

Doc # 447

SECOND REVISED RESTRICTIVE COVENANTS
OF EAGLE BAY - PHASE ONE

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, Sierra Investments, Inc., a Missouri corporation, is the owner of certain real property located in Benton County, Missouri, and has caused a survey to be made and filed for Record in the Recorder's Office of Benton County in Warsaw, Missouri, which survey appears at Book 15 Pages 74, 75, 76, 77, and 78 and which was filed on May 17, 1985; said property to be known as Eagle Bay, a subdivision, containing Plats One through Five, and

WHEREAS, there is presently a document entitled REVISED RESTRICTIVE COVENANTS OF EAGLE BAY - PHASE ONE which is recorded at Book 391, Pages 1488-1495 in the Office of the Recorder of Deeds of Benton County, Missouri, and

WHEREAS, the Board of the Directors have met to review said document, and have determined that it is for the mutual benefit of all lots, lot purchasers and lot owners to modify and amend said instrument as authorized in Article IV, Amendments Paragraphs (A-D), and

WHEREAS, Grantor is in possession and ownership of more than fifty-one (51%) of the lots covered by this instrument, and

WHEREAS, Grantor has determined that it is in the best interests of all lots, lot purchasers and lot owners to have one document which contains both the terms of the said instrument which are to remain intact and these which are modifications or amendments, thereby making future reference to the original REVISED RESTRICTIVE COVENANTS OF EAGLE BAY - PHASE ONE unnecessary, and

WHEREAS, Sierra Investments, Inc., is herein referred to as Grantor, and said term shall also be deemed to include any agents, successors, and assigns of Sierra Investments, Inc., and

WHEREAS, Grantor is in the process of developing said land into a subdivision for living and recreational purposes, said development to be known as "EAGLE BAY" and

WHEREAS, the Grantor is desirous of promoting and enhancing the value of said land by stabilizing residential and recreational values, and

WHEREAS, it is the purpose and intention of the Grantor to preserve said tract of land as a restricted residential or recreational neighborhood and to protect the same against certain uses by the adoption of a common neighborhood plan and scheme of restrictions; to apply that plan and restrictions, not only to all of the land and every parcel thereof as it may be sold from time to time, but also in favor of all other parcels within the area in the hands of the present or subsequent owners thereof, and to mutually benefit, guard and restrict the present and/or future title holders or occupants of any and all said parcels and to foster the health, welfare, and safety of all who own lots and reside in said area, with the understanding that both residential and camping sites exist there,

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WHEREAS, it is the further purpose and intention of the Grantor that all requirements and duties imposed by the Missouri Clean Water Law, Chapter 204 R.S.Mo., and all standards, rules and regulations adopted pursuant thereto and permits and orders issued thereunder applicable provisions of law, federal, state and local, and that restrictive covenants be adopted for that purpose, and

WHEREAS, all reservations, limitations, conditions, easements, and covenants herein contained, any and all of which are hereafter termed "Restrictive Covenants" or "Restrictions" are jointly or severally for the benefit of all persons who may purchase, hold or own, from time to time, any of the several lots covered by this instrument, and are intended to run with the land for specified periods, and be mutually enforceable,

WHEREAS, the Grantor hereby executes and enacts this instrument to be known as the "SECOND REVISED RESTRICTIVE COVENANTS OF EAGLE BAY - PHASE ONE" and which contains all of the applicable and enforceable restrictions and covenants enacted to date affecting the described property,

I. RIGHTS AND POWERS OF THE GRANTOR

A. The Grantor shall have the capacity and right to sue as such and shall have the right and duty to enforce, either in the Grantor's own name or in the name of any owner within the subdivision, any and all restrictive covenants and restrictions which may now or which may hereafter be imposed upon any of the lots in the EAGLE BAY subdivision covered herein, either in the form as originally placed or as subsequently amended.

B. The Grantor shall have to power to construct, reconstruct, improve, contract for, maintain or repair streets or roadways of any kind or qualities upon the several strips of land which are designated on the plats as streets, drives, lanes, roads, and walkways, and to repair and maintain any dams, lakes, and related facilities to be constructed upon the above-described property.

C. The Grantor shall have the right and power to provide for the plowing or removal of snow from the aforesaid streets, roadways, and trailways, whenever it deems it desirable to do so.

D. The Grantor shall have the right and power to plant, care for, spray, trim, and replant shrubbery and to sow and resow, trim and care for grass in or upon the drives, streets and roads, or in and upon any areas of the subdivision, as it may in its judgment determine desirable.

E. The Grantor shall have the right and power to provide lights in or on all drives, lanes, circles, streets and roads, and on or at all gateways or entrances, or in such other places in or about the area covered by this instrument as it may in its judgment determine desirable.

F. The Grantor shall have the right and power to grant easements in, over, along and under the streets, drives, lanes or roads for any of the purposes set out in this instrument. In addition to the foregoing rights and powers, the Grantor shall have the right and power to grant right of way easements to electric, telephone and other

utilities in order to permit them to replace, construct, reconstruct, operate, repair, maintain and relocate thereon, and in or upon all streets, roads, or highways abutting said lands, either above ground or underground or a combination of both a transmission or distribution line or system for the purpose of furnishing service to the above described premises, and to extend said line or system in the future on and across the above described tracts that may be subdivided and platted in separate lots to enable the utilities to furnish service to others and the right to have ingress and egress to, from and over the above described lands, for doing anything necessary or useful for the enjoyment of the easements granted; and to cut and trim trees and shrubbery to the extent necessary to keep them clear of said line or system; to cut down from time to time all dead, weak, leaning, or dangerous trees that are tall enough to strike the wires in falling.

G. The Grantor shall have the right and power to construct, to operate, to lease, to purchase, or in any other manner to construct or provide for sewers or sewage or wastewater disposal facilities, drainage, water, gas, electricity, street lighting, telephone service, or fire protection facilities to serve any or all of the above described tracts, either in their present state, or as subdivided, with the understanding that the Grantor may not be required to provide any of the above by the lot owners. The foregoing is subject to all provisions of applicable law, federal, state and local, including, but not limited to, the Missouri Clean Water Law, Chapter 204 R.S.Mo. and the regulations adopted pursuant thereto. If such services or facilities are implemented by Grantor, it may make use of or may convey, transfer or assign whole or partial rights in and to the easements created by this instrument or by the authority hereunder, or the easements set out on the plats of the subdivision of the above described property.

H. The Grantor shall have the right and power to provide for and maintain tennis courts, playgrounds, gateways, entrances, drinking fountains, lakes and related facilities, streams and other ornamental or recreational features in said subdivision on any lands set aside for the general use of the owners of the lots in said subdivision or to which the said owners have access and the use thereof. The Grantor shall have the right and power to construct or maintain such boat dock facilities as it may deem necessary for the use and benefit of owners of lots in said subdivision on the above described property. The Grantor shall further have the power to regulate and determine the size of motors to be used on boats on any lakes it may construct, and the use of the boats thereon. In no event may the lot owners require Grantor to provide any of the above amenities.

I. The Grantor shall have the right and power to care for and maintain any and all vacant lots and any lakefront on said subdivision, remove weeds and cut grass thereon, to pick up and remove therefrom loose materials, trash and rubbish or all kinds, and to do anything and all other things which may be necessary or desirable to keep such property neat in appearance and in good order. If a lot owner does not keep his lot free of weeds and mow his grass, the Grantor reserves the right to mow and clean up said lot and to charge such owner a reasonable fee for this service. In addition, the Grantor shall have the right to cause all wastewater disposal facilities on lots to be pumped so as to assure compliance with the Missouri Clean Water Law, regulations and standards. Failure to pay the charge where it has become necessary to mow and clean said lot or to pump wastewater and sewage shall give the right to the Grantor, to place a lien against the property for this service and to collect therefor in an action in debt. The Grantor shall also have the right to remove debris, trash, or any unsightly accumulation of materials or junk upon giving lot owner fifteen (15) days prior written notice of its intention to do so.

II. ASSESSMENTS BY THE GRANTOR

A. The Grantor and its successors are hereby authorized, empowered and granted the right to make assessments upon and against the said several lots and said parcels of land in the subdivision for the purpose and at the rates and on the conditions hereinafter provided:

1. To make a uniform annual assessment on the 15th day of November, of every year, of Seventy-two Dollars (\$72.00) per lot upon and against the several lots or parcels of land in said subdivision for the purpose of carrying out the general duties and powers of the Grantor as described herein and for the further purpose of enabling the Grantor to defend and enforce the restrictive covenants as hereinafter described. The Grantor shall also have the authority to increase said annual assessments, but any such increase shall be limited to 15% over the previous year's assessment.

2. To make special assessments if, at any time, the Grantor shall consider it necessary to make any expenditures requiring an assessment in addition to the assessments provided. In such event, the Grantor shall transmit in writing to the owners of lots, for their approval, an outline of the plan for the project contemplated and the estimated amount required for the completion of same and the total assessment required. If such project and the assessment so stated be approved at a meeting of the lot owners, duly called and held in the manner provided by the Grantor, by a fifty-on percent (51%) vote of the owners of all the lots, the Grantor shall notify all the owners of the said tracts of the additional assessment. Any assessment made under this paragraph shall be limited to \$25.00 in 1985, and may not be in excess of an amount increased by 15% over the previous years special assessment.

3. The Grantor specifically reserves the right, in its sole discretion, to exclude any lots owned by Grantor from the obligation to pay any assessments or maintenance fees of any type that might be set forth in these restrictions.

B. All assessments, either general or special, made by the Grantor for the purposes hereinabove enumerated shall be made in the manner and subject to the following procedure, to wit:

1. Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title or lot purchaser and deposited in the United States mail, postage prepaid, or may be given by posting a brief notice of the assessment upon the lot itself. Service in either of the above methods shall be sufficient.

2. Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of ten percent (10%) per annum until paid and such payment and interest shall constitute a lien upon said lot and shall remain in full force and effect until said amount is fully paid. At any time after the levying of and entry into the Grantor's records, the Grantor may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to any one or more lots and cause same to be recorded in the Office of the Recorder of Deeds, and the Grantor may, upon payment, cancel or release any one or more lots from the liability of assessment (as shown by the recorded instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected), and the Grantor shall cause to be noted from time to time in its records, the payment made on account of assessments. The Grantor may institute proceedings to foreclose the lien imposed by the failure to pay assessments under this instrument in a court of competent jurisdiction. Lot purchasers and lot owners may also enforce this instrument for the failure to pay lot assessments.

III. RESTRICTIONS RELATING TO THE USE OF AND CONSTRUCTION UPON THE LOT

A. These covenants and restrictions are applicable to the entire subdivision and shall run with the land for a period of Twenty years (20) from May 15, 1985, and shall be binding upon all owners of said land, and also upon all purchasers of said land, their heirs, successors, donees, grantees, and assigns until May 15, 2005. Said restrictions may be extended for a further term of an additional 20 years by a suitable instrument executed by the Grantor and the then owners of a majority of the lots in said subdivision and duly acknowledged in the office of the Recorder of Deeds for Benton County, Missouri, before the expiration of the twenty year period; and further extensions may be effected in like manner.

B. The use and enjoyment of each lot in the subdivision is subject to the rights and powers of the Grantor established in this instrument, or as the same may hereafter be amended. These restrictive covenants are mutually enforceable and shall be applied uniformly to every lot.

C. All building sites in the part or parts of the subdivision designated as "multipurpose" (10,000 sq. ft. or over) or "residential" shall be limited to one (1) single family dwelling. All constructed dwellings shall face the street or road upon which the lot fronts and no part thereof shall be nearer than Twenty-five feet (25) from the front lot line, and the distance from each side of the dwelling shall be no closer than five (5) feet from the side of the line of said lot. When the lot topography is not conducive to these limits, the Grantor may allow a variance therefrom upon application of the lot owner. No constructed dwelling shall be constructed on any lot purchased in the subdivision which has less than 600 sq.ft. living space excepting porches and porticos. There shall be no shed roofs and all buildings will be finished and painted or stained on the outside. No basement shall be occupied until living accommodations are completed. Any improvements shall be completed on the exterior within six months after construction starts. All other structures shall be in the rear of the living accommodations, and the exterior of it must be finished in the same manner as the living accommodations. All material used for the construction of the outside of the dwelling shall be new, and construction must be completed within six (6) months from the commencement of said construction of any type.

Mobile homes shall be no less than 720 square feet in size and shall not be more than eight (8) years old at the time of placement on the lot. No commercial business other than those of the Grantor shall be constructed or operated within the subdivision. No permanent structures shall be permitted in the part or parts of the subdivision designated as "camper" or for campers only.

Any building, mobile home or camper must be approved by the Grantor before being built or placed on a lot. Campers and mobile homes must be of commercial manufacture. This excludes converted buses, trucks, or vans. Pickup camper shells must remain on pickup truck, and such pickup truck shall be licensed and in good running condition. No camper or mobile home will be permitted which is over eight (8) years old, or which the Grantor determines to be unsightly. All unauthorized vehicles, campers, mobile homes or unsightly construction will be removed at the owner's expense and at no recourse to Grantor. The Grantor has the right to enter upon any property to correct violations of aforementioned restrictions. The Grantor will not be held liable for damage resulting from the removal of the above violations. Pending the construction or placement of a mobile home or constructed dwelling, lot purchasers and owners may, at the discretion of the Grantor, use a motor home or camper of an approved character on a temporary basis.

D. Before improvements are erected on any lot purchased in part or parts of the subdivision designated as "residential", the lot owner or purchaser shall first apply for and obtain a permit for the installation of approved sewage or wastewater disposal facilities from the Grantor. The only authorized means of waste water disposal for residential lots will be an approved individual sealed vault type holding tank. The capacity of the holding tank for temporary residents (those occupying the lot 140 days or less per year) shall be 1,000 gallons. The capacity of the holding tank for permanent residents (those occupying the lot more than 140 days per calendar year) shall be 1,500 gallons. Septic tanks shall not be permitted. The holding tanks shall be of an approved design and construction. Each lot purchaser or owner shall be required to cause said holding tank to be regularly pumped by any person, firm or corporation approved by the Grantor to assure compliance with the Missouri Clean Water Law. The only approved on-site method of wastewater or sewage disposal in the part or parts of the subdivision designated as "camper" is by means of collection in individual, portable holding tanks and discharge into a state approved collection facility to be constructed by the Grantor and to be operated by the Grantor. This collection facility shall be used only by purchasers or owners of camper lots. The Grantor shall maintain periodic inspections of all sewage disposal facilities. Upon the failure of any lot purchaser or owner to properly maintain any sewage disposal facility in accordance with the standards set forth in this paragraph and in the permit for construction granted by Grantor, the Grantor shall then and there, on behalf of all the other owners, take such action as shall be necessary to restore the facility to approved standards all at the expense of the owner, including, but not limited to, the cost of an action for injunctive relief, debt, damages, or causing sewage disposal and facilities to be pumped out. In the event the Grantor fails to take action necessary to assure compliance with the Missouri Clean Water Law and regulations, the Missouri Department of Natural Resources, the Missouri Clean Water Commission shall be empowered to assure such compliance by appropriate judicial action in its own name. Lot purchasers and owners may also enforce the restrictions in this paragraph.

E. Lot owners and purchasers may drill individual water wells provided that the wells are cased and sealed with grouting or other appropriate material. Written evidence shall be provided to the Grantor by the lot purchasers or owners that individual drilled wells conform to these standards.

F. No debris, trash or unsightly accumulation of materials or junk shall be allowed to stay on the premises and outside storage facilities will be permitted only if prior approval thereof has been obtained from the Grantor in writing.

G. No building shall be constructed below the elevation line approved by the Grantor for the particular area involved. All building plans must be approved by the Grantor prior to their construction.

H. No signs may be placed or maintained on any lot other than the name and address of the owner, which sign shall be no larger than two (2) feet long and one(1) foot high. The lots in the possession of the Grantor and the other lands of the Grantor are exempt from this restriction.

I. Each lot must be mowed and kept free of weeds and underbrush for the general appearance of the subdivision and prevention of fire. The lots in the possession of the Grantor and the other lands of the Grantor are exempt from this restriction.

K. No animals shall be kept, maintained or raised on said premises, except house pets, which shall be kept on a leash when on said premises when not in an enclosure. No poultry or livestock such as horses, cattle, pigs, or goats shall be stabled within the confines of the subdivision. No noxious or offensive activity shall be carried on any lot nor shall anything be done thereon which may be or may become a nuisance or annoyance.

L. The lot purchasers and lot owners shall have the right to use all land delineated or set apart as roads or other means of ingress or egress within the subdivision.

M. These covenants are several. Invalidation of any said covenants by judgment or court order shall in no way affect any of the other provisions, which shall in full force and effect.

N. The references to lot "owner" throughout this instrument shall be deemed to include any and all persons who have contracted to purchase a lot or who are already in possession of a fee simple title in said lot. While the terms lot owner and lot purchaser appear throughout this instrument, they are interchangeable for purposes of this instrument, and it is the intention of the Grantor to treat their properties equally.

IV. AMENDMENTS

A. The provisions of this instrument may be modified or amended by the action of the Grantor hereunder for the mutual benefit of all lots, lot purchasers and lot owners.

B. From and after the execution of this agreement, this instrument may be modified or amended by a vote of the owners of not less than fifty-one (51%) percent of the lots covered by this instrument.

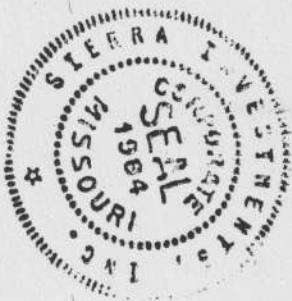
C. No person shall be entitled to vote unless he has paid any and all outstanding assessments against his property.

D. In no event shall the restrictions relating to compliance with the Missouri Clean Water Law be amended without the written consent of the Missouri Clean Water Commission.

IN WITNESS WHEREOF, the below signed officer of the Sierra Investments, Inc. sets his hand and seal this 30th day of July, 1986.

SIERRA INVESTMENTS, INC.

By: Danny Hammond
Danny Hammond, President



ACKNOWLEDGMENT

State of Missouri)
)
County of ~~Saline~~ Henry)

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On this 30 day of July, 1986, personally appeared before me, Danny Hammond, who stated to me that he is president of Sierra Investments, Inc., a corporation, and that he executed the foregoing instrument with authority of the corporations Board of Directors and acknowledged that he executed same as the free act and deed of the corporation.

In testimony whereof, I have hereunto affixed my signature and notarial seal on the day and year first above written.



Ruby F. Parks
Notary Public

RUBY F. PARKS
Notary Public, State of Missouri
My Commission Expires May 19, 1990



FILED FOR RECORD ON THE 30 DAY OF
July 1986 AT 10
O'CLOCK 28 MIN A M. RECORDED
IN BOOK 395 PAGE 174
ROSEMARY WALTHALL, CIRCUIT CLERK AND
EX OFFICIO RECORDER, BENTON COUNTY, MO

BY: Yvonne B England
YVONNE ENGLAND, Deputy