

Declaration of Conditions, Covenants and Restrictions Of Elk Park Estates II

WHEREAS, DECLARANT is the owner of certain property located in the NE1/4 of Section 17, Township 21 North, Range 29 West, PMM, in Sanders County, Montana, which is more particularly described as "Elk Park Estates II".

Now, therefore, the Declarant does hereby declare that the subdivision above described shall be sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and shall be binding on all parties having or acquiring any right, title or interest in the described properties, and shall inure to the benefit of each owner thereof. The word "lot" as used herein shall refer to each lot of the subdivision.

Elk Park is created as a residential nature preserve where people can coexist with the plants and animals of Saunders County. Elk, deer, wild turkey, grouse and other creatures have roamed the area for years. Large lots with space for homes for people and habitat for wildlife create a unique community. Residents shall not hinder or harass wildlife in any manner.

Subdivision: No lot shall be further subdivided.

Compliance with Health Regulations: No activity on any lot shall be conducted in violation of any Montana State Law, Montana State regulation or local ordinance or regulation with respect to water supply, sewage disposal, sanitation and air pollution.

Waste Material: No building site shall be used or maintained as a dumping or storage area for rubbish, trash, garbage, brush or other waste. All trash, junk, garbage and other waste shall be kept in sanitary and rodent-proof containers. No automobiles, automobile bodies, motor vehicles or parts thereof, may be left exposed to view from other lots in an inoperative condition, except during a period not to exceed two months while repairs are being made to such vehicle.

Setbacks: No residential building, nor any appurtenance or outbuilding, shall be less than ten (10) feet from any adjoining lot line, nor any closer than twenty-five (25) feet to the road. In addition to these setbacks, no residential building, nor any appurtenance or outbuilding shall be less than fifty (50) feet from the centerline of Yellowstone Pipeline on Lots 1, 16-22 and 24.

Construction Standards:

Foundation: Each residence must have a continuous perimeter foundation of concrete blocks, AWW, or poured concrete, and be a minimum of 1000 square feet of living area on the main floor.

Construction: Residences may be of frame or log construction or a modular home.

Roofing: All roofing material shall be earth toned and shall qualify as class A or B as specified in the Fire Protection Guidelines for Wildland Residential Interface Development, which is available through the Department of State Lands.

Building Sites: All lot owners shall develop a fire "Defensible Space" as outlined in the above guidelines for any building site.

Utilities: The availability, quantity and installation of individual services, such as electricity, telephone, water and septic system shall be at the individual lot owner's expense and responsibility, consistent with all appropriate laws, rules and regulations in place at the time of installation. All electricity, including service lines, shall be installed underground.

Road System: No gates, fences or obstructions will be allowed in on the road system of Elk Park Estates II, with the exception that a security gate may be located at both entrances. Lot owners must install a

minimum of a 12" culvert where each driveway enters the subdivision road system where drainage is necessary.

Animals: Horses are allowed if contained within the lot. No animal feeding yard will be permitted on any lot. No animals or horses may be allowed to become an annoyance or nuisance to the neighborhood. No dog may run at large or endanger wildlife. Offensive odors caused by inadequately cleaned animal facilities are strictly prohibited.

Timber and Vegetation: The overall characteristics of Elk Park shall be preserved. Vegetation removal is permitted to create a building site, create defensible space, open scenic views, and to gain access to the lots. Preservation of buffers between lots, new growth, native herbaceous plants, and lower story plants is encouraged. Clear-cutting of lots is strictly prohibited.

Discharge of Firearms: Except in emergency situations where it is necessary for the preservation of life of property, the discharge of firearms is prohibited.

Offensive Activity: No noxious or offensive activity shall be carried on or permitted upon any lot, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood; nor shall the premises be used in any way for any purpose which shall endanger the health, safety or welfare or unreasonably disturb the residents on any lot.

Garbage Disposal: Garbage shall be stored in insect and rodent proof containers and shall be hauled at least once a week to the Thompson Falls Refuse Site or another Sanders County designated disposal site. Grounds and outbuildings shall be kept in a neat and orderly manner.

Addressing: Rural addressing shall be prominently displayed.

Fences: Free movement of wildlife through Elk Park is encouraged. Fences that would impede movement shall be limited to areas immediately around building sites and are discouraged. Fences shall be well constructed, applicable to the animals being held and owner of animals is responsible for the fence.

Private Road Maintenance: To keep and maintain the private road system, a yearly maintenance and weed management fee of One Hundred and Twenty Dollars (\$120.00) will be levied against each lot.

There shall be no major modifications or repairs to the existing road system exceeding \$1,000 over the revenue generated by the established maintenance fee unless approved by the majority of Elk Park Estates II lot owners. If the costs of maintenance, snow removal and improvements to the private road system exceed the amount of revenue generated by the \$120.00 minimum charge, then the excess expense shall be prorated among the lots. Road maintenance will be performed to keep the road passable by automobile throughout the twelve months of the year.

The owner of each separately described lot or tract shall pay an equal share of road maintenance or improvement, and shall be entitled to one vote. Any damage caused to the road by a single lot or tract owner shall be repaired by that lot or tract owner causing the damage.

Delinquent maintenance and improvement fees shall constitute a lien against the real property. The lien shall be perfected by filing a Statement of Lien with the Sanders County Clerk and Recorder. The filing shall recite the name of the account, amount of the delinquency, the dates incurred and the real property affected. Any costs or attorney fees incurred in foreclosing the lien or collecting the delinquent maintenance and improvement fees shall be an additional charge against the user and the real property and collectable in the same manner as the delinquent maintenance and improvement charges.

The road maintenance and improvements shall be the responsibility of the Declarant until such time as 70% of the lots are sold. At which time, the fees and assessments provided for herein are to be under the control of a road maintenance administrator to be elected by the majority of the lot owners. Declarant is to be responsible for all fees and assessments on those lots still owned by the Declarant.

Weed Management Plan: Until such time as the road maintenance administrator is elected, the Declarant agrees to institute a weed management plan to include the spraying of noxious weeds within the road easement with a Sanders County approved herbicide when necessary. At such time as road maintenance administrator is elected, a new weed management plan may be instituted with the approval of majority of lot owners. All cost of weed management shall be paid out of the road maintenance and weed management fees collected.

Amendment: This declaration may be amended by an instrument signed by the owners of eighty (80) percent of the lots affected thereby. The commissioners of Sanders County are a party to the amendment of these covenants, but bear no right or duty of enforcement.

Severability: Invalidity of any one of these covenants or restrictions by Court order, judgment or decree shall in no way affect the remaining provisions which shall remain in full force and affect.

Enforcement: The Declarant or any lot owner shall have the right to enforce by any proceeding at law or in equity all restrictions, covenants, conditions, reservations and charges now or hereafter imposed by the provisions of this Declaration. The methods of enforcement may include proceeding to enjoin the violation, to recover damages or both. Failure by the Declarant or by any lot owner to enforce any provision shall in no event be deemed a waiver of the right to do so hereafter. The Declarant shall have no duty to take any affirmative action to enforce any restrictive covenant nor shall it be subject to any liability for its failure to so act. If any person entitled to do so shall bring formal legal action to enforce any provisions of this declaration, the prevailing party to this action shall be entitled to recover from the other party reasonable attorney fees in addition to cost of the suit.

Dated this 12 day of March, 1999.

C. Edwin VonHeeder
C. Edwin VonHeeder, Declarant

Wayne Forgey POA C. Edwin VonHeeder
Wayne Forgey, Declarant by

C. Edwin VonHeeder
C. Edwin VonHeeder, Attorney in Fact

STATE OF MONTANA)

ss.

County of Sanders)

On this 30th day of August, 1999, before me, a Notary Public for the above named state, personally appeared C. Edwin VonHeeder, Declarant, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the date and year first above written.

Lois A. Olson
Notary Public - State of Montana

Residing at Tout Creek
My Commission Expires 1/27/99