corporation comprised of the owners acting in concert pursuant to this declaration and by-laws of the Association.

- b. "Common Properties"--Those areas of land shown on any recorded plat of the premises including but not limited to recreation and sanitation facilities, common greens, except that this term shall not include (1) any platted lot unless the Association is the owner thereof and (2) any property which has been dedicated to and accepted by any public authority or body which has assumed the obligation to maintain the same.
- c. "Common Expenses"
 - 1. Expenses of administration, maintenance, repair or replacement of common properties
 - 2. Expenses agreed upon as common by all the owners.
 - 3. Expenses declared by law or the By-Laws to be common expenses.
- d. "Dwelling"--The mobile, modular, double-wide or conventional residence.
- e. "Lot"--The parcels of land into which the property was divided as shown on any recorded plat of the premises, with the exception of Common Properties as previously defined.
- f. "Owner"--The record owner whether one or more persons or entities, of the fee simple title to any lot except that 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.
- g. "Properties"-- All real property located in El-Mar Estates Phases I, I-West, II, II-Supplement I, III and IV, each a subdivision of Missoula County Montana.
- h. "Structure"--Any construction erected or placed upon any lot, including but not limited to parts of and additions to buildings, walls, fences, and other enclosures, television and other antennas, walks and driveways.
- i. "Unit"--Any lot and the dwelling and improvements located thereon
- j. "Board"--Duly elected officers of the El-Mar Estates Homeowners Association.
- k. "Daycare Home"--Serves six or fewer children and is operated in a residential dwelling. It is registered with the State.
- l. "Home Occupation"--An activity involving the sale of goods or services conducted entirely within the dwelling which is clearly incidental and factually subordinate to the use of the dwelling and does not change the character thereof shall comply with the following requirements:
 - 1. No window display or other public display of any material or merchandise in connection with any home occupation.
 - 2. No outside display or storage of products, materials, or machinery
 - 3. Not to be more than one (1) employee who is not a member of the immediate family.
 - 4. The use shall not occupy more than twenty-five percent (25%) of the gross floor area of the main building.
 - 5. The use shall not produce light, noise, odor, parking demand, traffic or any exterior activity inconsistent with the character of the neighborhood.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION**

Section 1. Existing Property The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Missoula County, Montana, and is more particularly described as El-Mar Estates, Phase I, I West, II, II Supplement I, III and IV a subdivision of Missoula County, Montana.

ARTICLE III
MEMBERSHIP VOTING RIGHTS IN THE ASSOCIATION

Section 1. MEMBERSHIP Every Owner shall be a member of the Association provided that any person or entity who is merely holding an interest in a lot as security for the performance of an obligation shall not be a member.

Section 2. VOTING RIGHTS: Every member of the Association shall have one vote for each lot owned and shall be entitled to cast such vote or votes at the meeting of the members. In the event that the owner of any lot is comprised of more than one person or entity, such persons or entities shall determine between themselves how the vote for such lot is to be voted; but there shall never be any fractional voting with respect to any lot nor more than one vote per lot; and if said common or joint owners do not unanimously agree on how their vote shall be voted, the Association, at its option may refuse to recognize the vote.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. TITLE TO COMMON PROPERTIES: Title to the common properties shall be held by the El-Mar Estates Homeowners Association, a Montana not-for-profit corporation.

ARTICLE V
ASSESSMENTS

Section 1. CREATION OF THE LIEN OF ASSESSMENTS: Each lot owner hereby covenants and agree to pay to the Association annual assessments, all such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessments, together with such interest thereon and costs of collection thereon as is hereinafter provided, shall be a charge and continuing lien upon the lot against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as is hereinafter provided shall be the obligation of the owner of such lot from the date when such lot was purchased.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used for the benefit of the owners and members of the Association, including but not limited to construction and maintenance of recreational facilities, sewage and water systems and common properties and for such other services promoting the recreational, health, safety and welfare of the owners

Section 3. AMOUNT OF ANNUAL ASSESSMENTS: The owner of each lot covenants and agrees to pay the Association the assessments which may be established by action of the Association through its Board of Directors as hereinafter provided. Such owner further covenants and agrees to pay any special assessments for capital improvements which may be established by the Association, as may be provided in

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the By-Laws of the Association. All capital improvements with a cost of \$5,000 or more shall require approval of sixty-five (65%) of the homeowners.

Section 4. PAYMENT OF ANNUAL ASSESSMENTS. The assessments provided for herein shall be computed on a quarterly basis, commencing on the first day of January for the first quarter, the first day of April for the second quarter, the first day of July for the third quarter and the first day of October for the fourth quarter. The assessments for any quarter shall become due and payable on the last day of that quarter. The Board of Directors of the Association shall fix the amount of the assessment against each lot for each assessment period at least 30 days in advance of the due date specified herein and shall, at that time, prepare a roster of the properties and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any owner. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The amount of the assessment which may be levied on any lot initially purchased shall be prorated in proportion to the total assessment for the entire year.

Section 5. EFFECT OF NON-PAYMENT OF ASSESSMENTS. If the assessments are not paid by midnight on the date when due (being the date specified in Section 4 hereof) then such assessment shall become delinquent and shall, together with interest thereon, become a continuing lien on the lot which shall run with the land. If the assessment remains unpaid 30 days after such due date, the assessment shall bear interest from the due date at the maximum annual percentage rate permitted by law but not in excess of 10%. The obligation of the then owner to pay any assessment or interest shall not be affected by any conveyance or transfer of title to said lot. The Association may bring an action at law against the owner obligated to pay the same, and/or to foreclose the lien against the property and there shall be added to the amount of such assessment the costs of collecting the same or foreclosing the lien thereof, including reasonable counsel fees.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Design Review Committee. The Board of Directors of the El-Mar Homeowners Association shall appoint three individuals to serve as a Design Review Committee to review and approve or deny all plans for construction within the properties.

Section 2. No dwelling, structure, excavation or construction of any kind and no fence, wall, garage, outbuilding, wire, pipe, walkway, hedge, driveway, antenna or exterior ornament of any kind, or any addition, alteration or remodeling thereof, shall be made, erected, constructed, altered, placed or permitted to remain upon any of the properties until plans and specifications showing the nature, kind, shape, height, materials, and location of same shall have been submitted to a Design Review Committee and approved in writing by the Committee as to exterior designs, color, size, height, type of construction, location in relation to surrounding structures and topography and with a particular view toward grading, drainage and ground cover in order to prevent erosion of the clay soils in the area. In the event the Committee fails to approve or disapprove within thirty (30) days after receipt of detailed plans and specifications approval shall not be required and this Article will be deemed to have been fully complied with.

Section 3. The Design Review Committee shall observe the rules of the Association and Missoula County in regards to placement of any dwelling or structure on any lot

Section 4. 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, the issuance of building permits or any delays associated with such action on the part of the committee

**ARTICLE VII
GENERAL RESTRICTIONS AND COVENANTS**

Section 1. GENERAL PURPOSES: These covenants are made for the purpose of creating and keeping the premises, insofar as is possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance, and guarding against any unnecessary interference with the natural beauty of the premises, all for the mutual benefit and protection of the owners of lots within the premises.

Section 2. USES AND ZONING: All lots within the premises except the common properties and any commercial lots shown on the plat, shall be known as and designated as single-family residential lots, and no use thereof shall be permitted except for single family residence purposes. No business, trade or commercial activity of any kind or description shall be conducted upon any such lot, except in conforming with CRR3 zoning, daycare homes and home occupation will be allowed. Property usage shall conform to the zoning restrictions of Missoula County, Montana, as well as those of the Association.

Section 3. DWELLINGS: The dwellings to be placed or constructed upon the lots shall be mobile, modular, double-wide, or conventionally constructed residences (except as noted at the end of this section), all of which shall be subject to approval of the DESIGN REVIEW COMMITTEE, however the committee shall have no power to approve a conventionally constructed dwelling with less than 850 sq. ft. (except in Phase IV, which is 900 sq. ft.), or more than 1600 sq. ft. of ground floor area, in the main structure, and the same shall not be permitted upon any lot. For the purpose of this section only, the main structure area shall not include porch, patio, or attached garage area for computation of minimum or maximum size.

No part of the main structure may be located nearer than 10 ft. to any side or rear lot line. No part of the main structure may be located nearer than 25 ft. from the front lot line. Garages, carports, patios, or separate utility buildings may be located 5 feet or more from side or rear lot lines. No part of any permanent structure may be located on the utility easement as shown on the official plat or restricted by the deed to an individual lot.

Mobile homes or double-wide mobile home may not be located on the following lots: Lot 1 Block 1, Lots 1 through 18 Block 2, Lots 1 through 19 Block 4, Lots 1 through 5 Block 6 and Lots 1 through 4 Block 7, all in Phase I; Lots 1 through 11 Block 1, Lots 1 through 16 Block 2, Lots 1-8 Block 3, Lots 1-15 Block 4 and Lots 1-7 Block 5, all in Phase II; all lots in Phase I West; and all Lots in Phase IV Block 1, Lots 1 and 2 Phase II Supp. 1.

Section 4. CONSTRUCTION: All construction on or within the properties shall be diligently prosecuted to completion and shall in any event be completed within three months of commencement unless specific written extension is given by the Design Review Committee. No construction materials shall at any

time be placed or stored so as to impede, obstruct, or interfere with pedestrian or vehicular traffic. Natural drainages must not be blocked or filled.

Section 5. LOT RENTAL. The rental of any residential lot and/or dwelling within the premises shall be prohibited except any owner may rent a lot and dwelling thereon, provided the same is adjacent to the lot upon which such owner resides.

Section 6. LANDSCAPING. Within 120 days of the construction or placing of a dwelling upon any lot all portions of such lot not covered by improvements shall be landscaped. At least two trees or suitable alternative plant material, in addition to grass, bark, crushed rock, flower or other ground cover is required. All trees, hedges, shrubs, flowers, grass or other ground cover shall be maintained and cultivated so that the same are not unsightly or a detriment to adjacent lots. All landscaping must be designed to preserve and protect the clay soil in the area and to prevent erosion. After the 120 days and cooperative weather, the Association and Design Review Committee is authorized to hire a landscaping company to perform the work necessary to bring the lot into conformance. They are also authorized to place a lien on said lot to recover the expenses for the work performed.

Section 7. TRASH, GARBAGE, SCREENING. No trash, garbage or other refuse shall be thrown or dumped on any land within the premises. There shall be no burning of refuse out of doors except as may be approved by the Missoula County Health Department. This shall not be construed to prohibit or deny the installation and use of wood burning fireplaces or barbecue pits. Each property owner shall provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles shall be screened from the public view and protected from disturbance. No clotheslines or clothes racks shall be permitted on any lot except in the rear or side yard thereof. In order to retain the integrity and value of the home sites in El-Mar Estates, the Association is authorized, after one written complaint giving the homeowner seven days to clean up the lot, to hire a person or persons to clean up said lot and place a lien on said lot to recover the clean up expense.

Section 8. SIGNS. No signs or other advertising device of any character shall be erected on any residential lot or building site or maintained upon any part of said property, except for real estate "For Sale" signs. Owner may erect one sign indicating the name and address of the owner or occupant thereof, in no case to be larger than 6"x24", unless approved by the Design Review Committee. Outdoor advertising shall be prohibited on any commercial lot except that the type and name of the business may be designated by one sign not exceeding 32 square feet located on the building.

Section 9. POWER EQUIPMENT. Power equipment shall not be operated before 7:00 a.m. or after 9:00 p.m. Each lot owner shall be responsible for the maintenance of the unimproved section of road right-of-way adjacent to his property. No motorized vehicles are allowed on the common areas or sidewalks. Snowmobiles and ATVs shall not be operated within the boundaries of the subdivision.

Section 10. VEHICLES AND PARKING. Owners shall be required to provide reasonable parking areas for their personal automobiles and travel trailers, upon each lot. No large commercial trucks (logging trucks, semi-vans, stock trucks, etc.), stock cars, mechanical parts, household appliances, inoperable automobiles or unsightly objects shall be parked or stored on any lot in public view unless prior approval is obtained by the Association.

Section 11. FIRE AND CASUALTY DAMAGE Any dwelling damaged by fire or other casualty must be removed from the premises or repairs commenced within thirty days unless an extension of time for such removal or repair is granted by the Design Review Committee. Any damaged dwelling not so removed or repaired may be removed and stored at the owner's expense or the Association may pursue any and all legal or equitable remedies to enforce compliance herewith.

Section 12. ANIMALS AND LIVESTOCK: No chickens, swine, poultry, goats, horses livestock or similar animals or fowl shall be raised, kept or cared for on any lot except that cats or dogs may be kept in accordance with the following covenants

- a. Any lot owner may have a cat or dog or both. They may maintain two dogs or two cats for a total of two animals.
- b. Such dogs of a 40 pound breed weight or greater shall be fenced and/or kenneled by such a structure that shall be adequate in size and height to keep the dog(s) in at all times, unless under direct owner supervision, during which time it must remain on the owner's lot
- c. All dogs shall be on a leash at all times when off the owner's property and under the control of a person(s) capable of handling the dog under all circumstances.
- d. No dog is allowed to run at large. At large meaning off of the owner's property and not on a leash or under direct control. In so doing, it is a nuisance. At large shall not include situation wherein someone frees a confined animal without the permission of the owner.
- e. Any dog may be deemed a nuisance who falls into one or more of the following definitions and be subject to removal by complaints. Nuisance dog is any dog that does the following:
 1. Steal or damage either private or public property.
 2. Defecate on private land without permission, or is allowed to defecate on public land or a common area in the Estates without the person in care of the dog cleaning up and disposing of the waste immediately. Any owner not adhering to this covenant shall be deemed in violation and his animal deemed a nuisance as here in described.
 3. Chase after person(s) not trespassing on the property of the owner or injuring or attempting to injure the person, family or property of the owner.
 4. Chase vehicles, bicycles, skate boarders, joggers, etc. in public streets, alleys, common areas or public walkways.
 5. Cause annoyance to any person by prolonged barking, howling, yelping, or other means.
 6. Runmaging through or scattering garbage or rubbish.
 7. Be in heat (estrus) without being kept in a confined area not accessible to any male dogs which may be running at large.
- f. No "Dangerous dog" may be kept in the Estates under any circumstances(s) as described in City of Missoula Municipal Code Sect. 1, 6.08.010 Definition F and Definition X, Item 4.
 1. El-Mar Estates shall have a "No Free Bites" policy. Any dog which attacks or bites a person(s) engaged in a lawful activity while off of the property of its owner shall be removed from the Estates with no recourse for re-entry to the Estates.
- g. Under no circumstances shall any person tease, abuse, assault or in any way disturb a dog or other animal with the intent to cause it to bark or attack any person.
- h. Enforcement of Section 12: A complaint system shall be established to deal with animal control problems to be administered by the Board by means of a certified letter as follows:

1. Complaint - each violation of this section or recurring violation of this section of covenants shall constitute a complaint when properly filed with the board.
2. Three or more complaints by two or more lot owners within 500 feet of the owner's property, within any thirty (30) day period beginning the day of the first complaint is received by the Board, shall be deemed sufficient evidence for removal of the said lot owner's animal.
3. The Board has the authority to treat initial complaints as warnings and grant a thirty (30) day grace period and shall be an exception to Article VII, Section 12, 8 b. of the covenants. Upon receipt of a certified letter having three or more complaints from the Board for items classified as "Nuisance" in this section, the lot owner will have thirty (30) days in which resolve the problem(s). If not satisfactorily resolved and complaints continue to come to the Board's attention, a second certified letter will be sent and the animal shall then be removed from the Estates.
4. Any lot owner may file a complaint on any dog at large, dangerous dog, or dog in violation of the covenants Article VII, Section 12, item 5 b., animal waste. The 500 foot limit shall not apply in these cases.
5. Complaints must contain the following information and be kept by the Board and shall be open to all parties involved for review.
 - (a) Name and address of lot owner and description of dog in violation.
 - (b) Clearly states the violation(s).
 - (c) Be signed and addressed by person(s) filing the complaint.
6. A file shall be kept by the Board on all conflicts of animals and lot owners such as is adequate for any legal action that may become necessary to resolve the conflict.

Section 13. NUISANCE: No loud or unreasonable noise, disturbance of the peace or other noxious or offensive activity shall be permitted, conducted, or carried out upon any lot or common properties within the subdivision.

The owners shall not permit or suffer any activity or failure to act upon their respective units which shall increase the rate of insurance of the common properties or surrounding lots which will obstruct or interfere with the rights of other owners.

Section 14. EFFECT AND DURATION OF COVENANTS: The covenants, conditions and restrictions of this Declaration shall run with the land and shall be binding upon each lot within the premises and each owner of property therein, his successors, representatives and assigns and shall continue in full force and effect for a term of 20 years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of 10 years unless otherwise terminated or modified.

Section 15. AMENDMENT: The condition, restrictions, stipulations, agreements and covenants contained herein shall not be waived, altered, abandoned, terminated, or amended in whole or in part except by written consent, duly recorded in the office of the Clerk and Recorder, Missoula County, Montana, of the owners of 65% of the privately owned lots included within the boundaries of the premises. Such consent may be given by a vote of the members at a meeting held after not less than 30 days prior written notice of such meeting and the purpose thereof has been sent by certified mail, return receipt requested, to the last known address of record of each such owner.

Section 16. ENFORCEMENT: The conditions, restrictions and covenants herein contained shall bind and inure to the benefit of, and be enforceable by, the owners of all real property located within El-Mar Estates Phases I, I West, II, II Supplement I, III and IV, their successors, personal representatives and assigns.

Any owner of any lot may institute and prosecute any proceedings at law or in equity against El-Mar Homeowner's Association or any person, firm or corporation violating or threatening to violate, any of the conditions, restrictions or covenants herein contained. Any such action may be maintained for the purpose of preventing a violation or to recover damages for violation of the terms and conditions of such covenants and restrictions or for both such purposes. The successful party to such litigation shall be entitled to recover reasonable costs of suit and attorney fees. In addition, El-Mar Homeowner's Association shall be entitled to recover its reasonable attorney fees incurred as the result of any violation of the terms of these covenants and restrictions whether or not litigation results.

In the event that attorney fees are owed to El-Mar Homeowner's Association and such fees are not paid within (30) days after written notification that such fees are due, the Board of Directors may add the amount of such unpaid attorney fees to the homeowner assessments. Payment of such assessments may be enforced as provided by Article V hereof.

The failure of El-Mar Homeowner's Association, its successors or assigns, or of any owner of any lots to enforce any of the conditions, restrictions or covenants herein contained shall not be deemed a waiver of right to enforce such conditions, restriction or covenants hereafter. Nothing herein contained shall be construed as preventing the application of any remedy given by law or equity against nuisance, public or private. The remedy herein provided shall be in addition to any other remedy now or hereafter provided by law.

Section 17. SEVERABILITY: Any invalidation of any conditions, restrictions or covenants herein contained by judgement or order of any court of competent jurisdiction shall in no way affect the validity of the remaining conditions, restrictions or covenants; and said remaining conditions, restrictions and covenants shall continue and remain in full force and affect. Any conditions, restrictions and covenants as invalidated shall be deemed separable from the remaining conditions, restrictions and covenants herein set forth.

IN WITNESS WHEREOF, the undersigned presiding officer and secretary of the Association do hereby certify that the foregoing is a true and correct copy of the Covenants as amended by the Association and duly adopted by the Board of Directors of the EL-MAR HOMEOWNERS ASSOCIATION this 14th day of November, 1997.

EL-MAR HOMEOWNERS ASSOCIATION

By John Koene
President

ATTEST:

Steve Davis
Secretary

STATE OF MONTANA)

ss.

County of Missoula)

John Koenes and Steve Davolt, being first duly sworn upon their oath, depose and say:

That they are the President and Secretary respectively of the Board of Directors for the EL-MAR HOMEOWNERS ASSOCIATION and that they are the presiding officer and secretary respectively of the Board of Directors when the foregoing Covenants were amended by the members and duly adopted by the Board of Directors.

John Koenes
President

Steve Davolt
Secretary

SUBSCRIBED AND SWORN TO before me this 14th day of November, 1997

W. M. Hoop

Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires: Jan. 25, 1999

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I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 17 DAY OF Nov 1997 AT 4:25 O'CLOCK PM AND IT IS RECORDED IN VOL 522 OF INSTRUMENTS IN THE COUNTY OF MISSOULA STATE OF MONTANA, ON PAGE 323 FEE 60 PAID 60 RETURN TO John Koenes WITH \$5 IN HAND. WITHE IN THE COUNTY RECORDER ADDRESS 5125 Flat Hatch BY [Signature] DEPUTY REC. [Signature]
Walla, Mt. 59802