

STATE OF MONTANA RAVALLI COUNTY 477897 Page 1 of  
 RECORDED: 04/20/2001 4:20 COVENANTS  
 Clerk AND RECORDER BY: Tena L. Miller FEE: \$18.00

**DECLARATION OF PROTECTIVE COVENANTS**  
**1<sup>st</sup> Addition to Auch Subdivision, Hamilton Heights, Blk 17, Lots 3 and 4, AP**

This declaration is made this 20<sup>th</sup> day of April, 2001, by Stacy Auch,  
Orin S. Patzer & Marla Powell, hereinafter referred to as "declarant".

**RECITALS**

Whereas, the Declarant<sup>is</sup> the owner of the subject property as described below.

Now, therefore, Declarant declares that the property described herein shall be held, sold, conveyed, encumbered, used, occupied, and improved subject to the following easements, restrictions, covenants, liens, and conditions, all of which are in furtherance of a uniform plan of development, improvement and sale of said real property and are established to protect the natural environment and promote public health and safety and for the purpose of enhancing the value, desirability, and attractiveness of the real property and every part thereof.

**ARTICLE 1.**  
**GENERAL PROVISIONS**

**Property Subject to Agreement.** The following real property in Ravalli County, Montana, and subsequent divisions thereof, are subject to this declaration:

**1<sup>st</sup> Addition to Auch Subdivision, Hamilton Heights, Blk 17, Lots 3 and 4, AP**

**Applicability.** This declaration shall run with the land and shall be binding upon and enforceable by all parties having or acquiring any right, title, or interest in any real property subject to this declaration.

**Term.** The provisions contained herein shall run in perpetuity.

**Amendments.** The provisions contained herein are revocable or alterable only with majority approval of lot owners and the consent of the Board of County Commissioners of Ravalli County.

**Severability.** If a court of competent jurisdiction holds that a part(s) of this agreement is invalid for any reason, the validity of the remaining portions shall continue in full force and effect and the rights of the parties shall be construed as if the part(s) was never part of this agreement.

**Venue.** If legal action is necessary by any owner concerning this agreement, exclusive venue will lie with the District Court of the Twenty-First Judicial District of the State of Montana, located in Hamilton, Montana.

**Litigation Fees.** Should any party initiate litigation, arbitration, or mediation concerning this agreement, the prevailing party(ies) shall receive from the opposing party(ies) financial compensation for all related costs, including reasonable attorney's fees and expert witness fees.

**Waiver or Abandonment.** The waiver of, or failure to enforce any breach or violation of any provision of this declaration, shall not be deemed to be a waiver or abandonment of such provision, or waiver of the right to enforce any subsequent breach or violation of such provision.

**Enforcement.** The Declarant, any owner, or Ravalli County may enforce by any proceeding at law or in equity these provisions against any person or persons violating or attempting to violate any provision either to restrain violation or to recover damages.

Return:  
 Bitterroot Development Corp  
 PO Box 2015  
 Hamilton MT 59840

**Definitions.** For the purpose of this declaration, certain terms and phrases are defined below and shall have the meaning ascribed to them.

"Owner" means the record owner (including without limitation the declarant), whether one or more persons or entities, of the fee simple title to any tract of land subject to this agreement, except that where such a tract of land has been sold on an installment sale basis pursuant to a security instrument, the buyer (provided he is not in default under said security instrument) shall be deemed the owner. The term 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.

"Structure" means any permanent or temporary object that is constructed, installed, or placed by man, which requires a location on a parcel of land. It includes buildings of all types, bridges, instream structures, storage tanks, walls, fences, swimming pools, towers, antennas, poles, pipelines, transmission lines, smokestacks, signs, and similar objects.

**Indemnification** The undersigned, their heirs, successors and assigns, and all future owners of property within the subdivision, agree to hold Ravalli County and the declarant harmless and indemnify Ravalli County and its employees, officials, and agents and the declarant from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County's costs and attorney's fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following:

## ARTICLE 2. DEVELOPMENT STANDARDS

**Control of Noxious Weeds.** Lot owners shall control the growth of noxious weeds on their respective lot(s).

**Notification of Irrigation Ditch/Pipeline Easement.** Within this subdivision there is an irrigation ditch or ditches. All downstream water right holders have the right to maintain and repair their ditches and diversion structures whenever necessary to keep them in good condition. The width of the maintenance easement is based on historical practices. Fences may cross an irrigation ditch, provided a gate allows historical access along the ditch. In addition, each downstream water right holder needs to approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch. Any act which damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited.

**Notification of No-Build/Alteration Zone.** Within this subdivision there is a no build/alteration zone as shown hereon to protect natural resources or other features. No structure, with the exception of fences, may be constructed in this area.

**Notification of Road Maintenance.** Ravalli County, the State of Montana, or any other governmental entity does not maintain the roads within this subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement was filed with this subdivision and outlines who is responsible for road maintenance and under what conditions.  
water or wastewater treatment system.

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*This space reserved for the Clerk & Recorder*

**Limitation of Access Onto County or State Road.** A "no access" restriction exists along Lots 3-1, 4-1 and Lot 12, which precludes permanent vehicular access onto Honeyhouse Lane, a county road.

**Stream Channels.** All stream channels shall be maintained in their natural state, except for projects done in accordance with a 310 permit as approved by the Bitterroot Conservation District.

Stacey Auch 4/11/01

Print Name

[Signature] 4/11/01  
Signature Date

Darin S. Patzer

Marlin Powell  
Print Name

[Signature] 4/11/01  
Signature Date

STATE OF montana )  
County of Ravalli )

This instrument was acknowledged before me on April 11 2001 TP.  
Stacey Auch, Darin S. Patzer, Marlin Powell by



Teresa Polunsky  
Notary Public for the State of Montana  
My Commission Expires 1/25/03  
Residing at Corvallis