

AMERICAN LAND TITLE CO.
P. O. BOX 396
BOZEMAN, MT 59771-0396

DECLARATION and BY-LAWS
FOR
HERITAGE - CONDOMINIUMS

21668

INDEXED
PLATED

State of Montana | ss.
County of Gallatin |
Filed November 17, 1975
at 2:15 P. M., and
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MISCELLANEOUS Page 2454

CARL L. STUCKY

County Clerk & Recorder

By-

Larry A. Bridges
Deputy

Fee \$ 71.00 pd.

Rt: J. S. French, Jr.
1328 W. Babcock
Bozeman, Mont.

UNIT AND FLOOR PLANS IN FILE

The undersigned being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Gallatin herewith executes the following certificate relating to the Heritage Condominiums situated on the following:

Tract 22 in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, Township 2 So., Range 5 East, 4 Acres

Minor Sub. Div. No. 4, Tract 3 in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, Township 2 So., Range 5 East, 1.452 Acres

Minor Sub. No. 10, in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, Township 2 So., Range 5 East, .620 Acres, Tract 2

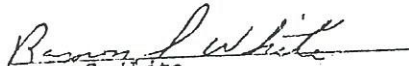
Minor Sub. No. 11, in NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 12, Township 2 So., Range 5 East, .529 Acres, Tract 2

and to the City of Bozeman, Gallatin County, Montana, to-wit:

1. The name "The Heritage Condominium" is not the same as, similar to or pronounced the same as, a word in the name of any other property or subdivision within Gallatin County except for the word "Condominium", and

2. All Taxes and assessments due and payable for the said Heritage Condominiums have been paid to date.

Date this 12th day of November, 1975


Ramon S. White

VALLEY OF FLOWERS P.U.D. - SCHEDULE OF IMPROVEMENTS

The following proposed schedule of improvements shall be adhered to in issuing of all building permits for the Valley of Flowers Planned Unit Development.

Improvements will be installed and completed according to staged development of this project. Stages will consist of the following lots:

- Stage 1 - Lots 1, 2, 3, 4
- Stage 2 - Lots 5, 6, 7, 8
- Stage 3 - Lots 9, 10, 11
- Stage 4 - Lots 12, 13, 14, 15

The following improvements will be installed for each stage as outlined below:

Stage 1

A. Streets - The dedication of South 15th Avenue will be executed through filing of the final subdivision plat. The Special Improvement District (SID) for the improvement (construction and paving) of South 15th will be applied for to the City Commission before any building permits are issued.

Adequate provisions for access to lots 1, 2, 3, and 4 must be provided for review and approval by the planning staff and City Engineer before any building permits are issued if the SID construction isn't completed before building construction is contemplated.

B. Parking Areas - The frontage drive and parking areas must be paved and such construction (as specified and approved by the City Engineer) completed within 12 months of final construction of buildings on lot #1. Building construction shall begin with lot #1. Frontage drive and parking area improvements shall begin at the same time that the building permits are issued for lots #1 through #4.

C. Landscaping, Screening, Fencing, and Signs - A five-foot decorative fence shall be constructed along the west property line. The developer shall submit design standards and plans for this fence to the Building Inspector and planning staff for review and approval. This fence will run the length of the proposed separation between South 15th Avenue and the Frontage drive. Construction of this fence shall begin at the same time building permits for lots #1 through #4 are issued. One-half of this fence shall be completed before any further building permits are issued for stages 2, 3, and 4. Landscaping around common areas on lots #1 through #4 must be started at the same time building permits are issued for lots #1 through #4. A minimum five-foot high hedge shall be planted along the northern boundary of this project. Plans and design standards for this hedge shall be submitted to the Building Inspector and planning staff for review and approval before building permits for lots #1 through #4 are issued. Planting of this entire hedge shall begin when building permits are issued for lots #1 through #4.

Stage 2

A. Streets - Building permits for lots #5 through #8 shall not be issued until the paving area construction is completed for lots #1 through #4.

B. Parking Areas - The frontage drive and parking areas for lots #5 through #8 must be paved and such construction (as specified and approved by the City Engineer) completed within 12 months of final construction of buildings on lot #8. Frontage drive and parking area improvement shall begin at the same time that building permits are issued for lots #5 through #8.

C. Landscaping, Screening, Fencing, and Signs - Building permits shall not be issued for lots #5 through #8 until all landscaping and fencing requirements for lots #1 through #4 are completed. Construction of the second half of the five foot high fence on the western boundary shall begin at the same time building permits for lots #5 through #8 are issued. The entire fence shall be completed within 12 months of final building construction on lot #8. Landscaping around common areas on lot #5 through #8 shall begin at the same time building permits are issued for lots #5 through #8. A five-foot high decorative fence is required along the southern boundary of the project from the western boundary of the project to the eastern boundary of South 14th Avenue. Plans for this fence shall be submitted to the Building Inspector and planning staff for review and approval before building permits are issued for lots #5 through #8. Construction of one-half of this fence shall begin when building permits are issued for lots #5 through #8. One-half of this fence shall be completed before building permits are issued for lots #9, #10, and #11.

D. Park Areas - After completion of building construction on lots #1 through #4, approximately one-half of Tract A (designated park area) shall be landscaped and playground equipment installed before any further building permits are issued. This requirement shall be fulfilled within 12 months of final building construction on lot #4. Landscaping plans and specifications and playground equipment shall be submitted to the Building Inspector and planning staff for review and approval before this work proceeds.

Stage 3

A. Streets - The completion of the SID (paving and construction) for South 15th Avenue shall be completed before building permits are issued for lots #9, #10, and #11. Building permits shall not be issued for lots #9, #10, and #11 until the paving area construction (parking areas and frontage drive) is completed for lots #5 through #8. Construction and improvement of Pioneer Drive shall be started at approximately the same time that building permits are issued for lots #9, #10, and #11.

B. Parking Areas - No other building permits shall be issued until Pioneer Drive has been fully completed (paved) including all parking areas.

C. Landscaping, Screening, Fencing, and Signs - The remainder of the fence along the southern boundary of the project shall begin when building permits are issued for lots #9, #10, and #11. This fence shall be completed within 12 months of final building construction on lot #10. Building permits for lots #12, #13, #14, and #15 shall not be issued until this fence is entirely completed. Landscaping around all common areas of lots #9 and #10 shall be completed before building permits are issued

for lots #12, #13, #14, and #15 and within 12 months of final building construction on lot #10.

D. Park Areas - The remainder of Tract A shall be landscaped and playground equipment installed within 12 months of final building construction on lot #10. Work shall begin when building permits are issued for lot #9.

Page 4

A. Streets - All street construction for this project shall be entirely completed before building permits are issued for lots #12, #13, #14, and #15.

B. Parking Areas - All parking areas for this project shall be entirely completed before building permits are issued for lots #12, #13, #14, and #15.

C. Landscaping, Screening, Fencing, and Signs - All required landscaping, fencing, and buffering requirements shall be completed before building permits are issued for lots #12, #13, #14, and #15. All common areas shall be appropriately landscaped for lots #12, #13, #14, and #15 within 12 months of final building construction on lot #13 for lots #12 and #13 and lot #15 for lots #14 and #15. A required ten foot latticed, chain-link fence shall be completed along the north and east sides of the proposed tennis court area before building permits are issued for lots #12, #13, #14, and #15.

D. Park Areas - All park areas shall be landscaped and playground equipment installed before building permits are issued for lot #12, #13, #14, and #15. The tennis courts and recreational building are proposed for a later date and are not subject to staged construction requirements.



John S. French, Jr.
JOHN S. FRENCH, JR.

Subscribed and sworn to before me this 17th day of November, 1975.

Olin M. Rice
Notary Public for the State of Montana
Residing in Bozeman, Montana
My Commission expires Aug. 6, 1976.

DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

HERITAGE - CONDOMINIUMS

The undersigned, who is the sole owner held in fee simple of the land and buildings hereafter described, hereinafter called "Grantor", in order to subdivide said property into separate units, pursuant to Chapter 23 of Title 71, Revised Codes of Montana 1947, as amended, hereby establishes and declares, on behalf of himself, his heirs and assigns, to their Grantees and their respective heirs, successors and assigns, that the property from and after the date of the recording of this declaration in the office of the Clerk and Recorder of Gallatin County, Montana, shall be and continue subject to each and all of the terms herein until this declaration is terminated or abandoned as hereinafter provided.

1. The land subject to this declaration is all of the following described property:

Fifteen (15) lots in a planned unit development located in the Southwest quarter (SW1/4) of Section 12, Township 2 South, Range 5 East, M.P.M. in the City of Bozeman.

2. The property subject to this declaration shall be known as Heritage - Condominiums. The buildings constructed on the property includes fifty-seven (57) separate family units, each of which consists of a ground floor, and one upper floor, together with a private carport or garage. The buildings are of frame construction with rough sawn siding and asphalt shingle roof. Each family unit has its own exit to the yard surrounding the buildings and is therefore capable of individual utilization as a family unit patio area, each unit owner obtaining a particular and exclusive property right thereto, and also an undivided interest in the common elements hereafter described.

Floor plans of the buildings constructed on said property, showing with particularity the layout of each unit, including the unit designation, location and dimensions of each unit, are filed concurrently with this declaration and made a part hereof by

reference as Document # 21668, on November 17, 1975,

in the office of the County Clerk and Recorder of Gallatin County

Montana. The family units have been numbered with Building and

Unit numbers from Building A through Building O, units 1 through

57, commencing with Building A - Units 1,2,3,4 on Lot 1 and

progressing through Building B - Units 5,6,7,8 on Lot 2, Building

C - Units 9,10,11,12 on Lot 3, Building D - Units 13,14,15,16 on

Lot 4, Building E - Units 17,18,19,20 on Lot 5, Building F - Units

21,22,23,24 on Lot 6, Building G - Units 25,26,27,28 on Lot 7,

Building H - Units 29,30,31,32 on Lot 8, Building I - Units 33,34,

35,36 on Lot 9, Building J - Units 37,38,39,40 on Lot 10, Building

K - Unit 41 on Lot 11, Building L - 42,43,44,45 on Lot 12, Building

M - 46,47,48,49 on Lot 13, Building N - 50,51,52,53 on Lot 14,

Building O - 54,55,56,57 on Lot 15.

3. Building A, B, C and D - Units 1,2,3,4,5,6,7,8,9, 10,11,12,13,14,15,16, have floor space consisting of approximately

504 square feet on the ground floor, and 504 square feet on the upper floor unit. Building E, F, G, H, I and J - Units 17,18,

19,20,21,22,23,24,25,26,27,28,29,30,31,32,33,34,35,36,37,38,39

and 40 have floor space consisting of approximately 560 square

feet on the ground floor and 560 square feet on the upper floor,

per unit, Building K - Unit 41 has floor space consisting of

approximately 1266 square feet on the ground floor, and 1311

square feet on the upper floor, Building L, M, N and O - Units

42,43,44,45,46,47,48,49,50,51,52,53,54,55,56,57 have floor space

consisting of approximately 819 square feet on the ground floor

and 819 square feet on the upper floor. Each unit is equipped

with and includes its separate forced air furnace or hot water boiler and 40-gallon quick recovery gas-fired hot water heater, together with any other fixtures or appliances which are located within or attached to the interior walls of the unit. Each family unit shall be bounded as to both horizontal and vertical boundaries as shown on the floor plans filed as Document # 21668 on November 17, 1975, in the office of the County Clerk and Recorder of Gallatin County, Montana, copies of which are attached hereto, subject to such encroachments as are contained in the building whether the same exist now or are created by settlement or movement of the building or by permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows:

(a) Horizontal boundaries:

- (i) The surface of the soil below the family unit.
- (ii) The underside of the top cord of the roof truss.

(b) Vertical Boundaries:

- (i) Between family units: the plane formed by the center line of the wall between apartments.
- (ii) Exterior boundaries: the plane formed by the center line of the outside walls of the building, except that such boundaries shall be extended so as to include within it all windows and glass doors within the family unit.

Each family unit shall include and the same shall pass with each family unit as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all the rights, title and interest of a unit owner in the property, which shall include but not be limited to:

- (c) An undivided share of the common elements as set forth in 4 of this declaration;
- (d) Association membership in the Heritage-Condominiums Association, the association for the benefit of the family unit owners.

(e) The following easements:

- (i) Easements through the common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of this declaration.
- (ii) Easements through the family units and common elements for maintenance, repair and replacements of the family units and common elements. Use of these easements, however, for access to the family units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
- (iii) Every portion of a family unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements.
- (iv) Easements through the family units and common elements for all facilities for the furnishing of utility services within the building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring provided that the easements for such facilities through a family unit shall be only substantially in accordance with the plans and specifications of the building.
- (v) An easement reserved by the Grantor over and across the common elements for the purposes of constructing Buildings B. and C.

4. The general common elements are as follows:

- (a) The premises upon which the building is constructed, described in 1. of this declaration, and reduced by that part of the premises occupied by the family units and the limited common elements described in 5.
- (b) The plumbing network including all water and sewer lines extending into more than one family unit.
- (c) All landscaping, plants and materials installed on the property outside of and adjacent to the building and the limited common elements described in 5.
- (d) Necessary light, telephone and water public connections including common electrical panel and common gas meter location.
- (e) The foundations, exterior halves of main walls and roof of the building.
- (f) Tract A as shown on the official plat consisting of the street area.
- (g) Tract B as shown on the official plat consisting of the park area.

Based upon the value each condominium unit bears to the combined value of all the Heritage Condominiums, each of the owners of family units 1 through 16 of Buildings A, B, C, and D shall have a 1.50 percentile interest in the common elements with all the other owners of the property and each of the owners of units 16 through 24 of Buildings E, F, G, H, I, J shall own a 1.75 percentile and each of the owners of units 25 through 57 of Buildings K, L, M, N, and O shall own a 2 percentile interest in said common elements. Common expenses and common profits if any, of the Heritage - Condominiums shall be distributed among, and charged to, the family unit owners according to the percentage of undivided interest of each in the common elements. Such assessments must be applicable to the units which receive the benefit of the expenditures, i.e., insurance, repair, upkeep and maintenance shall only be chargeable to those units which have been constructed and occupied in accordance with the provisions and requirements of this Declaration. Until all of the units are occupied as residential units assessments cannot be made against uninsurable and incomplete units and assessments for insurance, repair, upkeep and maintenance shall be deemed assessments attributable to limited common elements and shall be assessable only against completed units occupied as residences. Units not constructed or under construction and not occupied as residences, cannot be assessed for costs and expenses applicable only to residential units and shall not be assessable until used for residential purposes. Upon completion and occupancy of the last unit, assessments for insurance, repair, upkeep and maintenance shall become assessments attributable to general common elements and assessed against all units in accordance with their percentile of interest in the common elements. Prior to such date these assessments shall be treated in the same manner as assessments for

limited common elements. Except as otherwise limited in this declaration, each unit owner shall have the right to use the common elements for all purposes incident to the use of and occupancy of the respective family unit as a residence, and such other incidental uses permitted by this declaration, which rights shall be appurtenant to and run with the family unit, such undivided interest may not be changed without the unanimous approval of all owners. The common elements shall remain undivided, and no owner shall bring any action for partition or division of any part thereof.

5. The limited common elements (facilities restricted for the use of the respective family units) are as follows:

- (a) Each of the family units shall be entitled to the exclusive garage or carport designated with the same number as the family unit.
- (b) Each of the family units shall be entitled to exclusive use of the patio immediately adjacent to the rear entrance of the respective family unit side walls and the running edge of the patio.
- (c) The front porch from the door threshold to the front edge of the porch.
- (d) Except for the garage or carport, patio and porch there are no other limited common elements.

6. The units and common elements shall be occupied and used as follows:

- (a) No part of the property shall be used for other than residential purposes. Each family unit shall be used as a residence for a single family and for no other purpose, except that an owner may use a portion of his unit for an office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided further that in no event shall any part of the property be used as a school or music studio.
- (b) There shall be no obstruction of the common elements nor shall anything be stored in or on the common elements without prior consent of the Association. Each owner shall be obligated to maintain and keep in good order and repair his own family unit. No campers, boats, snowmobiles or other kinds of recreational equipment may be stored within the common elements unless kept within the garage or carport designated for use of a family unit, and only then if the owner of that family unit requires the use of only one additional parking space.

- (c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance of the building, or contents thereof applicable for residential use without the prior written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted in the common elements.
- (d) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior consent of the Association.
- (e) No rabbits, livestock, fowl, poultry or other animals of any kind shall be raised, bred or kept in any unit except that dogs, cats or other household pets may be kept in units, subject to the rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose.
- (f) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (g) Nothing shall be done in any family unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.
- (h) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, shall be conducted, maintained or permitted on any part of the property, nor shall any "for sale" or "for rent" signs or other window displays or advertising be maintained or permitted on any part of the property or in any unit therein; except that grantors and their agents reserve the right to place "for sale" or "for rent" signs on any unsold or unoccupied units, and the right is hereby given to any mortgagee or trust indenture beneficiary who may become the owner of any unit, to place such sign on any family unit owned by such mortgagee or beneficiary.

- (1) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.

7. The person designated to receive service of process in cases provided in sec. 67-2338, R.C.M. 1947, is JOHN FRENCH, JR., whose place of business is 1328 W. Babcock, Bozeman, Montana.

8. The administration of Heritage - Condominiums, consisting as aforesaid of the land and building described in 1 and 2 of this declaration shall be in accordance with the provisions of this declaration, and with the provisions of the bylaws which are filed concurrently with this declaration as Document# 21668, on November 17, 1975, at 2:15 P.M. in the office of the County Clerk and Recorder of Gallatin County, Montana.

9. This declaration shall not be revoked or any of the provisions herein amended unless seventy five percent (75%) of the owners and the mortgagees of all of the mortgages covering the family units agree to such revocation or amendment by duly recorded instruments.

10. No owner of a family unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of the family unit. All sums assessed by the Association but unpaid for the share of common expenses chargeable to any family unit shall constitute a lien on such family unit prior and superior to all other liens except only (a) tax liens on the family unit in favor of any assessing unit or special improvement district and (b) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by suit by the manager or Board of Directors of the Association acting on behalf of the owners of the family units, in like manner as a mortgage of real property. In any such foreclosure the family unit owners shall be

required to pay a reasonable rental for the family unit, if so provided in the bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors of the Association, acting on behalf of the owners of the family units shall have the power to bid in the unit at foreclosure sale, and to acquire and hold, lease, rent, mortgage, sell and convey the same. Suit to recover a money judgment for unpaid common expenses may be maintainable without foreclosing or waiving the lien securing the same.

11. Where the mortgagee or beneficiary of a trust indenture or other purchaser of a family unit obtains title to the unit as a result of foreclosure of a first mortgage or trust indenture, such acquirer of title, his successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units including such acquirer, his successors and assigns.

12. The respective family units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as:

- (a) rental for any period less than thirty (30) days; or
- (b) any rental if the occupants of the family unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, or bellboy service. Other than the foregoing obligations, the owners of the respective family units shall have the absolute right to rent or lease the same provided that said lease or rental agreement is made subject to the covenants and restrictions contained in this declaration and further subject to the bylaws attached hereto.

13. Except as hereinafter allowed, the Board of Directors or the management agent shall purchase all insurance policies upon

the property for the benefit of the family unit owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of Certificates of Insurance mortgage endorsements to the holders of first mortgages or trust indentures on the family units or any of them.

Each family unit owner may obtain insurance at his own expense, affording coverage upon his personal property and for his personal liability and as may be required by law.

The following coverage shall be obtained by the Association:

- (a) Casualty: The building and all insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including but not limited to vandalism, malicious mischief, wind storm and water damage.
- (b) Public liability and property damage in such amounts and in such form as shall be required by the Association, including but not limited to, water damage, legal liability, hired automobile, nonowned automobile and off premises employee coverages.

All liability insurance shall contain cross liability endorsements to cover liability of the family unit owners as a group to a family unit owner.

Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expense. All insurance policies purchased by the Association shall be for the benefit of the Association and the family unit owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty

losses shall be paid to the Association and any mortgagees named in endorsement to the policies. The association shall hold the proceeds in trust for the benefit of the Association, the family unit owners and their respective mortgagees in the following shares:

- (c) Proceeds on account of damage to general and limited common elements - the undivided share for each family unit owner and his mortgagee, if any, set forth in 4. hereof.
- (d) Proceeds on account of family units shall be held in the following undivided shares:
 - (i) partial destruction when the building is to be restored for the owners of damaged family units in proportion to the cost of repairing the damage suffered by each damaged unit.
 - (ii) total destruction of the building or where the building is not to be restored for all family unit owners, the share of each being that share set forth in 4.
- (e) In the event a mortgagee endorsement has been issued as to a family unit, the share of the unit owner shall be held in trust for the mortgagee and the family unit owner as their interests may appear.

Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (f) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as hereinafter provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to family unit owners and their mortgagees being payable jointly to them.
- (g) If it is determined as hereinafter provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to family unit owners and their mortgagees and distributed according to the loss sustained by each unit owner as established by an independent insurance adjuster selected by the Board of Directors of the Association.

If any part of the common elements shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

- (a) In the event of damage or destruction which does not render two or more of the family units untenable, damage shall be reconstructed or repaired unless this declaration is terminated prior to commencement of reconstruction or repairs. For the purpose of this paragraph, damage or destruction shall not be regarded as rendering a family unit untenable if repairs of such damages or destruction can reasonably be completed within thirty days after it occurs.
- (b) In the event of destruction rendering two or more of the family units untenable, no reconstruction or repairs shall be commenced unless first authorized by a meeting of the family unit owners which shall be called within ninety days after the insurance loss has finally been adjusted, whichever date later, and at which meeting family unit owners who in the aggregate own three of the units, in the building or buildings to be reconstructed or repaired have voted in favor of such reconstruction or repair.
- (c) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications. Encroachments upon or in favor of family units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the family unit upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the building was originally constructed. Such encroachments shall be allowed to continue and exist so long as the building stands.

15. The responsibility for repairing damage to the property is as follows:

- (a) If the damage is only to those parts of a unit which the responsibility and maintenance and repair is that of a family unit owner, then the unit owner shall be responsible for the reconstruction and repair after casualty, provided that such repairs must be completed by the unit owner within sixty days after it occurs. If such repairs are not completed within sixty days after the damage or destruction, then the Association shall have the option of performing such reconstruction and repairs as it shall deem necessary in the same

manner and with the same rights hereinafter. provided for all other reconstruction and repair for which the Association is responsible. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

- (b) Immediately after a casualty causing damage to the property for which the Association has the responsibility or repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums of such bonds as the board of Directors desires.
- (c) If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made against the family unit owners who own the damaged property in sufficient amounts to provide funds for the payment of such costs.
- (d) The funds for payment of costs of reconstruction and repair after casualty, consisting of proceeds of insurance and funds collected by assessments, shall be disbursed in payment of such costs in the following manner:
 - (i) If the responsibility for reconstruction and repair lies with the apartment owner, the proceeds shall be disbursed to the contractors, supplies and personnel supplying the materials and services required for reconstruction and repair in such amounts and at such times as the family unit owner may direct, or if there is a mortgagee endorsement, then to such payees as the family unit owner and first mortgagee jointly direct provided that this paragraph shall not be construed as limiting or modifying the responsibility of the family unit owner to make such reconstruction or repair.
 - (ii) If the responsibility of reconstruction and repair lies with the Association, the construction fund shall first be disbursed by order of the Association in payment of the cost of reconstruction and repair; provided, however, that if the amount of the estimated costs of reconstruction and repair exceeds the total of the annual assessments for common expenses made during the year in which the casualty occurred, or upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, then the construction fund shall be disbursed by payment of such costs in the manner required by the Board of Directors and upon approval of a licensed architect qualified to practice in Montana and employed by the Association to supervise the work.

(iii) It shall be presumed that the first moneys dispursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in a construction fund after payment of all costs of the reconstruction and repairs for which the fund is established, such balance shall be distributed jointly to the family unit owners and their mortgagees who are the beneficial owners of the fund.

(iv) When the damage is to both common elements and family units, the insurance proceeds will be applied first to the costs of repairing the common elements and the balance to the family units in share as above stated.

(v) Each apartment owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one family unit, subject to the rights of mortgagees of such units.

16. Each family unit owner shall be governed by and shall comply with the terms of this declaration and bylaws and regulations adopted pursuant thereto, and such bylaws and regulations as they may be amended from time to time. A default shall entitle the Association or other family unit owners to the following relief:

(a) Failure to comply with any of the terms of the declaration, bylaws or regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association, or if appropriate, by an aggrieved family unit owner.

(b) All family unit owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association; provided that nothing herein contained shall be construed to modify and waiver by insurance companies of rights of subrogation.

(c) In any proceeding arising because of an alleged default by a family unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the court.

- (d) The failure of the Association or of a unit owner to enforce any right, provision, covenant or condition in the future.
- (e) All rights, remedies and privileges granted to the Association or a family unit owner pursuant to any terms, provisions, covenants or conditions of the declaration or bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the declaration, bylaws or law or inequity.

17. All provisions of this declaration and of the bylaws validly adopted pursuant hereto, shall be construed to be covenants running with the land and with every part thereof and interest herein including, but not limited to, every family unit and the appurtenances thereto; and every family unit owner and claimant of the property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of this declaration and bylaws.

18. This declaration of condominium ownership shall be terminated, if at all, in the manner provided in Sections 67-2332 through 67-2335, inclusive, Revised Codes of Montana 1947, as amended.

19. (a) For two years from the date hereof or until Grantor shall, in writing, relinquish such control, a majority of the directors of the Association shall be selected by grantor and such members as may be selected by grantor need not be residents in the building.

(b) Grantor specifically disclaims any intent to have made any warranty or representation in connection with the property, the declaration or the bylaws except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. Estimates of common expenses are deemed accurate, but no warranty or guarantee is made

nor intended, nor may one be relied upon.

20. If any term, covenant, provision, sentence, phrase or other element of this declaration is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, provision, covenant or element of this declaration.

IN WITNESS WHEREOF, the Grantor has executed this declaration this 17th day of November, 1975.

John S. French, Jr.

STATE OF MONTANA)
: ss
County of Gallatin)

On this 17th day of November, 1975, before me, a Notary Public for the State of Montana, personally appeared John S. French, Jr. known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same, and that he is the President of HERITAGE - CONDOMINIUMS.

Subscribed as sworn to before me this
17th day of November, 1975.



Oliver M. Lien
NOTARY PUBLIC for the State of Montana
Residing at Bozeman, Montana
My Commission expires August 6, 1976

BYLAWS
OF
HERITAGE - CONDOMINIUMS

ARTICLE I.

Section 1. The provisions of these bylaws are applicable to a condominium located at _____, Bozeman, Montana, known as "Heritage - Condominiums" pursuant to the Declaration of Condominium Ownership dated _____ November 17, 1975, filed as Document # 21668, on 30 of Film, page 2454, in the office of the County Clerk and Recorder of Gallatin County, Montana, and in accordance with the provisions of the Montana Unit Ownership Act, Chapter 120, Laws of Montana 1965 (Title 67, Chapter 23, R.C.M. 1947).

Section 2. All present or future owner, tenants, future tenants or employees, or any other person who might use the facilities of "Heritage - Condominiums" in any manner, are subject to the regulations set forth in these bylaws. The mere acquisition or rental of any of the family units (hereinafter referred to as "units") of the project or the mere act of occupancy of any of said units will signify that these bylaws are accepted, ratified and will be complied with.

ARTICLE II.

Section 1. The owner of each unit in the building shall by virtue of such ownership be a member of the Heritage-Condominiums Association, hereinafter called the "Association". However, if ownership of any unit is vested in more than one person, while each such owner shall be a member, the several co-owners shall be entitled to vote only in accordance with the provisions of these bylaws on voting.

Section 2. Each owner shall be entitled to one vote for each unit owned; provided that the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine, but in no event shall more than one vote be cast with respect to any such unit.

Section 3. As used in these bylaws, the term "majority of owners" shall mean the owners holding more than half of the votes assigned as herein provided.

Section 4. Except as otherwise provided in these bylaws, the presence in person or by proxy of a "majority of owners" shall constitute a quorum. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. At all meetings of owners, each owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance of the owner of his unit.

ARTICLE III.

Section 1. The Association will have the responsibility of administering the operation of Heritage-Condominiums, approving the annual budget, establishing and collecting monthly assessments and arranging for the management of the project pursuant to an agreement containing provisions relating to the duties, obligations, removal and compensation of the management agent. Except as otherwise provided, decisions and resolutions of the Association shall require approval by a majority of owners.

Section 2. The annual meeting of the Association shall be held on the _____ day of _____ in each calendar year at _____ o'clock .m., at a place to be designated by the Board of

Directors in Bozeman, Montana, unless written notice of a different time, date or place is given by the Directors of the Association provided hereafter.

Section 3. Special meetings may be called at any time by order of the Board of Directors or by any six (6) members.

Section 4. Written notice of any annual or special meeting of the Association shall be mailed to each owner at his last known address as reflected by the Association's records not less than ten (10) days prior to the date of the meeting. Such notice shall specify the time, place and purpose of the meeting. At annual meetings, there shall be elected by ballot of the owners a Board of Directors, and such other business of the Association may be transacted as may properly come before them. No business shall be transacted at a special meeting except as stated in the notice unless by consent of a majority of owners present, either in person or by proxy.

Section 5. The order of business at all meetings of the Association shall be as follows:

- (a) Proof of notice of meeting or waiver of notice
- (b) Determination of Quorum
- (c) Reading of minutes of preceding meeting
- (d) Reports of officers
- (e) Reports of Committees
- (f) Election of Directors
- (g) Unfinished business
- (h) New business

ARTICLE IV.

Section 1. Board of Directors. The affairs of the Association shall be governed by a Board of Directors composed of three (3) persons, two of whom must be owners of units in the project, who shall be elected by the owners. An interim Board of Directors shall

govern the affairs of the Association prior to the first annual meeting of the Association. The interim Board of Directors may number less than three persons. The interim Board of Directors shall be: _____

Section 2. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by law or by these bylaws directed to be exercised and done by the owners. The directors shall serve without compensation.

Section 3. In addition to duties imposed by these bylaws or by resolutions of the Association, the Board of Directors shall be responsible for the following:

- (a) Care, upkeep and surveillance of the project and the common areas and facilities.
- (b) Collection of monthly assessments from the owners. *
- (c) Designation and dismissal of the manager and personnel necessary for the maintenance and operation of the project, the common area and facilities.
- (d) Approving vouchers for payment of all legal claims against the Association.

Section 4. The Board of Directors may employ for the Association a management agent at a compensation established by the Board to perform such duties and services as the Board shall authorize, including but not limited to, the duties listed in Section 3, above.

Section 5. Election and Term of Office. At the first annual meeting of the Association the term of office of one (1) director shall be fixed for three (3) years. The term of office of the second director shall be fixed at two years and the term of the third director shall be fixed at one (1) year. At the expiration of the initial term of each respective director, his successor shall be elected to serve a term of three (3) years. The directors shall hold office until their successors have been elected and hold their first meeting.

Section 6. Any director may be removed by a vote of a majority of votes entitled to be cast at any regular or special meeting of the Association called for that purpose. In the event of such removal, a successor may then and there be elected to fill the vacancy thus created for the unexpired term.

Section 7. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though they may constitute less than a quorum; and each person so selected shall serve until the next annual meeting of the Association, at which time the members shall elect a successor to fill out the balance of the unexpired term.

Section 8. The first meeting of a newly elected Board of Directors shall be held immediately following the annual meeting of the Association, and no notice shall be necessary to the newly elected directors in order to legally constitute such meeting, provided a majority of the whole Board shall be present.

Section 9. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each director, personally, or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting.

Section 10. Special meetings of the Board of Directors may be called by the Chairman on three (3) days' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) directors. All Directors' meetings shall be held within Gallatin County, Montana.

Section 11. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 12. A quorum of the Board for the transaction of business at any meeting shall be a majority of the directors. If, however, a quorum shall not be present or represented at any meeting, the directors present shall have the power to adjourn the meeting from time to time without notice other than announcement at the meeting until a quorum as aforesaid shall be present or be represented. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 13. The Board of Directors may require that officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds, premiums on such bonds to be paid by the Association.

ARTICLE V.

Section 1. Officers. The Board of Directors at its annual meeting shall elect a Chairman, Vice-Chairman, Secretary, Treasurer and such assistants as the Board deems necessary. Any two (2) or more offices may be held by the same person, except the offices of Chairman and Secretary. Officers other than the Chairman are not required to be owners. Interim officers may be appointed by the interim Board of Directors to act until the first meeting of the Board of Directors after the first annual meeting of the Association.

Section 2. The officers of the Association shall hold office at the pleasure of the Board, and in the event of a vacancy for any reason, the Board shall elect a successor at any regular

meeting or at any special meeting called for such a purpose.

Section 3. The Chairman shall preside at all meetings of the Association and the Board of Directors. He shall have general supervision over the affairs of the Association and its officers and all of the powers and duties usually vested in the office of President or Chairman of an Association, including, but not limited to the power to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 4. The Vice-Chairman shall act for the Chairman in the event of the absence or disability of the latter, and shall also perform such other duties as from time to time may be imposed upon him by the Board of Directors.

Section 5. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both.

Section 6. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all moneys and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE VI.

Section 1. Obligations of Owners. Assessment against the unit owners shall be made or approved by the Directors of the Association and paid by the unit owners to the Association in accordance with the following provisions:

- (a) Each unit owner shall be liable for his share of the common expenses, and any common surplus shall be owned by each unit owner in a like share.

- (b) Any assessment, the authority to levy which is granted to the Association or its Board of Directors by the Condominium declaration shall be paid by the unit owners to the Association in the proportions set forth in the provision of the declaration authorizing the assessment.
- (c) All sums collected by the Association from assessments may be commingled in a single fund but they shall be held for the unit owners in their respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. Such accounts shall be as follows:
- (i) Common expense accounts - to which shall be credited collections for assessments for all common expenses including liability and hazard insurance premiums as well as payments received for defraying costs of the use of common elements;
 - (ii) Alteration and improvement account - to which shall be credited all sums collected for alterations and improvement assessments;
 - (iii) Maintenance and repair account - to which shall be credited all sums collected for maintenance and repair assessments; and
 - (iv) Emergency account - to which shall be credited all sums collected for emergencies;
 - (v) A capital account for reconstruction, replacement or remodeling, to which shall be credited collections for capital construction.
- (d) All owners shall be obligated to pay monthly assessments imposed by the Association to meet all common expenses, including property taxes, liability and hazard insurance premiums. Assessments for common expenses shall be made for the calendar year annually in advance on or before October 1st of the year preceding for which the assessments are made and on such other and additional times as in the judgment of the Board of Directors additional common expense assessments are required for the proper management, maintenance and operation of the common elements. Such annual assessment shall be due and payable in 12 equal consecutive monthly payments on the 10th day of each month, commencing with October 10th of the year for which the assessments are made. The total of the assessment shall be in the amount of the estimated common expenses for the year including a reasonable allowance for contingencies and reserves less the amounts of unneeded common expense account balances. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment.

- (e) Other assessments shall be made in accordance with the provisions of the Condominium declaration to be paid at the time determined by the Board of Directors. Assessments for common expenses or emergencies which cannot be paid from the common expense account shall be made only by the Board of Directors.
- (f) The Secretary and Treasurer shall maintain records showing assessments made against unit owners which shall be available for inspection at all reasonable times by unit owners or their representatives. Such records shall show the amounts of all assessments paid and unpaid. The Treasurer may issue certificates as to the status of a unit owners assessment account to such persons as the unit owner may request in writing, and such certificates shall limit the liability of any person to whom it is addressed other than the unit owner.
- (g) Unit owners and their grantees shall be jointly and severally liable for all unpaid assessments due and payable for a specific family unit at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore. Unpaid portions of assessments which are due shall be secured by a lien upon the family unit as provided in the declaration upon the filing of a claim in accordance with the provisions of sec. 67-2326, R.C.M. 1947, as amended.
- (h) Assessments and installments thereof paid more than ten (10) days after the date when due, shall bear interest at the rate of 6% per annum from the date when due until paid. All payments upon assessments shall be applied first to interest and then to the earliest assessment due. Interest collected shall be credited to the common expense account.

Section 2.

- (a) Every owner must perform promptly all maintenance and repair work within his own unit, which if omitted would affect the project in its entirety or in a part belonging to other owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.
- (b) All the repairs of internal installations of the unit such as water, light, gas, power, sewerage, telephones, air conditioners, sanitary installations, doors, windows, lamps and all other accessories and appliances belonging to the unit area shall be at the owner's expense.
- (c) An owner shall reimburse the Association for any expenditures incurred in repairing or replacing any common area and facility damaged through his fault.

Section 3. An owner shall not make any structural modifications or alterations in his unit or installations located therein without previously notifying the Association in writing, through the management agent, if any, or through the Chairman of the Board of Directors, if no management agent is employed. The Association shall have the obligation to answer within ten (10) days thereafter, and failure to do so within the stipulated time shall mean there is no objection to the proposed modification or alteration.

Section 4. An owner will grant the right of entry to the management agent or to any other person authorized by the Board of Directors of the Association in case of any emergency originating in or threatening his unit, whether the owner is present at the time or not.

Section 5. An owner shall permit other owners, or their representatives, when so required, to enter his unit for the purpose of performing installations, alterations or repairs to the plumbing, mechanical or electrical services, provided request for entry is made in advance and that such entry is at a time convenient to the owner. In the case of an emergency, such right of entry shall be immediate.

Section 6. Rules of Conduct.

- (a) No resident of the building shall post any advertisements or posters of any kind in or on the project except as authorized by the Association.
- (b) Residents shall exercise extreme care about making noises of the use of musical instruments, radios, televisions and amplifiers that may disturb other residents.
- (c) Hanging garments, rugs, etc. from the windows or from any other facades of the project is prohibited.
- (d) Dusting rugs, etc. from the windows or cleaning rugs by beating on the exterior part of the project is prohibited.

- (e) Disposal of garbage or trash outside the disposal installations provided for such purposes in the service areas is prohibited.
- (f) No owner, resident or lessee shall install wiring for electrical or telephone installation, television antenna, machines or air conditioning units, etc. on the exterior of the project or that protrudes through the walls or the roof of the project except as authorized by the Association.
- (g) No baby carriages, tricycles, bicycles or toys shall be allowed to stand in the halls, passageways, or areas of the building.

Section 7. Additional Administrative Rules and Regulations relating to the details of the Operation of Heritage - Condominiums and the use of the common elements may be adopted or amended by the Board of Directors at any regular meeting or at any special meeting called for that purpose.

ARTICLE VII.

Section 1. Amendments. These bylaws may be amended by the Association in a duly constituted meeting for such purposes and no amendment shall take effect unless approved by the owners of at least three-fourths (3/4) of the units and until a copy of the bylaws, as amended, certified by the presiding officer and Secretary of the Association is recorded in the office of the Clerk and Recorder of Gallatin County, Montana.

ARTICLE VIII.

Section 1. Any owner who mortgages his unit shall notify the Association through the management agent, if any, or the Chairman of the Association in the event there is no manager, the name and address of his mortgagee; and the Association shall maintain such information in a book entitled Journal.

Section 2. In the event of foreclosure suit against a unit, the unit owner shall pay a reasonable rent for such unit.

IN WITNESS WHEREOF, the undersigned, constituting the sole owner of all of the units in Heritage - Condominiums executes this instrument as evidence of the adoption of the aforesaid bylaws of the Association, consisting of the present and

future owners of Heritage - Condominiums more particularly described in ARTICLE I, this 17th day of November, 1975.

John L. Mendenhall, Jr., President

_____, Secretary

ACCEPTANCE OF OFFICE BY INTERIM DIRECTORS

The undersigned, _____
 _____ having been named by ARTICLE IV, Section 1, of the
 above bylaws of Heritage - Condominiums as interim directors
 of said Association, do hereby accept said office on the _____
 day of _____, 1975.

DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

HERITAGE - CONDOMINIUMS

CONDENSED WITH AMENDMENTS THROUGH 9/24/97

1. The land subject to this declaration is all of the following described property:
Fifteen (15) lots in a planned unit development located in the Southwest quarter (SW1/4) of Section 12, Township 2 South, Range 5 East, M.P.M. in the City of Bozeman.

2. The property subject to this declaration shall be known as Heritage - Condominiums. The buildings constructed on the property includes fifty-five (55) separate family units, each of which consists of a ground floor, and one upper floor, together with a private carport or garage. The buildings are of frame construction with rough-sawn siding and asphalt shingle roof. Each family unit has its own exit to the yard surrounding the buildings and is therefore capable of individual utilization as a family unit patio area, each unit owner obtaining a particular and exclusive property right thereto, and also an undivided interest in the common elements hereafter described. Floor plans of the building constructed on said property, showing with particularity the layout of each unit, including the unit designation, location and dimensions of each unit, are filed concurrently with this declaration and made a party hereof by reference as Document _____, on April 4, 1978, in the office of the County Clerk and Recorder of Gallatin County, Montana. The family units have been numbered with Unit numbers from 1 through 55, with specific unit descriptions omitted for this document.

(a) Horizontal Boundaries:

- (i) The surface of the soil below the family unit.
- (ii) The underside of the top cord of the roof truss.

(b) Vertical Boundaries:

- (i) Between family units: the plane formed by the center line of the wall between apartments.
- (ii) Exterior boundaries: the plane formed by the center line of the outside walls of the building, except that such boundaries shall be extended so as to include within it all windows and glass doors within the family unit.

Each family unit shall include and the same shall pass with each family unit as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all the rights, title and interest of a unit owner in the property, which shall include but not be limited to:

(c) An undivided share of the common elements as set forth in 4 of this declaration;

(d) Association membership in the Heritage Condominiums Association, the Association for the benefit of the family unit owners.

(e) The following easements:

- (i) Easements through the common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of the declaration.

- (ii) Easements through the family units and common elements for maintenance, repair and replacements of the family units and common elements. Use of these easements, however, for access to the family units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.
- (iii) Every portion of a family unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements.
- (iv) Easements through the family units and common elements for all facilities for the furnishing of utility services within the building, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring provided that the easements for such facilities through a family unit shall be only substantially in accordance with the plans and specifications of the building.
- (v) An easement reserved by the Grantor over and across the common elements for the purposes of constructing Buildings B and C.
- (vi) An easement for such encroachments as are contained in the building whether the same exist now or are created by settlement or movement of the building or by permissible repairs, reconstruction or alteration.

4. The general common elements are as follows:

- (a) The premises upon which the building is constructed, described in 1. of this declaration, and reduced by that part of the premises occupied by the family units and the limited common elements described in 5.
- (b) The plumbing network including all water and sewer lines extending into more than one family unit.
- (c) All landscaping, plants and materials installed on the property outside of and adjacent to the building and the limited common elements described in 5.
- (d) Necessary light, telephone and water public connections including common electrical panel and common gas meter location.
- (e) The foundations, exterior halves of main walls and roof of the building.
- (f) Tract A as shown on the official plat consisting of the street area.
- (g) Tract B as shown on the official plat consisting of the park area.

Specific description of common areas and individual unit responsibility omitted for this document.

5. The limited common elements (facilities restricted for the use of the respective family units) are as follows:

- (a) Each of the family units shall be entitled to the exclusive garage or carport designated with the same number as the family unit.
- (b) Each of the family units shall be entitled to exclusive use of the patio immediately adjacent to the rear entrance of the respective family unit side walls and the running edge of the patio.
- (c) The front porch from the door threshold to the front edge of the porch.
- (d) Except for the garage or carport, patio and porch there are no other limited common elements.

6. The units and common elements shall be occupied and used as follows:

- (a) No part of the property shall be used for other than residential purposes. Each family unit shall be used as a residence for a single family and for no other purpose, except that an owner may use a portion of his unit for an office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided further that in no event shall any part of the property be used as a school or music studio.
- (b) There shall be no obstruction of the common elements nor shall anything be stored in or on the common elements without prior consent of the Association. Each owner shall be obligated to maintain and keep in good order and repair his own family unit. No campers, boats, snowmobiles or other kinds of recreational equipment may be stored within the common elements unless kept within the garage or carport designated for use of a family unit, and only then if the owner of that family unit requires the use of only one additional parking space.
- (c) Nothing shall be done or kept in any unit or in the common elements which will increase the rate of insurance of the building, or contents thereof applicable for residential use without the prior written consent of the Association. No owner shall permit anything to be done or kept in his unit or in the common elements which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste will be permitted in the common elements.
- (d) Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, radio or television antenna shall be affixed to or placed upon the exterior walls or roof of any part thereof, without the prior consent of the Association.
- (e) No rabbits, livestock, fowl, poultry or other animals of any kind shall be raised, bred or kept in any unit except that dogs, cats or other household pets may be kept in units, subject to the rules and regulations adopted by the Association, provided that they are not kept, bred, or maintained for any commercial purpose.

- (f) No nuisances shall be allowed upon the property nor shall any use or practice be allowed which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- (g) Nothing shall be done in any family unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.
- (h) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, shall be conducted, maintained or permitted on any part of the property, nor shall any "for sale" or "for rent" signs or other window displays or advertising be maintained or permitted on any part of the property or in any unit therein; except that the grantors and their agents reserve the right to place "for sale" or "for rent" signs on any unsold or unoccupied units, and the right is hereby given to any mortgagee or trust indenture beneficiary who may become the owner of any unit, to place such sign on any family unit owned by such mortgagee or beneficiary.
- (i) Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.

7. The person designated to receive service of process in cases provided in sec. 67-2338, R.C.M. 1947, is JOHN FRENCH, JR., whose place of business is 1328 W. Babcock, Bozeman, MT 59715.

8. The administration of Heritage - Condominiums, consisting as aforesaid of the land and building described in 1 and 2 of this declaration shall be in accordance with the provisions of this declaration, and with the provisions of the bylaws which are filed concurrently with this declaration as Document # 21668, on November 17, 1975, at 2:15 p.m. in the office of the County Clerk and Recorder of Gallatin County, Montana.

9. This declaration shall not be revoked unless all of the mortgagees covering the family units agree to such revocation. The provisions of this declaration may be amended upon the agreement of seventy-five percent (75%) or more of the owners and the mortgagees of all the mortgages covering the family units agree to such revocation or amendment by duly recorded instruments.

10. No owner of a family unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of the family unit. All sums assessed by the Association but unpaid for the share of common expenses chargeable to any family unit shall constitute a lien on such family unit prior and superior to all other liens except only (a) tax liens on the family unit in favor of any assessing unit or special improvement district and (b) all sums unpaid on the first mortgage of record. Such lien may be foreclosed by suit by the manager or Board of Directors of the Association acting on behalf of the owners of the family units, in like manner as a mortgage of real property. In any such foreclosure the family unit owners shall be required to pay a reasonable rental for the family unit, if so provided in the bylaws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors of the Association, acting on behalf of the owners of the family units shall have the power to bid in the unit at foreclosure sale, and to acquire and

hold, lease, rent, mortgage, sell and convey the same. Suit to recover a money judgment for unpaid common expenses may be maintainable without foreclosing or waiving the lien securing the same.

11. Where the mortgagee or beneficiary of a trust indenture or other purchaser of a family unit obtains title to the unit as a result of foreclosure of a first mortgage or trust indenture, such acquirer of title, his successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the family units including such acquirer, his successors and assigns.

12. The respective family units shall not be rented by the owner thereof for transient or hotel purposes, which shall be defined as:

- (a) rental for any period less than thirty (30) days or
- (b) any rental if the occupants of the family unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, or bellboy service. Other than the foregoing obligations, the owners of the respective family units shall have the absolute right to rent or lease the same provided that said lease or rental agreement is made subject to the covenants and restrictions contained in this declaration and further subject to the by laws attached hereto.

13. Except as hereinafter allowed, the Board of Directors or the management agent shall purchase all insurance policies upon the property for the benefit of the family unit owners and their respective mortgagees as their interest may appear, and shall provide for the issuance of Certificates of Insurance mortgage endorsements to the holders of first mortgages or trust indentures on the family units or any of them.

Each family unit owner may obtain insurance at his own expense, affording coverage upon his personal property and for his personal liability and as may be required by law.

The following coverage shall be obtained by the Association:

- (a) Casualty: The building and all insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against loss or damage by fire or other hazards covered by the standard extended coverage endorsement, and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the building, including but not limited to vandalism, malicious mischief, wind storm and water damage.
- (b) Public liability and property damage in such amounts and in such form as shall be required by the Association, including but not limited to, water damage, legal liability, hired automobile, non-owned automobile and off premises employee coverage's.

All liability insurance shall contain cross liability endorsements to cover liability of the family unit owners as a group to a family unit owner.

Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expense. All insurance policies purchased by the Association shall be for the benefit of the Association and the family unit owners and their mortgagees as their respective interests may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association and any mortgagees named in endorsement to the policies. The Association shall hold the proceeds in trust for the benefit of the Association, the family unit owners and their respective mortgagees in the following shares:

- (c) Proceeds on account of damage to general and limited common elements - the undivided share for each family unit owner and his mortgagee, if any set forth in 4. hereof.
- (d) Proceeds on account of family units shall be held in the following undivided shares:
 - (i) partial destruction when the building is to be restored for the owners of damaged family units in proportion to the cost of repairing the damage suffered by each damaged unit.
 - (ii) total destruction of the building or where the building is not to be restored for all family unit owners, the share of each being that share set forth in 4.
- (e) In the event a mortgagee endorsement has been issued as to a family unit, the share of the unit owner shall be held in trust for the mortgagee and the family unit owner as their interest may appear.

Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners in the following manner:

- (f) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as hereinafter provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to family unit owners and their mortgagees being payable jointly to them.
- (g) If it is determined as hereinafter provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to family unit owners and their mortgagees and distributed according to the loss sustained by each unit owner as established by an independent insurance adjuster selected by the Board of Directors of the Association.

14. If any part of the common elements shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

- (a) In the event of damage or destruction which does not render two or more of the family units untenable, damage shall be reconstructed or repaired unless this declaration is terminated prior to commencement of reconstruction or repairs. For the purpose of this paragraph, damage or destruction shall not be

regarded as rendering a family unit untenable if repairs of such damages or destruction can reasonably be completed within thirty days after it occurs.

- (b) In the event of destruction rendering two or more of the family units untenable, no reconstruction or repairs shall be commenced unless first authorized by a meeting of the family unit owners which shall be called within ninety days after the insurance loss has finally been adjusted, whichever date later, and at which meeting family unit owners who in the aggregate own three of the units, in the building or buildings to be reconstructed or repaired have voted in favor of such reconstruction or repair.
- (c) Any such reconstruction or repair shall be substantially in accordance with the plan and specifications. Encroachments upon or in favor of family units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the family unit upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plan and specifications or as the building was originally constructed. Such encroachments shall be allowed to continue and exist so long as the building stands.

15. The responsibility for repairing damage to the property is as follows:

- (a) If the damage is only to those parts of a unit which the responsibility and maintenance and repair is that of a family unit owner, then the unit owner shall be responsible for the reconstruction and repair after casualty; provided that such repairs must be completed by the unit owner within sixty days after it occurs. If such repairs are not completed within sixty days after the damage or destruction, then the Association shall have the option of performing such reconstruction and repairs as it shall deem necessary in the same manner and with the same rights hereinafter provided for all other reconstruction and repair for which the Association is responsible. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.
- (b) Immediately after a casualty causing damage to the property for which the Association has the responsibility or repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums of such bonds as the Board of Directors desires.
- (c) If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the cost thereof are insufficient, assessments shall be made against the family unit owners who own the damaged property in sufficient amounts to provide funds for the payment of such costs.
- (d) The funds for payment of costs of reconstruction and repair after casualty, consisting of proceeds of insurance and funds collected by assessments, shall be disbursed in payment of such costs in the following manner:

- (i) If the responsibility for reconstruction and repair lies with the apartment owner, the proceeds shall be disbursed to the contractors, supplies and personnel supplying the materials and services required for reconstruction and repair in such amounts and at such times as the family unit owner may direct, or if there is a mortgagee endorsement, then to such payees as the family unit owner and first mortgagee jointly direct provided that this paragraph shall not be construed as limiting or modifying the responsibility of the family unit owner to make such reconstruction or repair.
- (ii) If the responsibility of reconstruction and repair lies with the Association, the construction fund shall first be disbursed by order of the Association in payment of the cost of reconstruction and repair; provided, however, that if the amount of the estimated costs of reconstruction and repair exceeds that total of the annual assessments for common expenses made during the year in which the casualty occurred, or upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, then the construction fund shall be disbursed by payment of such costs in the manner required by the Board of Directors and upon approval of a licensed architect qualified to practice in Montana and employed by the Association to supervise the work.
- (iii) It shall be presumed that the first moneys dispersed in payment of costs of reconstruction and repair shall be from insurance proceeds, and if there is a balance in a construction fund after payment of all costs of the reconstruction and repairs for which the fund is established, such balance shall be distributed jointly to the family unit owners and their mortgagees who are the beneficial owners of the fund.
- (iv) When the damage is to both common elements and family units, the insurance proceeds will be applied first to the costs of repairing the common elements and the balance to the family units in share as above stated.
- (v) Each apartment owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one family unit, subject to the rights of mortgagees of such units.

16. Each family unit owner shall be governed by and shall comply with the terms of this declaration and bylaws and regulations adopted pursuant thereto, and such bylaws and regulations as they may be amended from time to time. A default shall entitle the Association or other family unit owners to the following relief:

- (a) Failure to comply with any of the terms of the declaration, bylaws or regulations adopted pursuant thereto, shall be ground for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association, or if appropriate, by an aggrieved family unit

owner.

- (b) All family unit owners shall be liable for their expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association; provided that nothing herein contained shall be construed to modify and waiver by insurance companies of rights of subrogation.
- (c) In any proceeding arising because of an alleged default by a family unit owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be determined by the court.
- (d) The failure of the Association or of a unit owner to enforce any right, provision, covenant or condition in the future.
- (e) All rights, remedies and privileges granted to the Association or a family unit owner pursuant to any terms, provisions, covenants or conditions of the declaration or bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the declaration, bylaws or law or inequity.

17. All provisions of this declaration and of the bylaws validly adopted pursuant hereto, shall be construed to be covenants running with the land and with every part thereof and interest herein including, but not limited to, every family unit and the appurtenances thereto; and every family unit owner and claimant of the property or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of this declaration and bylaws.

18. This declaration of condominium ownership shall be terminated, if at all, in the manner provided in Sections 67-2332 through 67-2335, inclusive, Revised Codes of Montana 1947, as amended.

19. (a) For two years from the date hereof or until Grantor shall, in writing, relinquish such control, a majority of the directors of the Association shall be selected by grantor and such members as may be selected by grantor need not be residents in the building.

(b) Grantor specifically disclaims any intent to have made any warranty or representation in connection with the property, the declaration or the bylaws except as specifically set forth therein and no person shall rely upon any warranty or representation not so specifically made therein. Estimates of common expenses are deemed accurate, but no warranty or guarantee is made nor intended, nor may one be relied upon.

20. If any terms, covenant, provision, sentence, phrase or other element of this declaration is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever any other term, provision, covenant or element of this declaration.

21. Unpaid Assessment - Mortgagee: Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessments by the association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the units including such acquirer, his successors and assigns.

22. In a voluntary conveyance of a unit the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the association and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments made by the association against the grantor in excess of the amount therein set forth.

23. Exterior Maintenance by Homeowners' Association: The Homeowners' Association shall take all necessary steps, including, but not limited to, painting, lawn care, roof repairs, cement repairs, snow removal and replacement or repair of all broken or worn parts, to ensure that the building does not unnecessarily deteriorate. The Board of Directors of the Homeowners' Association shall annually inspect the building and proceed with any necessary maintenance or repairs. Failure by the Board of Directors of the Homeowners' Association to make the annual inspection and/or proceed with any necessary maintenance shall give any first mortgagee the right to order such work done and bill the Homeowners' Association therefor. Any first mortgagee or representative of the same, upon written request, shall have the right to join in the annual inspection made by the Board of Directors and suggest needed repairs and maintenance necessary to preserve the security value of the condominium project.

24. Foreclosure: The association shall have the power to bid on the condominium unit at foreclosure or other legal sale and to acquire and hold, lease, mortgage and vote the votes appurtenant to, convey or otherwise deal with the same. Any encumberer holding a lien on a condominium unit may pay, but shall not be required to pay, any unpaid general common expenses or limited common expenses payable with respect to any such unit, and upon such payment such encumberer shall have a lien on said unit for the amounts paid of the same rank as the lien of his encumbrances without the necessity of having to file a notice or claim of such lien.

25. Copies of Mortgages: One copy of each insurance policy and of all endorsements thereon shall be furnished by the association to each mortgagee of a unit owner on request. The Homeowners' Association shall give the mortgagee notice in writing of any loss to the common elements which exceeds the sum of \$10,000.00 or damage to any condominium unit which exceeds the sum of \$1,000.00. Certain provisions in these declarations with reference to insurance are for the benefit of mortgagees and all such provisions are covenants for the benefit of any mortgagee of a unit and may be enforced by such mortgagee.

26. A first mortgagee, upon request, will be entitled to written notification from the Owners Association of any default in the performance by an individual unit owner of any obligation under the condominium documents which is not cured within sixty (60) days.

27. Miscellaneous:

- (a) Whenever in these declarations the words mortgage or mortgagees is used they shall be deemed to include Montana Trust Indentures and other lenders or beneficiaries under a trust arrangement.
- (b) The holder of the first mortgage on the premises shall have the right to review the Homeowners' Association records and shall have the right to send its representative to the meeting of the Homeowners' Association and to be advised of the date thereof.
- (c) The developer shall maintain a reserve fund sufficient to run the Homeowners' Association and shall deposit this amount in the reserve account when the Homeowners' Association is formed. The reserve fund may be reviewed by the holder of the first mortgages on the units.
- (d) All taxes, assessments and charges will relate only to the individual condominium unit and not to the entire project and shall comply with the provisions of Section 67-2340 R.C.M. 1947.
- (e) This declaration is intended to comply with all of the warranties required by FHLMC regulations in effect on the date of these declarations and in particular those FHLMC regulations set forth in Section 3.208. The FHLMC regulations shall be deemed a part of this declaration and a complete copy shall be maintained by the developer or Homeowners' Association and shall be furnished to buyers or owners upon request.
- (f) In the event that the Homeowners' Association hires a professional manager, then a written professional management contract shall be required. That contract must contain a provision which allows termination without cause or payment of a termination fee upon 90 days written notice. The maximum term of the management contract is to be the term of three years with it further provided that the professional manager shall be bonded in any amount set by the Homeowners' Association.
- (g) The Board of Directors of the Homeowners' Association, together with an insurance agent and a representative of the first mortgagees, shall annually review the limits of the coverage of the insurance policies and keep those policies in force for an amount up to and not less than 100% of the insurable value based on the current replacement costs.