

COVENANTS, CONDITIONS, AND RESTRICTIONS

Missoula Development Park

As approved by the Board of County Commissioners on September 25, 1996 and amended on May 23, 1997, September 24, 1997 and May 26, 1998. (Correcting Erroneous Exhibit A Attached to Book 542 Page 1571 Covenants)

STATE OF MONTANA COUNTY OF MISSOULA

KNOW ALL MEN BY THESE PRESENTS:

That the County of Missoula (herein after called the COUNTY), a political subdivision of the State of Montana, is the owner of all that certain real property, known as the Missoula Development Park (herein after called the Development Park) located in Missoula County, State of Montana more particularly described in the Preliminary Plat, Exhibit A, attached hereto and herein by reference thereto; and

WHEREAS, it is the desire and intention of the County to develop all of said property as a business and industrial park, and,

WHEREAS, the COUNTY plans to sell, lease, and/or develop the property described in Exhibit A, which it desires to be subject, pursuant to a general plan of improvement, to certain restrictions, conditions, covenants and agreements between it and the several purchasers of said property and between the several purchasers of said property themselves as hereinafter set forth; and,

WHEREAS, the Development Park is being developed as a Mixed Use Development for office, industrial, research and development, commercial and educational uses designed to improve and enhance the local business community and environment. This Declaration is intended to complement local governmental laws and regulations and where conflicts occur, that the users of sites within the Development Park will be motivated to preserve these qualities through mutual cooperation and organization.

NOW, THEREFORE, the COUNTY declares that the property described in Exhibit A, but specifically exempting all of Block 1 and Lot 4 of Block 8, is held and shall be sold, conveyed, leased, occupied and held subject to the following restrictions, conditions, covenants and agreements between it and the several owners, purchasers and lessees of said property and between themselves and their heirs, successors and assigns.

ARTICLE I DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Section shall, for all purposes of this Declaration, have the meaning herein specified.

- 1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Owners' Association, including any and all amendments or modifications thereof.
1.2 "Association" shall mean and refer to the Missoula Development Park Property Owners' Association, Inc. a Montana corporation not for profit, its successors and assigns.
1.3 "Authority" shall mean and refer to the Missoula Development Authority, a body established by the Missoula County Board of Commissioners for the purpose of managing, directing, and overseeing the development activities of all County-owned development parcels. The Authority's rights hereunder may be assigned in whole or in part and on an exclusive or non-exclusive basis, with approval of the Board of County Commissioners.

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- 1.4 **"Building"** shall mean and refer to each and every structure constructed on any Lot, including multi-level parking structures.
- 1.5 **"Bylaws"** shall mean and refer to the Bylaws of the Association, including any and all amendments or modifications thereof.
- 1.6 **"Board of Directors"** or **"Board"** shall mean and refer to the Association's Board of Directors.
- 1.7 **"Common Area"** or **"Common Areas"** shall mean all portions of the Property (including access drives, parking areas, and all other improvements and landscaping thereon) now or hereafter owned by the Association for the common use and enjoyment of the Owners, whether shown on any recorded plat of any portion of the Property or described in any deed or grant of easement to the Association. The use of the Common Area shall be restricted to ingress and egress, utility purposes, parking, landscaping, drainage, security, safety, lighting, fire hydrants and recreational purposes or any other use to which the Association may determine. The Common Area shall initially include that property described on the preliminary plat on Exhibit **A** attached.
- 1.8 **"County"** shall mean and refer to the Missoula Board of County Commissioners acting on behalf of the Missoula Industrial Development District who may assign responsibilities spelled out in this document to the Authority by specific action of the Board of County Commissioners.
- 1.9 **"Declaration"** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Missoula Development Park, as modified and amended from time to time.
- 1.10 **"Design Review Committee"** or **"DRC"** or **"Committee"** shall mean and refer to the Missoula Development Authority sub-committee and their successors and assigns.
- 1.11 **"Grantor"** shall mean and refer to Missoula County, Montana, a Montana Corporation, doing business as County of Missoula, Montana, and, to the extent provided, its successors and assigns.
- 1.12 **"Improvements"** shall mean and refer to any man-made changes in the natural condition of the land, including, but not limited to, structures and construction of any kind, whether above or below the land surface such as any building, fence, wall, sign, addition, alteration, screened enclosure, sewer, grading, landscaping, exterior illumination, any changes in any exterior color or appearance, and including both original and all later exterior construction or exterior improvement on any Lot.
- 1.13 **"Lot"** shall mean and refer to any plot of land shown on any recorded plat, recorded replat, or subdivision map of the Property or any part thereof, with the exception of Common Areas or areas deeded to a governmental authority or association. It shall not include lots which are described on a plat that has not been recorded.
- 1.14 **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "owner" shall include the County for so long as the County shall hold title to all or any portion of the Property or any Lot.
- 1.15 **"Legal Rate"** shall mean the highest rate of interest then allowed by Montana law, currently set at ten percent (10%)
- 1.16 **"Property"** shall mean and refer to the real property described in the preliminary plat Exhibit **A**

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and such additions thereto as may hereafter be brought within the jurisdiction of the Association, by amendment to this Declaration in accordance with Section 8.2 below, or as otherwise permitted hereby.

- 1.17 **"Site Development Guidelines"** shall mean and refer to the guidelines which shall be adopted by Missoula County for use by the Missoula Development Authority, for the purpose of establishing, reviewing and approving the quality and character specifications of all site development, landscaping, site plans, (including signs, lighting, building materials, and architectural design) for the development park and each Lot therein. Said Site Development Guidelines may be modified or amended from time to time by the County, in its sole discretion, but no such amendment shall be binding upon persons without notice thereof until recorded in the Public Records of the Missoula County Clerk and Recorder, Montana.
- 1.18 **"Street"** shall mean any street, highway or other thoroughfare within the Property and shown on any recorded subdivision plat, whether designated thereon as street, boulevard, parkway, place, drive, road, terrace, way, land, circle or otherwise.
- 1.19 **"Structure"** shall mean and refer to any thing or device the placement of which upon any Lot might affect the physical appearance thereof, including, by way of illustration and not limitation, buildings, sheds, covered patios, driveways, fountains, swimming pools, parking areas, trees, shrubbery, paving, curbing, landscaping, fences or walls, or any sign or signboard. "Structure" shall also mean any excavation or fill, the volume of which exceeds ten (10) cubic yards; or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any water in any natural or artificial stream, wash or drainage channel upon or across any Lot.
- 1.20 **"Trail"** shall mean any non-motorized path constructed primarily for the benefit of hikers, bikers, and other pedestrian activities within the Property, usually occurring in Common Areas and along drainage ways and riparian corridors.

**ARTICLE II
PROPERTY RIGHTS**

- 2.1 **Owner's Easement of Enjoyment** A non-exclusive easement is hereby established over all portions of the Common Area for vehicular and pedestrian ingress and egress to and from all portions of the Property, and for maintenance of the Common Area, for the benefit of the County and the Association as appropriate, subject to the following provisions:
- (a) The right of the County to dedicate or transfer all or any part of the Common Area to any public agency, Authority or utility for such purposes and upon such conditions as may be agreed to by a majority of the voting interests in the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved and recorded by the County;
 - (b) All provisions of this Declaration, any additional covenants and restrictions of record, any plat of all or any part or parts of the Property, and the enabling Resolution and Bylaws of the Authority;
 - (c) The right of the Association from time to time in accordance with its Bylaws to establish, modify, amend and rescind reasonable rules and regulations regarding the use and enjoyment of the Common Area;
 - (d) All existing easements and restrictions of record and the right of the County to grant additional easements affecting the Common Area or any part thereof;

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- (e) The right of the Authority to otherwise deal with the Common Area as provided by its enabling Resolution; and
- (f) Any right of the County of Missoula upon the failure of the Authority to do so, to maintain such portions of the Common Area as are designated on any plat as being for drainage easements.

- 2.2 Common Area** The Common Area shall be for the use and benefit of the Association and the County, , and their tenants, invitees and licensees, for any proper purpose. The Common Area shall be used by each person entitled to its use in such a manner as shall not abridge the equal rights of other owners to the use and enjoyment thereof. Each Owner shall be liable to the Association for any and all damage to the Common Area and any personal property or improvements located thereon, caused by such Owner, its invitees, licensees, lessees, contract purchasers, agents, contractors or subcontractors, and the cost of repairing same shall be a lien against such Owner's Lot or Lots, as provided in Section 4.8.
- 2.3 Rules and Regulations** No Owner or other permitted user shall violate the rules and regulations for the use of the Common Areas, as the same are from time to time adopted by the Association.
- 2.4 Easements for Utilities and Drainage** Perpetual non-exclusive easements for the installation and maintenance of utilities and drainage facilities are reserved to the County and any assignee of the County over all utility and drainage easement areas shown on any plat of the Property or encumbered by recorded easements as of the date of recording (which easements shall include, without limitation, the right of reasonable access over Lots to and from the easement areas). The County, and the Association shall each have the right to convey additional easements, permits and licenses encumbering the Common Areas if deemed necessary or desirable on an exclusive or non-exclusive basis to any person, corporation or governmental entity. Further, an easement is reserved over all portions of the Property for installation and maintenance of electrical apparatus, CATV facilities, or other apparatus for any utilities installed to serve any portion of the Property as shown on the plat. The specific location of any apparatus or facilities, and the granting of specific easements across County or Association property in favor of the providers of utilities, shall be determined within the powers of the County and the Association. The easement rights reserved pursuant to this section shall not impose any obligation on the County or the Association to maintain any easement areas or install or maintain easements, or areas which may be served by them. Within easement areas no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with access to, or the installation and maintenance of, the easement areas or any utilities or drainage facilities, or which may change the direction or obstruct or retard the flow of water through drainage channels in easement areas. The Owner of any Lot subject to an easement shall acquire no right, title or interest in or to any poles, wires, cables, conduits, pipes or other equipment or facilities placed on, in, over or under the portion of the Lot which is subject to the easement. Subject to the terms of this Declaration regarding maintenance, the easement areas of each Lot and all above-ground Improvements in easement areas shall be maintained continuously by and at the expense of the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible. With regard to specific easements for drainage, the County shall have the right, but without obligation, to alter the drainage facilities, but not materially adversely affect any Lot unless the Owner of the Lot consents to such alteration.
- 2.5 County and Association Easement** The County reserves for itself, the Association, and the Authority, and their respective grantees, successors, legal representatives, agents and assigns, an easement for access to, over and across each Lot and the right to enter upon each Lot for the purpose of exercising their respective rights and obligations under this Declaration. Absent emergency conditions, entry into any Building shall not be made without the consent of the Owner or occupant, except pursuant to a valid court order. An Owner shall not arbitrarily withhold

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consent to entry for the purpose of discharging any duty or exercising any right granted by this Article, provided the entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner.

ARTICLE III
THE ASSOCIATION

- 3.1 Powers and Duties** The Association shall have the powers and duties set forth here and in the Articles and Bylaws, including the right to enforce the provisions of this Declaration, and the right to collect assessments for expenses, and additional rights as may reasonably be implied therefrom. As provided in the Bylaws, the Association may, in writing, without a meeting take any action authorized hereunder to be taken at a meeting.
- 3.2 Membership** Every Owner of a Lot, including lots held by multiple person or entities, shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, Bylaws, rules and regulations, and this Declaration. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership, as limited above, shall be the sole qualification for membership. An Owner of more than one (1) Lot shall be entitled to one membership for each Lot or Parcel owned by him. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot. The County shall also be a member so long as it owns one or more Lots.
- 3.3 Voting Rights** All votes shall be cast in the manner provided by the Bylaws. Unless otherwise specified, whenever an action is taken by the Association or required to be approved by the Association, the action shall be deemed authorized or approved if approved by a majority of the voting interests in the Association at the time authorization or approval is sought. The two (2) classes of voting memberships and voting rights associated with memberships areas follows:

Class A Class A members shall be all Owners with the exception of the County and shall be entitled to one (1) vote, or a prorata portion thereof, for each acre or part of an acre, unless the Lot owned is zoned for commercial use as shown on Exhibit "B", in which case the Owner of a Lot shall be entitled to two (2) votes, or a prorata portion, for each acre or part of an acre owned within the commercial zone. When more than one person or entity holds an ownership interest in a Lot, all owners shall be entitled to the votes allocated to a Lot, to be exercised as they among themselves determine, but in no event shall more than the votes allocated to each Lot be cast with respect to that Lot, nor shall any split vote be permitted with respect to a Lot.

Class B The Class B member shall be the County and shall be entitled to a maximum of five (5) votes, or a prorata portion, for each acre or part of an acre owned, unless a Lot or Lots owned or portion of the Property owned is zoned for commercial use as shown on Exhibit "B", in which case the County shall be entitled to ten (10) votes, or a prorata portion, for each acre or part of an acre owned within the commercial zone. The County may relinquish its right to Class B membership at any time by recording an instrument in the records of the Missoula County Clerk and Recorder. Unless sooner terminated by relinquishment, the Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

- One (1) year after eighty percent (80%) of the acreage of the Property has been conveyed by the County to other Owners; or,
- Twenty (20) years following conveyance of the first Lot by the County to another Owner.

Association Any Lot owned by the Association shall not be entitled to a vote.

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- 3.4 Term of Rights Reserved** Rights reserved in this Declaration by the Authority and the County shall run until majority control of the Association passes to Lot Owners other than the County. Thereafter, such rights shall be reserved by the Association.
- 3.5 Services** The Association may obtain and pay for the services of any person or entity to manage its affairs, to the extent it deems advisable, as well as other personnel the Association determines to be necessary or desirable for the proper discharge of its duties. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its operations or the enforcement of this Declaration. The Association may arrange with others to furnish common services to each Lot, and that cost may be included in the assessments for maintenance described in Article IV, below.
- 3.1 Manager** The Association may obtain, employ and pay for the services of an entity or person, hereinafter called the "Manager" to assist in managing its affairs and carrying out its responsibilities, to the extent it deems advisable, as well as other personnel as the Association shall determine to be necessary or desirable, whether personnel are furnished or employed directly by the Association or by the Manager.
- 3.2 Personal Property for Common Use** The Association may acquire, hold and dispose of tangible and intangible personal property by sale or otherwise, subject to restrictions, if any, provided in the Association's Articles or Bylaws.
- 3.3 Insurance** The Association shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary. The Association provide that all persons responsible for collecting and disbursing Association moneys be insured or bonded with adequate fidelity insurance or bonds.

ARTICLE IV
COVENANT FOR ANNUAL MAINTENANCE AND SPECIAL ASSESSMENTS

- 4.1 Financing of Initial Improvements** A Tax Increment Finance District (TIF) has been formed to provide financing for the acquisition and development of the Missoula Development Park to include all initial infrastructure improvements such as roads, utility services, drainage facilities, and their appurtenances. Related costs for engineering, project management, marketing, and other services related to the development of the Missoula Development Park shall be financed from tax increment proceeds from Tax Increment District, and not through special assessments on the members of the Association. Maintenance of these improvements may also be funded through proceeds of the Tax Increment Finance District until ownership has been accepted for maintenance by a public or governmental authority or agency.
- 4.2 Maintenance of Common Areas and Landscaping** All of the Common Area and Improvements within the Common Area owned by the Association, shall be maintained by and at the expense of the Association, unless specified otherwise. The Association's maintenance responsibilities shall extend to and include maintenance of all decorative identification signs for Missoula Development Park, indicating the location of and entrance to the Property and any central directories; planting and maintaining landscaped areas; sweeping; trash disposal; snow removal; striping; lighting; and maintaining service drives and roads, and pedestrian accesses and walkways; maintenance of fire hydrants; street lights; and the installation, construction and relocation of improvements to enhance and beautify the Common Area. This provision shall not limit the obligation of an Owner to maintain all Improvements within its Lot. In the event that the need for maintenance or repair of the Common Area or any personal property owned by the Association is caused by the willful or negligent act of an Owner, its tenants, licenses or invitees, the cost of that maintenance or repair

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shall be due and payable from the Owner, and shall be secured by a lien against the Owner's Lot as provided in Section 4.8.

4.3 Maximum Annual Maintenance Assessment Until January 1 of the year immediately following conveyance of the first Lot to an Owner other than the County the maximum annual assessment shall be \$500.00 for each acre or pro-rated part of an acre within each Lot. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the County, the maximum annual assessment may be increased by the Board of Directors each year not more than fifteen percent (15%) above the maximum assessment for the previous year without a vote of the members of the Association. Any increase in the annual assessment greater than fifteen percent (15%) must be authorized by a vote of the Association. The calculation and collection of the assessments shall be as prescribed in Sections 4.6 and 4.7 below. Lots which do not have access to an improved road and sewer and water shall not be subject to these assessments.

4.4 Special Assessments for Capital Improvements In addition to the authorized annual maintenance assessments, the Association may levy, by majority vote of Association votes cast in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of reconstruction, major repair or replacement of a specific capital improvement involving a Common Area owned by the Association, including fixtures related to the Common Area. Written notice of approval of a special assessment, and the date due, shall be sent to all Owners thirty (30) days in advance of the due date. Lots which do not have access to an improved road and sewer and water shall not be subject to these assessments.

4.5 Reserves The Association is authorized to establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements within the Common Area and any other improvements which the Association is obligated to maintain. The reserve fund shall be funded by the annual maintenance assessment levied by the Association.

4.6 Date of Commencement of Annual Assessments: Due Dates The annual maintenance assessments for Lots shall commence on the first day of the month following the conveyance of the initial Common Area from the County to the Association. The first annual assessment shall be adjusted and prorated according to the number of months remaining in the calendar year. The Board of Directors shall annually fix the amount of the annual assessment against each Lot in advance of each annual assessment period. Written notice of the annual assessment, and the due date for payment, shall be sent to every Owner subject to assessment at the address provided by the owner. 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. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

4.7 Rate and Collection Both annual maintenance and special assessments must be fixed at a uniform rate for all qualifying Lots, and assessments as to each Lot shall be computed by a rate per acre or pro-rated partial acre.

- (a) The County shall pay its fair share of assessments on qualifying lots as any other owner.
- (b) The assessments, charges and liens provided for or created by this Article IV shall not apply to the Common Area, or any property dedicated to and accepted for maintenance by a public or governmental authority or agency.

4.8 Lien Rights

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- (a) **Creation of the Lien and Personal Obligation of Assessments** Each Owner of any Lot, by acceptance of a deed for a lot within the Development Park, whether or not it is expressed in a deed, is deemed to covenant and agree, to pay to the Association (i) annual assessments or charges, and (ii) special assessments for capital improvements. The annual and special assessments, together with interest at the Legal Rate, costs, and reasonable attorney's fees incurred in collecting assessments, shall be a charge on and a continuing lien upon the Lot against which each assessment is made. Each Lot is security for any expense due the Association and for any other sums due from its Owner to the Association, and in connection with any Lot. Each sum, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person who was the Owner of a Lot at the time when the assessment fell due. If any Lot is owned by more than one Owner, the rights of the Association may be enforced against any and all Owners, jointly and severally. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by the successors, provided, however, that the lien shall remain valid, and enforceable against the property.
- (b) **Notice of Lien** To secure any sum payable by an Owner to the Association under the terms of this Declaration, the Association shall be entitled to file in the records of the Missoula County Clerk and Recorder, a notice of its claim of lien. The notice shall state the sum payable and shall state that it also secures interest on the sum payable at the Legal Rate and attorneys fees and costs incurred in its preparation, recordation, and enforcement and shall contain a description of the Lot against which enforcement of the lien is sought. The notice of lien shall date from the time that the obligation or expense is incurred, but shall not be binding against creditors until the notice is recorded.
- (c) **Foreclosure** The amount secured by the lien shall be due and payable upon demand and if not paid, the lien may be enforced by foreclosure in the same manner as the mortgage. The amount due and secured by the lien shall bear interest at the Legal Rate of interest permitted by Montana law thirty (30) days after the due date of the assessment, and in any action to enforce payment, the Association shall be entitled to recover costs and attorney's fees, which shall also be secured by the lien being foreclosed. The defaulting Owner shall continue to be liable for assessments levied by the Association during the period of foreclosure, and if the Association is foreclosing the lien, then all assessments levied through the date a judgment of foreclosure is entered shall be secured by the lien foreclosed. The Association shall have the right to bid at any foreclosure sale and acquire title to the Lot being sold.
- (d) **Other Remedies** Each Owner hereby acknowledges that a violation by an Owner of one or more of the restrictions or obligations may cause the Association to suffer material injury or damage not compensable in money and that the Association shall be entitled to bring an action for specific performance to enforce compliance with these restrictions or to enjoin the continuance of any breach or violation.
- (e) **Remedies Cumulative** The Association, at their option, may enforce any one or more of the remedies contained in this section or any other rights or remedies to which the Association may be entitled by applicable law, whether or not set forth herein. All remedies provided by this document or by applicable law shall be cumulative and not mutually exclusive.

- 4.9 **Subordination of the Lien to Mortgages** The lien of the assessment shall be subordinate to the lien of any prior pledge which is recorded prior to the recording of a notice of lien against the portion of the Property encumbered by a mortgage. Sale or transfer of a Lot shall not affect the assessment lien against the Lot. However, the sale or transfer of any Lot pursuant to foreclosure of any first mortgage recorded prior to the recording of a notice of lien or any proceeding in lieu thereof, shall extinguish the lien of assessments only as to those payments which became due prior to sale or transfer. No sale or transfer shall release any Lot from liability for assessment payments becoming due or from the lien.

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ARTICLE V
DEVELOPMENT APPROVAL AND DESIGN CONTROL

- 5.1 Creation of a Special Approval Committee** A Design Review Committee (herein after called the DRC) shall enforce the Missoula Development Park Covenants, Conditions, and Restrictions. The DRC shall review and approve the proposed use of each parcel of land, the architectural design, site and landscaping proposed for each site, and any variances deemed necessary; keeping in mind the broad outlines of the purpose of the Development Park. The DRC shall have all powers necessary to approve the land use and plans, and to enforce its decisions in accordance with these Covenants. This review may take place at and as part of the agreement to sell the land by the County or after that sale, but before and as a condition to the issuance of a building permit and zoning approval for any construction on the land involved.

As long as the County is a Class B member of the Association, the Authority Chair shall appoint not less than three (3) members of the Authority to serve as the Design Review Committee. Thereafter, the DRC shall be appointed by the Association. The DRC, at the expense of the entity appointing the DRC, may hire professionals including, but not limited to Landscape Architects, Architects and Engineers necessary or helpful to review submittals and advise approval or denial of the applications.

- 5.2 Architectural Standards and Guidelines** The DRC shall use development guidelines approved by the County which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration. These additional standards and guidelines shall supplement these Covenants Conditions and Restrictions and are incorporated by reference. The DRC shall have the authority to interpret the general intent, affect and purpose of these Covenants, Conditions and Restrictions with respect to architectural and design matters. Each purchaser, transferee, mortgagee and/or owner is responsible for contacting the County or the DRC to obtain and review the most recent architectural standards and design guidelines which control the development, construction, landscape and use of the Lot and the structures to ensure conformance with the Covenants, Conditions and Restrictions. Any design review and approval does not necessarily constitute conformance with the Covenants, Conditions and Restrictions; and any design review and approval does not necessarily constitute conformance or compliance with any rule regulation, ordinance, resolution, or other law or requirement of the Federal, State, County or local government. It is the continuing responsibility of each purchaser, transferee, mortgagee, and/or owner to assure that construction on and/or use of the property conforms to the design approved by the DRC and that construction and/or use of the property also conforms to the applicable covenants, conditions and restrictions and to all applicable rules, regulations, ordinances, resolutions and other laws or requirements of the Federal, State, County or local government.

- 5.3 Architectural Control** Any further subdivision of a lot by any Owner, other than the County must meet the guidelines or restrictions in this document. The County may subdivide the property and resubdivide any lot owned by the County without the consent of the Association. No building, wall, fence, pavement or other improvements of any nature shall be erected, placed or altered on any portion of the Property except in compliance with the Development Guidelines and until the construction plans and specifications and a site plan showing the location of the Improvement is approved in writing by the DRC. Each Improvement shall be erected, placed or altered only in accordance with the approved plans, and specifications and site plan. Upon completion of any Improvement, the Owner shall submit a report confirming that the Improvements have been completed in accordance with the approved construction plans and specifications. Any change in the exterior appearance of any Building, pavement, or elevation, shall be a change requiring approval under this Section.

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- 5.4 Inspection of Completed Work** Upon completion of approved Improvements, the Owner shall give written notice of completion to the DRC. Within twenty (20) working days after its receipt of written notice of completion, the DRC may inspect the improvements. If the DRC finds that work was not completed in strict compliance with all approved Plans or Specifications, it shall notify the Owner in writing of noncompliance within a reasonable time, specifying in reasonable detail the noncompliance, requiring the Owner to remedy the problem. If upon the expiration of thirty (30) days from the date of notification of noncompliance, the Owners have failed to respond, the DRC shall notify the Board or County in writing. The Board or County shall determine the nature of the complaint and the estimated costs of correction or removal. The Owner shall be given an opportunity to remedy the problem within a period of forty-five (45) days from the date of the determination by the Board or County at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse the Association or County for all expenses incurred. These expenses are an Assessment against the owner and the lot constituting a lien upon the land and Improvement and be enforced as provided in this Document. If after receipt of written notice of completion from the Owner, the DRC fails to notify the Owner of the noncompliance within the period provided the Improvement shall be deemed to be in accordance with the approved Plans or Specifications.
- 5.5 SARA Title III Compliance - "Right to Know"** To comply with the Superfund Amendments and Reauthorization Act (SARA), a condition of Ownership shall be to provide the County with a list of any substances which require reporting to the Local Emergency Planning Committee (LEPC). The County may submit the list to the Missoula LEPC for a report on potential safety hazards, threats to health, air quality and ground water. Based upon the LEPC report, the County may approve the proposed land use and lot (with or without modifications); approve the proposal, but not the particular Lot; or reject the proposed land use.
- 5.6 Liability of Design Review Committee** The Design Review Committee and each of its members shall not be liable for damages to anyone submitting plans for approval or to any Owner by reason of mistake in judgment, negligence or non-feasance of the Committee, its members, agents or employees, arising out of or in connection with the approval of disapproval or failure to approve any plans. The Committee shall not be responsible for the compliance of any plans with applicable governmental rules and regulations.

ARTICLE VI

MAINTENANCE; DAMAGE; INSURANCE

- 6.1 Care and Appearance of Improvements** All Improvements shall be maintained in a structurally sound, neat, and attractive manner by and at the expense of the Owner. Maintenance responsibilities shall include:
- (a) Prompt removal of all litter, trash, refuse and wastes;
 - (b) Keep unimproved lots weed free;
 - (c) Prune trees and shrubbery;
 - (d) Keep exterior lighting, signs and mechanical facilities in working order;
 - (e) Keep lawn and landscaped areas alive, free of weeds and attractive with appropriate provision of water and fertilizer;
 - (f) Keep parking areas, driveways, roads and trails in good repair;

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- (g) Stripe and seal parking and driveway areas;
- (h) During construction, insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials, and keep trailers and any other temporary structures in a neat and orderly manner;
- (i) Keep all site irrigation and drainage systems in good repair and working order;
- (j) Maintain all exterior building surfaces in good order;
- (k) Control erosion to protect storm drainage systems.

6.2 Utilities, Equipment and Fixtures Fixtures and equipment serving only one Lot, such as, utility lines, pipes, wires, conduits and the like, shall be maintained and kept in good repair by the Owner. In the event equipment and fixtures installed within the Property serve more than one Lot, whether or not within a Lot, the expenses of maintaining and repairing these shall be shared equally by the Owners of the Lots served. In the event any equipment or fixtures are damaged as a result of the actions of any person or entity other than the Owners responsible for repairing them, the person causing the damage shall be liable for all expenses incurred by the Owners in repairing them. No Owner shall do or allow any act, or allow any condition to exist, that will impair the structural soundness or integrity of any Building or impair any easement, or do any act or allow any condition to exist which will or may adversely affect any Building or any Owner of a Lot or create a hazard to persons or property.

6.3 Damage; Reconstruction; Insurance In the event any Improvements within the property or Common Area are damaged or destroyed by casualty or otherwise, the Owner or the Association, as the case may be, shall promptly clear all debris resulting from the damage and rebuild or repair the damaged Improvements in accordance with the terms and provisions of the Declaration. When grassed or landscaped areas are damaged or destroyed, the Owner or Association, shall repair and/or replace the same in a manner consistent with the surrounding area. Any repair, rebuilding or reconstruction of Improvements on account of casualty or otherwise shall be approved by the DRC.

Liability insurance coverage shall be obtained in amounts as the Association may determine providing liability insurance coverage for the Common Areas. Each Owner shall at all times maintain for each Lot owned, adequate casualty insurance to provide for complete reconstruction of all Improvements. The owner shall provide proof of such insurance, if requested by the Association.

**ARTICLE VII
GENERAL USE RESTRICTIONS**

7.1 Prohibited Operations and Uses No Lot shall be used in violation of any applicable law or regulation of the State of Montana or County of Missoula. The following uses and operations are prohibited:

- (a) the storage, display or sale of explosives or fireworks;
- (b) any mobile home or trailer court, labor camp, junk yard, stock yard, distillation of bones, or animal raising, storage, slaughter or disposition of any kind;
- (c) any , excavation, refining and/or removal of earth materials, except as may be needed, and completed within one thirty (30) day period, for the exclusive purpose of improving and/or leveling a building site;

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- (d) drilling for oil, gas, hydrocarbon substance, water, geothermal steam and other subsurface substances of any nature;
- (e) any dumping, disposal, incineration or reduction of garbage or refuse of any nature; any auction, public sale or other auction house operation;
- (f) repair or manufacturing conducted outdoors;and,
- (g) noise which exceeds levels and standards specified in the City of Missoula Municipal Code. The noise levels and standards of Missoula's Municipal Code are hereby adopted by reference

7.2 Exterior and Interior Lighting All interior and exterior lighting must be arranged or shielded so as to avoid excess glare or reflection onto any portion of an adjacent street or into the path of oncoming vehicles or onto any adjacent lot. No flashing, traveling, animated or intermittent lighting shall be visible from the exterior of any Building. All exterior lighting must comply with the codes and regulations of Missoula County regulatory authorities and the Site Development Guidelines.

7.3 Irrigation On-site private wells will only be allowed with County and State approval, and no Lot Owner shall draw or pump water from any pond on the Property for irrigation or any other purpose without the express written consent of the County.

7.4 Nuisances Based on the discretion of and review by the Association, no activity shall be conducted upon the Property which may become a nuisance or unreasonable annoyance to the other Owners or occupants of the Property. No personal property of any nature shall be parked, stored or permitted to stand for any period of time on the Common Area except for personal property owned by the Association or with the consent of the Association.

7.5 Animals No animals shall be permitted to be kept, raised or maintained on any Lot for commercial or agricultural purposes.

7.6 Temporary Structures No trailer, shed, shack, garage, barn or other temporary building shall be moved to, erected on, or used on any Lot at any time for a residence, workshop, office or storage room, either permanently or temporarily, except for a trailer or structure maintained during the construction period. All temporary structures and construction materials must be removed immediately following construction completion. The Authority may keep temporary structures on the Property in connection with its sales, promotional, or administrative efforts of the Property or any other lands owned by the Authority.

7.7 Garbage/Trash Collection Trash, garbage, rubbish, debris, waste material, or other refuse shall be deposited in receptacles approved by the DRC which shall be promptly removed from each Lot. Open burning is not allowed on the Property.

7.8 Obstructions No permanent structure shall be placed on any Lot which prevents access to or use of any easement. No obstructions shall be allowed on any trail, sidewalk or driveway.

7.9 Ponds Ponds, swales or other water detention or retention areas constructed by the County within the Property shall serve as the Property's drainage facilities. Owners or occupants of Lots or members of the public shall not use ponds for fishing, irrigation, swimming, bathing, boating or other recreational purposes without prior approval of the Association.

7.10 Utility Connections All utility connections, including all electrical and telephone connections and installation of wires to Buildings, shall be placed underground from the nearest available power

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source. Above ground transformers shall be adequately screened and fenced, with approval of the DRC.

- 7.11 **Use of Name** The name "Missoula Development Park" may not be used in the name of any Building or project on the Property, or in the name of any Owner, other than the Authority, in its advertising or other dealings with the public, without the Authority's prior written consent.
- 7.12 **Rules and Regulations** Reasonable rules and regulations concerning the appearance and use of the Lots and Common Areas, and consistent with the terms of this Declaration, may be made and amended by the County and/or the Association in the manner provided in the Articles and Bylaws. Copies of rules and regulations shall be made available to all Owners, upon request. All Owners, their invitees, licensees and lessees shall use the Common Area only in accordance with the rules and regulations.

ARTICLE VIII

RESERVATION OF RIGHTS BY THE AUTHORITY AND THE COUNTY

- 8.1 **The County's Rights** Notwithstanding any other provision of these covenants, the County reserves the following rights which include the Authority's sales activities of the Property and shall also benefit the Authority in the development, construction, promotion and sale of any other property in which the Authority may have an interest:
 - (a) To use the Property and/or trailers or other temporary structures, for development, sales, construction, and general business offices.
 - (b) To bring, invite or arrange for trucks and other commercial vehicles to enter and remain upon the Property for construction purposes.
 - (c) To amend this Declaration without the joinder of any other person or entity, provided that no amendment shall be made which substantially alters the nature of the development contemplated.
 - (d) To amend this Declaration to add additional lands to the Property, by recording an amendment executed only by the County and the owners of the added lands, after which the lands added shall be a part of the Property subject to the terms of this Declaration.
 - (e) To withdraw at any time portions of the land described in Exhibit "A", provided that the withdrawal of lands shall not, without the consent of a majority of the voting interests in the Association, materially increase the prorata share of expenses of the Association, payable by the Owners of Lots remaining subject to this Declaration. The withdrawal of lands shall be made and evidenced by filing in the records of Missoula County Clerk and Recorder, an amendment to this Declaration describing the lands to be withdrawn, executed only by the County without the consent of joinder of the Association on any other Owner or Mortgagee of and within the Property.
 - (f) To extract, refine, stockpile and remove gravel and other earth materials from County property.
 - (g) To administer and enforce the provisions of these covenants upon determination of the Association's or Authority's failure to perform. This determination and subsequent actions to assume administrative and enforcement actions shall not be made until a written notice of intent has been provided to the Association or Authority, and opportunity provided for comment for and against such intent.

ARTICLE IX

MISCELLANEOUS

- 9.1 **Term and Amendment** This Declaration shall become effective upon its recordation in the records of Missoula County Clerk and Recorder. These restrictions shall run with the land,

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whether or not they are specifically mentioned in any deeds or conveyances of Lots within the Property, and shall be binding on all parties and all persons claiming under such deeds, for a period of twenty (20) years from the date this Declaration is recorded. After that time the term of this Declaration shall automatically extend for successive periods of ten (10) years each, unless an instrument in writing, signed by a majority of the voting interests in the Association, has been recorded in the records of Missoula County Clerk and Recorder, altering or rescinding this Declaration in whole or in part. This Declaration may be amended or modified only by an instrument signed by the Owners having at least seventy-five percent (75%) of the voting interests in the Association duly executed and acknowledged and recorded in the records of the Missoula County Clerk and Recorder. No amendment of this Declaration shall require an Owner to remove any structure constructed in compliance with this Declaration as it existed on: (i) the date on which the construction of the structure commenced; or (ii) the date on which the Owner took title to its Lot, if the construction of the structure commenced within ninety (90) days of its taking title. No amendment may require the County to relinquish any rights reserved to it under this Declaration.

9.2 Enforcement In the event of non-compliance with any of the restrictions in this Declaration, the Association may, at its option, after giving the Owner written notice and a reasonable amount of time to respond, may rectify the situation by entering the property and taking any and all necessary actions to bring the property into compliance, using funds of the Association, and with the approval of a majority of the Board of Directors. The Owner of non-complying Lots or structures shall reimburse the Association for any work performed. To secure reimbursement, the Association shall have a lien upon the Lot enforceable as provided in Section 4.8. It shall be the right of the County, the Association or any Owner of a Lot to prosecute any proceeding at law or in equity against anyone violating the restrictions, to prevent persons from so doing, to recover damages, or against the land to enforce any lien created. If found to be in violation of the restrictions, the prevailing party shall be entitled to all expenses of the litigation, including court costs and reasonable attorney's fees (including those on appeal). The County or the Authority shall not be obligated to enforce these restrictions and shall not be held liable or responsible for any violation of this Declaration by any person other than itself. Failure of the County or any other person or entity to enforce any provision of this Declaration upon breach, shall not be deemed a waiver of the right to do so. Issuance of a building permit or license which may be in conflict with these restrictions shall not prevent the County, the Association or any Owner from enforcing the restrictions.

Notice Any notice required to be sent to any Owner shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the Owner. Any notice required to be sent to the County or the Association shall be deemed to have been properly sent when personally delivered or mailed certified, return receipt requested, post paid, United States Mail to:

Missoula County Administrative Offices
 Missoula Development Authority
 200 West Broadway Street
 Missoula, Montana 59802-4292

or such other address as the County or the Association shall specify.

9.3 Severability Invalidation of any term or provision of this Declaration by judgment or court order shall not affect any of the other provisions hereof which shall remain in full force and effect.

9.4 Condemnation In the event proceedings are initiated by any government or agency, seeking to take by eminent domain the Common Area, or any part or interest, with value (including loss of value to the balance of the Common Area and Improvements in excess of Ten Thousand Dollars (\$10,000), the Association shall give prompt notice, including a description of the property to be condemned, to all First Mortgagees, all Owners, and to the County. The Association shall have full power and authority to defend in those proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority. The Association shall not enter into any proceedings, settlement, or agreements, to relinquish any property, without giving all First Mortgagees, all Owners and the Authority at least 15 days' written notice.

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In the event, there is a taking in condemnation or by eminent domain of the Common Area, the award made shall be applied by the Association to repair and restore the Common Area. If the award is insufficient to repair and restore the Common Area, the Association shall disburse the net proceeds of the award to the Owner of each Lot receiving, one (1) equal share. The Association shall first pay from the share of each Owner the amount of any unpaid liens or encumbrances, in their order of priority. Nothing shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee in the distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of Common Area.

If a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this document, the award must include compensation to the Owner for that Lot and its allocated interests. Upon acquisition, unless the decree otherwise provides, that Lot's allocated interests are automatically reallocated to the remaining Lots in proportion to their respective interests. Any remnant of a Lot remaining after part of a Lot is taken under this Section 9.6 shall be deeded to the Association as a Common Area.

Except as provided in the previous paragraph, if part of a Lot is acquired by eminent domain, the award must compensate the Owner for the reduction in value of the Lot and its interest in the Common Areas, whether or not any Common Areas are acquired. If part of the Common Area is acquired by eminent domain, that portion of any award attributable to the Common Area taken must be paid to the Association. Any portion of the award attributable to the acquisition of a limited common element, as that term is defined in the Act, must be equally divided amount the Owners of the Lots to which that limited common element was allocated at the time of acquisition. For the purposes of acquisition of a part of the Common Area other than the limited common elements, service of process on the Association shall constitute sufficient notice to all Owners, and service of process on each individual Owner shall not be necessary.

The court decree shall be recorded in every county in which any portion of the Property is located. The reallocations of allocated interests pursuant to this Section 9.6 shall be confirmed by an amendment to the document prepared, executed, and recorded by the Association, in accordance with Article VIII hereof.

- 9.5 Interpretation** Unless the context otherwise requires, the use of the singular shall include the plural and vice versa; the use of one gender or the neuter shall include all genders and the neuter; the use of the terms "include" and "including" shall be without limitation; and any reference to "attorney's fees" shall mean "reasonable attorney's fees and costs incurred before, during and after litigation, including appellate and appearances in bankruptcy proceedings." The headings used are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions.
- 9.6 Approvals** Wherever the consent or approval of the County, the Association or the Design Review Committee is required to be obtained, no action requiring consent or approval shall be commenced or undertaken until after a written request has been submitted to and approved in writing. In the event a party fails to act on a written request within ninety (90) days after it has been received, the consent or approval to the action sought be presumed. However, no action shall be taken which violates any of these covenants other than the covenant to obtain the approval requested.
- 9.7 Exhibits** All Exhibits referred and attached to are incorporated in the Declaration by this reference.
- 9.8 Assignments** The County shall have the sole and exclusive right at any time to transfer and assign to, and to withdraw from a person, firm, corporation or other entity, any or all rights powers,

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easements, privileges, authorities, and reservations given to or reserved by the County by any part or section of this Declaration, or an exclusive or non-exclusive basis. If at any time exercise the rights, powers, easements, privileges, authorities, provisions hereof, the same shall be vested in and be exercised by a committee to be elected or appointed by the Owners having a majority of the voting interests in the Association. Nothing shall be construed as conferring any rights, powers, easements, privileges, authorities or reservations in that committee, except in the event aforesaid.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed this 18th day of July, 2001.

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana

Barbara Evans
Barbara Evans, Chairman

Bill Carey
Bill Carey, Commissioner

Jean Curtiss
Jean Curtiss, Commissioner

APPROVED AS TO FORM AND CONTENT:
Michael J. Schmitt
Deputy County Attorney

ATTEST: VICKIE M. ZEIER, Missoula County Clerk
By Stacey Decker
DEPUTY
Clerk and Recorder

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