

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS RELATING TO  
THE ARBORS, INC.**

THIS DECLARATION is made this \_\_\_ day of October 2004, by The Arbors, Inc., a Montana corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Ravalli County, Montana, known as The Arbors and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof as if set forth in full herein; and

WHEREAS, Declarant wishes to place restrictions, covenants, and conditions upon said real property for the use and benefit of the property, the Declarant and the future owners of the property;

NOW, THEREFORE, Declarant hereby declares that all the property described above shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property as a desirable residential development. These easements, covenants, conditions, and restrictions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described property, or any part thereof, and shall inure to the benefit of each successor in interest to the owner thereto.

**ARTICLE I: DEFINITIONS**

Section 1. Association. "Association" shall be the The Arbors Homeowners Association as created and operated by this declaration.

Section 2. Properties. "Properties" shall be that certain real property described in Exhibit "A" and such other real property as hereafter may be brought within the jurisdiction of the Association.

Section 3. Common Properties. "Common Properties" shall include the maintenance of the roadway system and such other common aspects of the property as may be brought within the jurisdiction of the Association.

Section 4. Lot. "Lot" shall be any plot of land shown upon any recorded plat map of the Properties subject to this Declaration, with the exception of dedicated streets and roads.

Section 5. Member. "Member" shall be every person or entity who is a Member of the Association as described in Article II.

Section 6. Owner. "Owner" shall be the record owner, whether one or more persons or entities, of any Lot which is a part of the Properties, including buyers under a contract for deed, but excluding those having any such interest merely as security for the performance of an obligation.

Section 7. Declarant. "Declarant" shall be The Arbors, Inc., it's successors and assigns.

## **ARTICLE II: MEMBERSHIP & VOTING RIGHTS**

Section 1. Membership. Every person or entity who is a record Owner of any Lot, including buyers under a contract for deed, shall be a Member of the Association. The foregoing is not intended to include persons or entitles who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment by the Association. Ownership of any such Lot shall be the sole qualification for membership. The Association, if it acquires an interest in a lot which would otherwise qualify it for membership, shall not be considered a Member either for voting or assessment purposes.

Section 2. Voting Rights. Except as provided herein, the Members of the Association shall be entitled to one vote for each Lot in which they hold interest which qualifies for membership. The Declarant shall be entitled to four (4) votes for each Lot in which he holds an interest which qualifies for membership, so long as he owns two (2) or more Lots. When more than one (1) person or entity owns an interest in any such Lot, their vote shall be exercised as such persons or entities determine, but in no event may more than one (1) vote per Lot be cast, except as previously stated.

Section 3. Meetings. The association shall have meetings from time to time as called by a majority of the Lot owners by written notice mailed or delivered to each Lot owner at least fifteen days prior to the date of the meeting. Decisions of the Association shall be made by the membership by a simple majority of the Lot owners present at any meeting. Absentee Lot owners may assign their right to vote by written proxy.

## **ARTICLE III: SERVICES**

Section 1. Road System. Declarant will install a road system to serve the Properties subject to this Declaration. Streets will be maintained by the City of Hamilton.

Section 2. Common Properties. Every Member shall have a right and an easement of enjoyment in and to the Common Properties (road system), and such easement shall be appurtenant to, and shall pass with the title to, every Lot, subject to the following provisions:

- (a) The right of the Homeowners' Association to provide reasonable restrictions on the use of the Common Properties for the overall benefit of its Members.

- (b) The right of the Homeowners' Association to assess fees for the repair, maintenance and improvement of the Common Properties, and to borrow money for such purposes.
- (c) The right of the Homeowners' Association to suspend the voting rights of any Member for any period during which any fee assessed against such Member's Lot remains unpaid.
- (d) The right of the Homeowners' Association to dedicate or transfer all, or any part, of the Common Properties to any governmental unit, public agency, authority or utility for such purposes, and subject to such conditions, as may be agreed to by the Members. No such dedication nor transfer shall be effective unless approved by a vote of two thirds (2/3) of the Members.
- (e) The right of the Homeowners' Association, with the approval of two thirds (2/3) of its Members, to grant easements under any Common Properties to any public agency, authority or utility.

Section 3. Additional Services. The Association may provide additional services as it sees fit. The Association may provide such services for all or a portion of the Properties within its jurisdiction or with which it may contract, and it may levy assessments on such portion of its Members or others as derive benefits from the services provided.

Section 4. Fees. The Association shall establish a fee schedule for providing said services, which fees shall be considered as assessments, to be calculated, billed, and collected together with other assessments as provided in Article IV. Such schedule may include the assessment of:

- (a) charges for availability of a service even though it is not used by the Lot owner;
- (b) charges for an initial hookup;
- (c) charges for use based on a flat rate or meter measurement;
- (d) additional charges for excess use; and/or
- (e) such other charges as may be required to maintain and operate systems or service.

Section 5. Rules and Regulations. The Association shall be authorized to establish such rules and regulations as it deems appropriate for the reasonable provision of the services provided. They may include regulations for usage, restrictions on usage, and such other rules and regulations as are deemed reasonable for assuring proper provision of services or operation of the systems providing the same. Provisions may be made for suspending services for non-payment of assessments or abuse of established rules and regulations. Adjustment procedures may be provided.

#### **ARTICLE IV: ASSESSMENTS**

Section 1. Creation of Lien and Obligation. Each Lot Owner hereby covenants and agrees to pay to the Association all assessments to be fixed, established and collected from time to time as hereinafter provided. Such assessments, together with interest and

costs of collection as herein provided, shall be a charge on the land and shall constitute a lien upon the Lot against which such assessment is made. Undeveloped Lots owned by the Declarant or its successors shall be subject to assessment at a rate as hereinafter defined. Such lien shall be deemed perfected upon filing with the County Clerk and Recorder of Ravalli County as an account of the assessments due together with a correct description of the property to be charged with such lien, and it shall continue until all unpaid assessments, interest and costs of collection shall have been fully paid. The priority of such lien shall be determined as of the time of filing with the Clerk and Recorder. It shall be deemed subordinate to all previously recorded or filed interest, and shall run with the land. Each such assessment, together, with interest and costs of collection as herein provided, shall also be the personal obligation of the Owner of such Lot as of the time which such assessment became due. Delinquent personal obligations shall not pass to successors in title unless expressly assumed by them. This shall in no way limit the effect or validity of any lien against real property created and filed as provided herein. The Association may establish rules and regulations concerning the collection of obligations and the perfection of liens.

Section 2. Rate of Assessments. All assessments shall be fixed at a uniform rate per Lot. Undeveloped Lots owned by the Declarant shall be subject to assessment at one-fourth (25%) the amount of assessment fixed for other Lots.

Section 3. Assessments. The general assessments levied by the Association shall be used for such purposes as are deemed desirable by the Association including, but not limited to: expenditures for construction, reconstruction, repair or replacement of any capital improvement; maintenance, upkeep, real property taxes, hazard and liability insurance, and related expenses in regard to any common properties; and, administrative costs of the Association incurred in enforcing the conditions, restrictions or charges set forth in this Declaration.

Section 4. Commencement of Assessments. The Association is authorized to commence initial assessments as herein authorized at such time as it determines appropriate. Each Lot Owner shall be required to prepay a prorated portion of the annual assessments at the closing of the sale and purchase of every Lot. Written notice of assessments shall be sent to every Owner. The due dates shall be established by the Association. If the assessments are not paid by such due date, then interest shall begin to accrue on them at a rate to be determined by the Association.

Section 5. Certificate of Payment. The Secretary of the Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Association for the issuance of such certificate. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. In addition, the Secretary of the Association shall maintain a roster of the individual Lots and the assessments due thereon.

Section 6. Nonpayment of Assessment. Any assessment which is not paid when due shall be delinquent. The Association may bring an action at law to collect the amount

of the delinquent assessment together with all interest, costs, and reasonable attorney fees incurred in such action, or it may take action to perfect and foreclose a lien for such assessments.

Section 7. Property Subject to Assessment. All Lots shall be subject to assessments by the Association as herein provided, except those Lots acquired by the Association and the Common Areas.

## **ARTICLE V: PROTECTIVE COVENANTS**

The following Protective Covenants are designed to provide a uniform plan for the development of the Properties. They shall constitute a covenant running with the land for each Lot within the Properties.

Section 1. Land Use and Dwellings. With the exception of the Common Area, none of the lots in the subdivision may be used or improved for other than private residential purposes, and no business, trade, nor manufacturing shall be conducted thereon except for homeowner occupations that are conducted entirely inside the residential structure, don't require customers, clients, or suppliers to travel to and from the property, and are not an annoyance or nuisance to the neighborhood. No more than one single family dwelling, garage housing up to three motor vehicles, and the usual and necessary outbuildings, shall be erected, placed or maintained on any lot except for those lots designated for multi-family housing by the declarant. All single family dwellings shall be of new frame construction and on a poured foundation. Building materials shall be compatible with other housing in the area. Use of metal siding or roofing is prohibited on any structure.

Section 2. Building Site. No Lot shall have more than one (1) dwelling house located upon it except those lots designated for multi-housing by the declarant. All structures must be completed within one year of commencement of construction and initial landscaping, at least to the extent of establishing a lawn on areas not otherwise occupied by structures, driveways or decorative plantings, must be completed within eighteen months of commencement of construction.

Section 3. Setback Lines. No building shall be located on any Lot in violation of the setback restriction delineated on the plat. For the purposes of this section, the building location shall be considered to be the building foundation line.

Section 4. Temporary Structures. No trailers, modular homes nor structures of a temporary character including, but not limited to, a recreational vehicle, basement, tent, shack, garage, barn, or other outbuilding, shall be used at any time as a residence, either temporarily or permanently, nor shall any building be occupied for residential purposes until it is completely finished.

Section 5. Vehicle Parking and Driveways. Improvements on each residential lot shall provide for off-street parking and no motor vehicles shall be placed or parked

so as to impede or obstruct pedestrians or vehicular traffic along any road easement within the Property.

Section 6. Fences. No fence shall be constructed of materials other than cedar with wood or metal posts and fences shall not exceed more than six (6) feet in height. Fences shall be natural or stained with light body stain. Fencing shall be limited to that portion of each lot from the rear of the dwelling to the rear of the property, and no fence shall be permitted on that portion of each lot between the rear of the dwelling and the street.

Section 7. Weed Control. All Lot owners shall take preventive and reasonable measures to exercise weed control over their property.

Section 8. Exterior Maintenance. Each Owner of a Lot shall provide exterior maintenance upon such Lot and structures, if any, to include the painting and repairing of structures; maintenance of the lawn and grounds to preclude weeds, underbrush, and other unsightly growths; and the prevention of refuse piles or other unsightly objects from accumulating or remaining on the grounds. In providing such exterior maintenance, the Owner shall utilize color and landscaping schemes that are harmonious with the surrounding area. All exterior colors shall be approved by the Architectural Review Committee. The Declarant shall be the Architectural Review Committee until build out of development at which time the Homeowner's Association shall assume review responsibilities. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Associations shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association may then enter such Lot and provide required maintenance at the expense of the Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefore and shall become a special assessment upon that Lot. The Association may exercise all such rights to collect that assessment as it may other assessments pursuant to Article V. Such entry on the Lot by the Association shall not be deemed a trespass.

Section 9. Outside Lighting. Outside illumination equipment or fixtures shall not be constructed unless attached to the main residential structure or garage, or unless attached to a pole not to exceed 8 feet in height, which pole will conform with the general architectural plan of the residence. Mercury vapor night lights are not permitted. Any electrical connection between the residence or garage will be underground. All outside wiring shall be subterranean. Television, radio and other antennas located upon said premises are to be located so as to be inconspicuous.

Section 10. Burning of Trash. Outside burning of trash and other materials is prohibited.

Section 11. Animals and Pets. Two dogs and/or two cats per lot or other common household pets may be kept provided they are not bred or maintained for commercial purposes. All household pets shall be kept within the Lot of their owner and shall not be allowed outside their lot unless under the immediate control and supervision of their owner or member of his immediate family.

Section 12. Vehicles. No equipment, machinery, motor homes/trailers (except for visitors and guests for a period not to exceed two weeks), trucks exceeding one ton capacity, pickups carrying campers, boats, boat trailers, or unsightly vehicles shall be parked or allowed to remain in front of or along-side any building or in a driveway, on any Lot, or on the adjoining streets. However, storage of such vehicles shall be allowed if they are stored in a garage, or stored behind the rear building line of a dwelling in a fenced area screened from the view of adjoining Lots. The screen fence shall be of minimum of five feet in height but shall not exceed the maximum six feet height limitation set forth in Section 5 of this Article. This provision is not intended to preclude the entry for construction, maintenance, delivery, moving, or other such service vehicles while they are being utilized in connection with services for the property.

Section 13. Signs. No advertising signs, billboards, nor other unsightly objects shall be erected, placed or permitted to remain on any Lot. However, exceptions shall be allowed for one small sign identifying the contractor of a building under construction, or for one small "For Sale" sign per Lot. Until the Declarant sells all of the Lots in the development, it shall be permitted to place signs throughout the Properties to promote the sale of Lots.

Section 14. Nuisances. No noxious nor offensive activity shall be carried on or permitted upon any of the Properties, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood; nor shall the premises be used in any way or for any purpose which may endanger the health and safety of, or unreasonably disturb the peace and quiet of, the resident of any Lot. Prohibited activities, for example, include but shall not be limited to, a wrecking or junk yard for automobiles, or equipment/machinery, a rendering plant, and a dumping ground for refuse or garbage. Neither an outdoor barbecue nor a wood stove shall be considered a nuisance.

Section 15. Damaged Property. Any dwelling damaged by fire or other casualty must be removed from the premises or repairs commenced within one hundred twenty (120) days of such damage unless an extension of time for such removal or repair is granted by the Homeowners' Association. The Homeowners' Association may pursue any and all legal and equitable remedies to enforce compliance and to recover any expenses incurred in connection therewith. Any cost incurred by the Association under this section shall become a special assessment upon the Lot of the owner. The Association may exercise all such rights to collect that assessment as it may any other assessment pursuant to Article V.

Section 16. Woodpiles. Woodpiles shall be neatly stacked or located so as not to be visible from the street.

Section 17. Damage or Destruction of Common Area by Owner. In the event the Common Area is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Homeowners' Association to repair said damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently. The amount necessary for such repairs shall become a special

assessment upon the Lot of the Owner. The Association may exercise all such rights to collect that assessment as it may other assessments pursuant to Article V.

Section 18. Sanitary Restrictions. The Owners of each Lot shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal and air pollution.

Section 19. Discharge of Firearms Prohibited. The discharge of firearms is prohibited except where reasonably necessary to protect property or persons.

## **ARTICLE VI: GENERAL PROVISIONS**

Section 1. Duration. The covenants, conditions, charges and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforceable by, the Association, the Declarant or other Owner of any Lot subject to this Declaration, it or their respective legal representatives, heirs, successors, or assigns in perpetuity.

Section 2. Enforcement. Any Owner, the Declarant or the Association shall have the option and right to enforce, by any proceeding at law or inequity, all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include legal action seeking an injunction to prohibit any violation, one to recover damages, or both. Failure by any Owner, or by the Declarant, to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. Should any law suit or other legal proceeding be instituted against an Owner who is alleged to have violated one or more of the provisions of this Declaration, the prevailing party in such proceeding shall be entitled to reimbursement, for the costs of such proceeding, including reasonable attorney's fees.

Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision(s), which shall remain in full force and effect.

Section 4. Amendment. The Declarant reserves the sole right to amend, modify, make additions to, or make deletions from this Declaration he alone deems appropriate. This right of the Declarant to make such amendments shall continue for so long as Declarant is a member in the Association. After that time, the right to amend shall pass to the Association to be exercised only upon concurrence of seventy-five (75%) of the members of the Association. Amendments must be recorded in the office of the Clerk and Recorder, Ravalli County, Montana.

In addition to the foregoing, these covenants shall not be repealed or amended without prior written consent of the City of Hamilton.

Section 5. Liability of Declarant. The Declarant shall have no liability for any of his actions or failures to act, or for any action or failure to act of any Owner of any Lot in The Arbors.

IN WITNESS WHEREOF, the Declarant has executed the foregoing Declaration on the day and year first above written.

\_\_\_\_\_  
The Arbors, Inc., by  
Chip Pigman, President

State of Montana     )  
                                  :SS.  
County of Ravalli    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, a Notary Public for the State of Montana personally appeared Chip Pigman known to me to be the President of the corporation and acknowledged to me that he did execute the same.

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

\_\_\_\_\_  
Notary Public for State of \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My Commission expires: \_\_\_\_\_

EXHIBIT A:

IN SENW IN SWNE Index 128 CS #489435-ED Tract A1 36.04 acres.