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Charlotte Mills - Gallatin County, MT MISC



Return to:
Jeremy J. leFeber
Berg, Lilly & Tollefsen, P.C.
1 West Main Street
Bozeman, MT 59715

Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch

THIS FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE MONTANA RANCH is made and entered into as of July __, 2012, by the undersigned, being at least 75% of the real property owners of record of real property governed by these Covenants (collectively and individually the "Owners").

This Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch (the "Covenants") amends, restates, and supplements the Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2056580, the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2167439, the First Supplemental Declaration to the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2176463, the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2274835, the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2334123, the First Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2340970, and the Second Amendment to the Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch recorded as Document No. 2394409 in the Office of the Clerk and Recorder of Gallatin County, State of Montana, those document now being amended, restated, and supplemented as provided hereinbelow (collectively the "Prior Covenants.")

WITNESSETH:

WHEREAS, the Owners own certain real property situated in Gallatin County, Montana, described in Exhibit A attached and incorporated herein by reference (the "Property" or "Premises");

WHEREAS, Montana Golf Enterprises, LLC has delivered notice to the Association that it had waived its control rights as the Declarant under the Prior Covenants as of May 6, 2009 ("Waiver of Control") a copy of which is attached hereto as Exhibit "B" and incorporated herein;

WHEREAS, on account of the Waiver of Control the Owners have the right and authority to amend the Covenants; and

WHEREAS, the undersigned desire to continue to create and maintain a planned community on the Property and to subject and place upon the Property certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of the Property and for the purpose of furthering a plan for the improvement, sale and ownership of the Property. The goal at The Montana Ranch is to create a lastingly beautiful environment in which to live. It is the intention of the Owners to establish and impose a general plan for the improvement, development, use and occupancy of the Property, in order to maintain and enhance the value, desirability and attractiveness of the Property and to promote the resale thereof.

NOW, THEREFORE, the Owners hereby declare that the Property shall be held, sold, used and conveyed subject to the following covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I – DEFINITIONS

Section 1.1 Certain Defined Terms. For the purpose of the Covenants (and all exhibits and other documents made or delivered hereunder), in addition to the terms defined above in the recitals, the following terms shall have the following meanings:

(a) "Association" shall mean and refer to The Montana Ranch Home Owners Association, a Montana non-profit corporation, its successors and assigns. The Association shall act by and through its Board and officers.

(b) "Board" shall mean and refer to the Board of Directors of the Association.

(c) "Budget" shall mean a budget for each fiscal year to be prepared by the Board and adopted by the Association, which budget shall be applicable to all of the Lots, shall be used as the basis for establishing the annual assessment to be levied against each Lot, and shall include an estimate of all the Common Expenses and appropriate reserve fund for the maintenance, repair and replacement of areas and facilities which are located from time to time within any Common Areas or Limited Common Areas.

- (d) "Bylaws" shall mean the Bylaws of the Association.
- (e) "Common Area" shall mean and refer to all real property (including improvements thereon) owned or leased by the Association, or existing by way of easement, existing or future, for the common use and enjoyment of the Owners, including all roads, parking areas, equestrian trails, road right-of-ways, park areas and similar areas and facilities on the Property designated as Common Areas on Exhibit C, and any areas later designated as Common Areas by the Association.
- (f) "Common Area Easement" shall mean that area comprised of Tract 4, a general ingress and egress easement sixty (60) feet in width centered on the Common Area Roads shown on Exhibit C, all trails shown on Exhibit C, and such other easements for common use as may be agreed by the Lot owner and Declarant or Association.
- (g) "Common Expense" shall mean and refer to (a) the costs of maintenance, snow removal, repair, replacement and upkeep of the Common Area, Limited Common Areas and Horse Barn.
- (h) "Covenants" shall mean and refer to this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch, as the same may be amended and supplemented from time to time.
- (i) "Declarant" shall mean and refer to Montana Golf Enterprises, LLC, a Montana Limited Liability Company ("MGE"), and the successors and assigns of MGE.
- (j) "Design Guidelines" shall mean and refer to design guidelines which may from time to time be adopted and published by the Design Review Board, together with the Declarant and Association, to set forth procedures for review of plans and standards and criteria for the review and construction of improvements on the Property.
- (k) "Design Review Board" or "DRB" shall mean and refer to the Design Review Board.
- (l) "Designated Residential Area" or "DRA" shall mean an approximate five (5) acre portion described, set aside and approved by the DRB on each Lot for an Owner's residence, secondary buildings and private space.
- (m) "First Mortgage" shall mean and refer to any unpaid and outstanding first mortgage, first deed of trust or other similar voluntary security instrument encumbering a Lot recorded in the records of the Office of the Clerk and Recorder of the County of Gallatin, Montana, having priority of record over all other recorded liens except those governmental and other liens made superior by statute.

(n) "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

(o) "Guest" shall mean and refer to any family member, guest, patron, tenant, agent, employee, licensee or invitee of an Owner.

(p) "Horse Barn" shall mean the equestrian facility, if any, which may include barns, paddocks, stalls, arena, caretaker house and all related and supporting facilities and improvements operated in connection with such facility.

(q) "Improvement(s)" shall include, but not exclusively, all buildings, outbuildings, bridges, roads, trails, pathways, driveways, parking areas, fences, screening walls and barriers, retaining walls, ditches, electrical, telephone distribution facilities, natural or planted trees and shrubs, poles, signs, loading areas and all other structures, installations and landscaping of every type and kind, whether above or below the land surface.

(r) "Limited Common Area" shall mean and refer to the driveway constructed by the Declarant to serve an individual Lot or Lots. Such Limited Common Area is for the common use and enjoyment of only those Owners and such Owner's Guests whose Lot is served by driveways defined as Limited Common Elements on Exhibit C.

(s) "Lot", "Tract" or "Parcel" shall mean and refer to any separate numbered parcel, lot or plot of land shown upon the Property, as the same may be amended from time to time, together with all appurtenances and improvements now or hereafter located thereon. The Montana Ranch Lots are denominated as Lots 3-29 as shown on Exhibit C. Lots which may be further subdivided in accordance with these Covenants are shown on Exhibit C.

(t) "Member" shall mean a Member of the Association and refer to each Owner of a Lot that is subject to assessment hereunder, including Declarant so long as Declarant owns any Lot. Membership in the Association shall be appurtenant to and may not be separated from ownership of a Lot.

(u) "Occupant" shall mean a leasee or licensee of an Owner, or any other person or entity other than an Owner in lawful possession of a Lot with the permission of the Owner.

(v) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(w) "Record", "Recording", "Recorded" or "Recordation" shall mean, with respect to any document, that recordation of said document in the office of the Clerk and Recorder of Gallatin County, Montana.

(x) "Property", "Project" or "Premises" shall mean and refer to that certain real property described in Exhibit A, together with such additions thereto, if any, as may hereafter be brought within the jurisdiction of the Association.

(y) "Structure" shall mean any construction erected or placed upon any Lot, including, but not limited to, houses, barns, sheds, pools, tennis courts, parts of and additions to buildings, walls, fences and other enclosures, television and other antennas, walks, and driveways.

(z) "Visible from neighboring property" or "Visibility" shall mean, with respect to any given object on a Lot that such object is or would be visible to a person six (6) feet tall, standing on any part of any Lot or other part of the Premises.

(aa) "Wildlife Corridor" shall mean an area maintained in a natural state for the preservation of both animal and plant life.

Section 1.2 General Interpretive Principles. For purposes of these Covenants, except as otherwise expressly provided or unless the context otherwise requires:

(a) The terms defined in the Covenants have the meanings assigned to them in the Covenants and include the plural as well as the singular, and the use of any gender herein shall be deemed to include the other gender;

(b) References herein to "Articles," "Sections," "Paragraphs," and other subdivisions without reference to a document are to designated Articles, Sections, Subsections, Paragraphs and other subdivisions of the Covenants;

(c) Reference to a subsection or clause without further reference to a Section is a reference to such subsection or clause as contained in the same Section in which the reference appears, and this rule shall also apply to Paragraphs and other subdivisions; and

(d) The words "herein," "hereof," "hereunder" and other words of similar import refer to the Covenants as a whole and not to any particular provision.

ARTICLE II – GRANT OF EASEMENTS

Section 2.1 Easements Reserved by Declarants and Conveyed to the Association. Declarant hereby defines and reserves, and conveys to the Association, for its benefit and that of its Members and the Owners in common, as set forth herein, shall have the following easements:

(a) An easement over, through and across each Lot for all purposes whatsoever which are consistent with the intent of this Agreement including ingress and egress and for weed control and the use and repair of roads, driveways, bridges, trails, ponds, ditches, fences, buildings and other structures, utilities and Improvements belonging to

the Association; provided, however, that no structure which is a residential building or one which accommodates such use shall be permitted except those approved by the Association to house Association staff, or temporary guests of the Association or its members.

(b) An easement over, through and across each Lot for the installation and maintenance of electric power lines and telephone lines as well as pathways and trails between all Lots. Such easements shall be located to minimize any reduction in privacy or financial impact on the Lot over which the easement passes.

(c) An easement and right-of-way for any irrigation ditches, ponds or canals and for all courses, channels and beds of any streams, creeks, drainage or rivers and an easement and right-of-way over twenty (20) feet of any banks thereof which occupy, cross, flow or traverse any Lot together with the right of ingress and egress to use and to operate, repair, construct, maintain and replace the foregoing or any structures.

Section 2.2 Other Easements. The following easements are hereby granted, and such uses and right shall run with the land and all conveyances of Lots hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the same even though no specific reference to such easements, uses and rights appears in any such conveyance document:

(a) Access.

(i) Easements for access across all Common Area roads and Limited Common roads as they exist on the Property and as are shown on Exhibit C or other duly recorded instruments. No structure, planting or other material shall be placed or permitted to remain within these easements which may damage or interfere with access.

(ii) Common Area Easements for the use by the Association, Owners and Guests over all of Tract 4, a general access and egress easement sixty (60) feet in width centered on the Common Area Roads shown on Exhibit C, and trails as shown on Exhibit C. The right to define or create trails or paths in any portion of the Common Area Easement outside the paved roadways is reserved to the Association. If any trails pass through a fence erected by an Owner, the appropriate access gate shall be constructed at the expense of the Association.

(iii) Limited Common Easements, which grant a general ingress and egress easement sixty (60) feet in width centered on the Limited Common Area Driveways as shown on Exhibit C. The use of the Limited Common Easements is reserved exclusively to the Association and those specific Owners or Guests of such Owners whose Lot is served by a defined driveway.

(b) Utilities.

(i) Each Lot shall be and is hereby made subject to all easements for electric, telephone and other facilities as are necessary to provide utility service to said Lot, adjacent Lots and/or the buildings located thereon. Each Owner hereby agrees to execute such further grant or other documentation as may be required by any utility or other company or public, governmental or quasi-governmental entity for such purpose.

(ii) Without limiting the generality of the foregoing, certain private utility or service connections or lines and equipment, such as telephone or electric, may be located in one of the Lots but used by, or in common with, other Lots. Each Owner of a Lot on which such private utility or service connections or lines or equipment are not located but whose Lot is serviced by the same shall have a perpetual nonexclusive easement in and to that part of the other Lots containing such private utility or service connections or lines or equipment as is reasonably necessary for purposes of maintenance, repair, replacement and inspection thereof.

(c) Emergency. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, snow plowing, road maintenance and other similar agencies or persons, now or hereafter servicing the Property, to enter the Property in the performance of their duties.

(d) Association. The Association (including its agents, employees and contractors) shall have a nonexclusive easement to enter each Lot and the improvements located thereon as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to the Covenants.

(e) Declarant. Until termination of the period of Declarant's control of the Association set forth in these Covenants, Declarant (including its agents, employees and contractors) shall have a nonexclusive easement to make use of each Lot and the improvements located thereon as may be necessary or appropriate to exercise Special Declarant Rights pursuant to the Covenants.

(f) Easements for Cross-Drainage. Every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Property; provided, no person shall alter the natural drainage on any Lot so as to materially increase the drainage of storm water onto adjacent portions of the Property without the consent of the Owner of the affected property.

(g) Crop Production. The Association reserves an easement for the right to produce and harvest crops, or lease the right to produce and harvest crops, on any portion of the Property. All proceeds from crop production shall be used by the Association for common expenses. In the event an Owner desires to remove its property from crop production, such Owner shall give notice of withdrawal to the Association and such withdrawal shall become effective when the existing crop has been completely harvested.

(h) Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance

pursuant to the Covenants for weed control and to inspect for the purposes of ensuring compliance with these Covenants, any Supplemental Declaration, Bylaws, and rules, which right may be exercised by any member of the Board of Directors, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single-family, detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Section 2.3. Duty of the Association or Declarant. These Covenants and the provisions contained herein shall not establish any duty whatsoever upon the Association or the Declarant to complete, restore, maintain, repair, or replace any part of the Premises or any structure thereon, and shall vest no rights in Owners or any other person as against the Association or the Declarant in such respect.

ARTICLE III – TIMBER, MINERAL, AND WATER RIGHTS

Declarant does hereby convey to the Association, all rights to existing and future mineral and water rights, both surface and underground, whether represented by shares of stock in irrigation, water or ditch companies, or otherwise, appurtenant to or used in connection with the property excepting therefrom, however, such water from wells as may be used by Owners for residential or stock use and/or surface water from creeks or springs that may be used by Owners for stock use. The Association shall use its water rights for (a) maintenance and preservation of the streams, rivers and ponds on the Premises, (b) maintenance and development of the Common Easement Area, including use for irrigation and livestock, and (c) such other purposes as the Association shall deem necessary or desirable. Subject to the availability of water for such uses, the Association may, in its discretion, allow the Owners to use such water where practical and consistent with the gardens or improvements on DRAs, provided such Owners agree to bear their share of any costs of providing such water, or pay reasonable fees or charges for such use, as the Association in its discretion may allocate, charge or assess. The Association shall not exercise any of its rights to existing and future mineral rights associated with a particular Lot unless and until the Association has received such Lot Owner's prior written consent.

ARTICLE IV – MEMBERSHIP AND VOTING RIGHTS; THE ASSOCIATION

Section 4.1 Membership. Each Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot and shall automatically pass with fee simple title to the Lot. Each Lot, however, shall only be entitled to one vote, which may not be divided. If a Lot is owned by more than one person, or if a Lot is owned by a corporation, limited liability company, partnership

or any other entity, then the Owner or Owners shall designate one person who shall be entitled to cast the vote on behalf of the Lot. If only one of the Owners or representatives of any Lot is present at any meeting of the Association, then that person automatically shall be presumed to have the authority to cast the vote on behalf of the Lot unless the Owner or Owners have otherwise notified the Association in writing. If a Lot is divided in accordance with these Covenants, each newly created Lot shall be entitled to one vote as if it were an originally designated Lot.

Section 4.2 Directors of the Association. The affairs of the Association shall be managed by a Board of at least three (3) directors. The exact number of directors shall be set from time to time in the Bylaws to the extent not set forth herein. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws. When any Owner (including an entity controlled by Owner) owns at least 480 acres within the Property, such Owner shall be entitled, without the vote of the other Owners, to serve as a Director of the Association ("Automatic Director").

Section 4.3 Management of the Association. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove members of the Board and officers of the Association as hereinafter provided. The period of Declarant's control of the Association shall terminate upon the earlier of the time when (i) 90% of the Lots are sold from Declarant to third parties; or (ii) Declarant delivers notice to the Association that Declarant is waiving its control rights. Until termination of the period of Declarant's control of the Association, the Board shall be composed of three (3) or more Members who are not required to be Lot Owners. Until the expiration of Declarant's control as set forth above, Declarant shall have the sole right to appoint the members of the Board and to remove any director with or without cause at any time and to fill all vacancies of all directors. Upon termination of the period of Declarant's control, the Board shall be composed of three (3) or more Directors, and the Owners shall elect at the annual meeting of the Members, Directors for those positions not otherwise occupied by the Automatic Directors. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board be approved by Declarant before they become effective.

Section 4.4 Officers of the Association. The officers of the Association shall be as set forth in the By-laws.

Section 4.5. Management.

(a) The Property shall be administered and managed pursuant to the Covenants, the Articles of Incorporation and Bylaws. Each Owner shall comply strictly with the Covenants, Articles of Incorporation and Bylaws. The Board shall have the right to adopt, amend or repeal, from time to time, reasonable rules and regulations governing the use of the Common Area as herein set forth and each Owner shall be bound by and shall

comply with such rules and regulations. The Association shall enforce all rules and regulations as well as the provisions of the Covenants, Articles of Incorporation and Bylaws. Failure of an Owner to comply with any such rules and regulations or provisions shall be grounds for an action to recover damages or to obtain injunctive relief, or both, by the Association on behalf of the Owners or, in a property case, by an aggrieved Owner. In addition, the Board may establish and enforce penalties for the infraction thereof, including (after notice and an opportunity to be heard as set forth in the Bylaws) the levying and collecting of fines for the violation of any such rules, regulations or provisions.

(b) The Association may utilize professional management in performing its duties. The Board may not delegate to a manager the authority to make expenditures for capital additions or improvements chargeable against any portion of the annual budgets provide for in these Covenants other than that portion specifically designated for capital expenditures. The members of the Board shall not be liable for any omission or improper exercise by a manager or any such duty, power or function so delegated by a majority of the Board.

ARTICLE V – COVENANT FOR ASSESSMENTS

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Premises, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree: a) to pay to the Association, (1) annual assessments or charges, and (2) special assessments for capital improvements or otherwise as hereinafter provided; and b) that the annual and specific assessments, together with interest, costs, and reasonable attorney's fees, if any, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal (joint and severable) obligation of the person or persons who was or were the Owner(s) of such Lot at the time when the assessment became due. Although such charges shall be a continuing lien upon the property until paid, the personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them with the consent of the Association. If a Lot is divided and may be separately conveyed as an independent parcel of land, then each newly created Lot shall be responsible for a set of assessments as though it were an originally designated Lot.

Section 5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, and welfare of the Owners and the Association and for the establishment, improvement, maintenance and protection of the Property and the interest of the Owners therein, and/or for property or facilities enhancing their use and enjoyment and/or the conservation of the natural amenities of the Property. These purposes may include, but shall not be limited to, funding for: the payment of taxes; insurance for common properties and risks involving the Association; maintenance (including snow removal) of roads, parking areas, utilities,

bridges and or other improvements or easements owned by the Association or sued by the Owners in common; the establishment, maintenance and protection of pastures, land, crops, streams, ponds, timber, livestock, wildlife and animals within the Premises; the construction, maintenance and repair of all improvements, including buildings, structures, ponds, ditches, utilities, stables or recreational facilities owned by the Association and constructed on the Common Easement Area or elsewhere for the Association; and the cost of labor, equipment, services, materials, management, protection and supervision of the assets and interests of the Association. By agreement, the Association may plow Limited Common Area roads or driveways and assess individual members for their pro rata share.

Section 5.3 Annual Assessments. Annual assessment shall be determined by the Board of Directors in an amount estimated to cover the normal operating expenses of the Association for each year as determined in conformity with standard accounting practices, together with such additional amounts as may, in their reasonable judgment, be necessary to cover any past deficits from operations or to create reasonable reserves for the future cost of operations of the Association.

Section 5.4 Special Assessments. In addition to an annual assessment to cover the Association's operating expenses, the Association, by an action of its Board, may levy, in any assessment year, special assessment(s) for the purpose of reserving or paying for, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Association or upon the Common Easement Area including fixtures and personal property. Any such assessment must also have the consent of two-thirds of the votes of the Members voting in person or by proxy at a meeting duly called for this purpose. Nothing stated herein shall restrict the right of the Association to provide for the repayment of the special assessment over a term of months or years subsequent to the date of such assessment, and upon terms and conditions it deems appropriate, including the collection of interest on the deferred balance.

Section 5.5 Notice and Quorum for any Action Authorized Under Section 5.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.4 shall be sent to all Members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members or their proxies entitled to cast thirty (30) percent of all Owners shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held sooner than thirty (30) days following the preceding meeting.

Section 5.6 Uniform Rate of Assessment. Both annual and special assessments must be fixed in equal amounts for all Lots and may be collected on a monthly basis. However, when in the judgment of the Board, a capital improvement is of a nature that uniquely restores damages or provides value only to certain individual Lots then, to the extent determined by the Board that such improvements are not beneficial to the Associate as a whole or to the Members or Lots in general, such portion of costs which solely contribute

to those certain individual Lots may be pro-rated, scheduled and assessed among only those Owners or Lots affected.

Section 5.7 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Lot and shall be assessed on a calendar year basis. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. Credits and Reimbursements to Owners shall be determined and arranged so that the burden of taxes and governmental assessments and, if possible, payments, shall be shared pro rata by Owners for taxes assessed against any common properties, Improvements (or usage) of the Association and the Owners, including, for instance, taxes on the Common Easement Area. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 5.8 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of ten (10) percent per annum, but in no event to exceed the maximum rate permitted under Montana law, or such lower rate as may be set from time to time by the Board. The Association may record a notice of lien against the Lot and bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property in the same manner as a mortgage on real property, and the Association shall be entitled in any such actions or foreclosure proceedings to recover its costs, expenses and reasonable attorney's fees. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Easement Area or abandonment of his Lot.

Section 5.9 Non-subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be superior and not subordinate to the prior lien of any first mortgage or prior recorded liens which are recorded after the date of the recording of these Covenants. Sale or transfer of any Lot shall not affect the assessment lien, whether such lien arises prior to such sale or transfer, or thereafter becomes due.

Section 5.10 Declarant's Assessment. For the purpose of assessments, any Lot owned by the Declarant shall be subject to the same assessments and provisions of these Articles as Lots of any other Owner.

Section 5.11 Payment by First Mortgagee. Any First Mortgagee holding a lien on a Lot may pay, but shall not be obligated to pay, any amounts secured by the lien created by this Article, and upon such payment such First Mortgagee shall be subrogated to all rights of the Association with respect to such lien, including priority.

ARTICLE VI – DESIGN CONTROL

Section 6.1 Purpose. The intent of Declarant in establishing the following protective covenants is to provide a uniform plan for the development of the Property which will create, conserve and maintain the natural environment and present scenic and aesthetic quality of the Property to the greatest extent compatible with providing use to the Owners for the development of single family residences together with such agricultural and recreational pursuits which may be reasonably consistent with the natural environment of the Property and its surroundings, and to further provide every practical and legal means to safeguard and protect the interest of all Owners and the value and stability of the Property.

Section 6.2 Requirement of Review by the Design Review Board. Except insofar as its duties may be extended with respect to a particular area by the Association, the Design Review Board (“DRB”) shall review and approve or disapprove all plans and specifications submitted to it for any proposed Improvement.

No construction, improvements, or alterations of any structure affecting the external appearance of any main building or secondary buildings and no driveways, parking areas, swimming pools, ponds, tennis courts, fences, satellite dishes, walls railings, artifacts, or other similar improvements and no wire, pipe, sewage disposal system, well or walkway shall be made, erected, altered, placed or permitted to remain upon the Property until a site plan and specifications showing the design, location, material(s) and color(s) together with the name of the contractor shall have been submitted consistent with the requirements contained in the Design Guidelines, and such site plan and specifications have been approved in writing by the DRB, which shall consist of a minimum of two and a maximum of three members appointed by the Board.

In considering applications, the DRB shall use in its evaluation its established guidelines, which shall incorporate therein the principal guidelines required or which may be created by Section 6.4, the restrictions set forth in Section 7.1 and the individual site’s characteristics as the primary and foremost criteria of design objectives so that improvements, although of merit and interest, shall not overly dominate their surroundings, but rather shall be reasonably subservient to them and harmonious with the land and its forms. The DRB shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, exterior finishes and materials and similar features and the overall benefits and detriment to the surrounding area and The Montana Ranch generally, but shall not be responsible for reviewing, nor shall its approval of any plans and specifications be deemed approval thereof, particularly from the standpoint of structural safety, the engineering soundness or conformance of any Improvements with building or other codes.

Section 6.3 Membership of DRB. The DRB shall consist of a minimum of two (2) and a maximum of three (3) members. All DRB members shall be members of the Association, unless one of the members who is not a member of the Association has professional qualifications in the area of architecture, design or land planning. The Directors of the

Association shall appoint the members of the DRB; provided, however, that so long as any Owner (including an entity controlled by Owner) owns at least 480 acres within the Property, such Owner shall be entitled to serve as a member of the DRB.

Section 6.4 Design Guidelines. In addition to reviewing all improvements under the conditions or guidelines set forth herein, the DRB has established Design Guidelines which will set forth the procedures and criteria for review of residences or other structures to be constructed or installed on the Property. Such criteria shall be consistent with the intent of Section 6.2 and the provisions of Article VII.

Failure to follow procedures or criteria set forth in the Design Guidelines shall form an adequate basis for rejection of the submitted site plan and specifications. A copy of the Design Guidelines is available from Declarant or the DRB and it is each Owner's responsibility to obtain a current copy of the Design Guidelines.

Section 6.5 Variances. The DRB may authorize variances from compliance with any of the architectural provisions of these Covenants or any Design Guidelines, including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, setbacks, colors, materials or similar restrictions when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations may, in their sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be approved by at least a majority of the DRB. The granting of such a variance shall not operate to waive any of the terms and provisions of these Covenants for any purpose except as to the particular property and particular provision and in the particular instance covered by the variance.

Section 6.6 Approval or Disapproval by the DRB. In the event the DRB fails to approve or disapprove such design, location, construction, and materials within forty-five (45) days after the detailed site plan and specifications have been submitted to it, approval shall not be required and this Article shall be deemed to have been fully complied with. Any plans, specifications and proposals so approved, either expressly in writing or by the expiration of the forty-five (45) day period hereinabove provided, shall then permit the Owner to commence construction in accordance with said plan. Any structure to be erected in accordance with approval so given shall be diligently prosecuted to completion and must be commenced and completed within eighteen (18) months of approval, or new approval must be obtained unless specific written extension is granted by the DRB. If any structure is begun but is not completed within eighteen (18) months of the commencement of construction, and in the reasonable judgment of the DRB is of offensive or unsightly appearance, then the DRB or the Board may, after reasonable notice to the Owner, take such action as may be necessary in accordance with Section 6.7 in its judgment to improve the appearance so as to make the property harmonious with other properties on the Montana Ranch, including completion of the exterior of the structure, installation of screening or covering of the structure or any combination thereof, or similar operations. The amount of any expenditures made in so doing shall be a lien on the property and may be enforceable by an action at law. The DRB shall act by a majority of its members and any authorization or approval made by the DRB must be

signed by a majority of the members thereof. All construction activities must occur between the hours of 7:00 a.m. and 7:00 p.m.

Section 6.7 Inspection of Work. Upon the completion of any Improvement for which approved plans and specifications are required under these Covenants, the Owner shall give written notice of completion to the DRB. Within such reasonable time as the DRB may set in its rules, but not to exceed thirty (30) days after such notification and any adjustment for weather conditions, the DRB or its duly authorized representative may inspect such Improvement. If the DRB finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval as required by Section 6.6, it shall notify the Owner in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance and shall require the Owner to remedy the same. If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall fail to remedy such noncompliance, the DRB shall notify the Board in writing of such failure. Upon notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correction or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board's ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expense incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and the Improvement in question and the land on which the same is situated for reimbursement and the same shall constitute a lien upon such land and Improvement and be enforced as set forth in these Covenants. The DRB may inspect all work in progress and give notice of noncompliance as provided above. If the Owner denies that such noncompliance exists, the procedure set out above shall be followed, except that no further work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board shall find that such noncompliance exists.

Section 6.8 Materials. Construction materials shall not at any time be placed or stored so as to impede, obstruct or interfere with pedestrian or vehicular traffic and construction materials shall not be kept, placed or stored on Lots, including its DRA, for a period exceeding thirty (30) days following substantial completion of construction (as shall be determined by the DRB) without specific approval of the DRB or as permitted by Section 7.1(g).

Section 6.9 Restoration of Lot. Upon completion of the construction on any Lot, the Owner shall to the greatest extent possible restore the Lot to the conditions which existed prior to such construction (taking into account such construction and approved landscaping) so that the Lot and improvements shall be in harmony with the surrounding unimproved property. The Owner must complete said restoration within 45 days or such other period as may reasonably be dictated by weather conditions following completion of construction on any Lot. In the event restoration is not completed within said time

period, Declarant or Association, upon reasonable notice to the Owner, may complete said restoration at the expense of the Owner.

ARTICLE VII – MINIMUM BUILDING AND USE RESTRICTIONS

Section 7.1 Building Restrictions. Without a variance from the DRB, no structure, other than those currently standing at the time of recording of these Covenants, which fails to meet the following minimum standards, shall be erected, placed or allowed to remain on any Lot:

- (a) No structure, except one belonging to the Association, shall be erected, altered, placed, or permitted to remain on any Lot, or within the DRA of such Lot and no such structure within a DRA shall be comprised of anything other than one single family dwelling, a private garage and optional guest quarters, barns, out buildings or other structures without approval of the Association. All structures shall be erected only on the specific sites approved by the DRB. Each building site must include a landscape plan providing for the planting of grasses, trees, shrubs and other landscape features which serve to enhance the appearance of the site and moderate the impact and abruptness of rooflines and dominance of any structures.
- (b) Any building or residence erected on any Lot shall be of new construction, and no mobile homes, trailers, old buildings or pre-assembled homes shall be placed or moved onto said Lot. However, an old building which, in the sole discretion of the DRB, is deemed to be of significant design, historical or esthetic value may be placed or incorporated with new construction on a Lot with such specific approval of the DRB.
- (c) No basement or structure on any Lot may be used for dwelling purposes until after it has been completely enclosed according to the approved plans and until it has been substantially completed, with sanitary facilities and utilities permanently installed. No structure of a temporary character, including but not limited to trailers, mobile homes (single wide or double wide), set together or expanding trailer houses, modular homes, tents, shacks, barns or outbuildings shall be constructed, placed or occupied on any Lot at any time as a residence. Residential structures shall not be occupied until the exterior is completed and the water supply and the sewer systems are completed with the written approval of the local health authority. Construction trailers will be considered on a case-by-case basis by the DRB. A guest house may be occupied pending construction of a primary residence for a maximum period of twelve (12) months unless extended with the written approval of the DRB.
- (d) Exterior TV, radio, satellite dishes or other antennae may be installed, but the number, location, height, color, screening and size of such antennae must conform to these Covenants and the Design Guidelines established by the DRB to minimize their appearance or visibility from neighboring Lots.

- (e) All electricity, telephone, lines and similar improvements, together with facilities constructed incidental thereto, shall be placed and installed underground.
- (f) No garbage, trash, unsightly debris, organic or inorganic waste shall be collected and/or permitted by an Owner to accumulate on any Lot or in any road adjacent thereto, but shall be promptly and efficiently disposed of, and no vacant lands or other Lot shall be used as a dump ground or burial pit by any Owner. The only allowable outside trash or refuse cans or containers shall be those which are kept and maintained in effective animal (including bears) proof condition and enclosed or screened by a structure constructed in conformance with these Covenants. Outside incinerators shall not be permitted.
- (g) No signs, billboards, banners, streamers or advertising devices of any nature except as may be authorized by the DRB (e.g., house "for sale" signs) shall be erected or maintained on any part of the Property. The foregoing shall not apply to the business activities or advertising of the Declarant, its agents or representatives while any Lots owned by Declarant remain unsold. The Association may erect signs or notices for identification purposes in accordance with applicable statute and municipal laws or codes.
- (h) To the extent reasonably possible given existing topography, roads, walks, paths and trails should be laid out in curving or winding routes. Any dwelling shall have provided for it, within the same DRA, off street parking for at least two (2) vehicles.
- (i) No dwelling or other structure intended for use or occupancy by individuals shall be constructed without an adequate septic tank or sewage disposal system. No outhouse or privy shall be permitted or maintained on any Lot, except that a chemical toilet shall be permitted on a Lot during the time an approved Improvement is being constructed. Any septic tank or sewage or waste disposal system or any private water supply system, including wells, shall be located, installed and maintained at all times in compliance with standards established by the Montana State Board of Health and by any other governmental agency with jurisdiction.
- (j) The wells, septic tanks and drainfields shall be constructed or installed in accordance with state and county standard.
- (k) No mining, quarrying, excavation, oil drilling or development of any kind shall be allowed in or on the Property except for such excavation for road building, gravel, ponding or other structures as may be necessary in connection with the completion of the Project by the Declarant or placing of

Improvements thereon in accordance within the terms and restrictions of these Covenants or with the specific approval of the Association.

- (l) The layout, design and installation of all plant life, landscaping, grasses, lawns or ground covers, except those in specifically confined vegetable or flower gardens or planters, must generally conform to native varieties (and not be of an undesirable spreading nature), and be planted with irregular or natural looking spacing. No owner or owners shall permit noxious weeds or other undesirable plants to grow or spread upon his DRA or Lot. In the event any Owner fails to control or eliminate the growth or spreading of such noxious weeds and undesirable plants, the Association shall, after reasonable notice, be entitled to take such action as is necessary to eradicate or control such weeds and plants at the expense of the Owner or Owners of the Lot, and the full amount of any costs and expenses shall be due and payable within thirty (30) days after the Owner is billed therefore.
- (m) Violation. Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article VII shall be made by the Board, whose determination shall be final.

Section 7.2 Use Restrictions. The following use restrictions shall be applicable to all Lots:

- (a) No Hunting / Firearms. Except for pest control, hunting, trapping or the discharge of any rifle, shotgun, pistol or other firearms or use of traps shall not be permitted anytime on the Property unless such activities are expressly authorized and permitted by the Board.
- (b) Animals on Lots. With the exception of horses, whose use and care are defined in these Covenants, no animals or poultry shall be kept or fed on any Lot except (i) ordinary household pets belonging to the household, (ii) no more than ten (10) cow calf pairs and (iii) a reasonable number of family farm animals (e.g. sheep, llama, alpaca, pig or chickens). To the extent an Owner qualifies and elects to have the animals set forth in Section 7.2(b)(ii) above, such Owner shall be responsible for installing the fencing that contains such animals to such Owners' Lots, and such fencing shall allow easily operable gates that allow other passage by horse wherever such fences cross designated or existing trail areas within the Property. Notwithstanding the foregoing, should, in the discretion of the Association, a particular household pet become a nuisance to livestock or wildlife, such household pet will not be allowed outside of an Owner's DRA unless in the immediate company and control of their owner or his agents. The Association may also limit the number of household pets on DRA's or elsewhere and may withdraw permission for any domestic animal to remain on the Property from any Owner who, after due notice, violates the restrictions of this paragraph including excessive animal noise, or whose animal is, or has become, a nuisance to livestock, wildlife,

property or other Owners, invitees or Association personnel. Also notwithstanding the foregoing, should, in the discretion of the Association, any of the animals described in Section 7.2(b)(ii) above become a nuisance to neighbors or wildlife, the Owner of such animals may be required to satisfy those conditions deemed necessary to the Association to remedy the nuisance, including but not limited to, removal of such animals from the Property.

- (c) No Domestication of Wild Animals. No attempt shall be made by anyone to domesticate any wild animals on the Property. There shall be no commercial raising of domestic or wild animals.
- (d) Timber / Vegetation. There shall be no cutting, removal or voluntary destruction of timber, vegetation or rock outcroppings located on the Property except by: (1) Declarant to complete the Project; (b) the Association to enable the building of structures and improvements on a building site; or (c) by an Owner as approved by the Association for the removal of dead or diseased trees, noxious weeds, or the maintenance or establishment of other approved roads, streams, paths, ponds or the health and care of grazing lands and crop, forests, planned habitats or landscaping.
- (e) Burning / Fire. No external burning of refuse or other materials shall be permitted on any Lot without the specific approval of the Association except that a fire ring not to exceed eight feet in diameter may be used to burn wood and other nonrubbish material. The use of any outdoor fires for camping or other purposes shall conform to safety rules set forth by the Association. The design, location and use of all barbecue pits, sites or units must be approved by the DRB. No Owner shall do any act or permit the continuance of any condition that creates an unnecessary or unreasonable risk of fire and shall follow the rules for fire prevention and projection established by the Association.
- (f) Rules. The Association may adopt and make available reasonable rules governing the use of all designated roads, driveways and trails as well as other Common Easement Areas on the Property and penalties or assessments for violations of such rules. Owners, occupants, permittees and invitees shall be bound and abide by such rules.
- (g) Preservation of Property. The Owners or Occupants of any Lot shall at all times conduct their use and activities in a manner that will preserve the integrity of the Property, including the prevention of any degradation of water quality, any reduction or increase in the flows of the springs, creeks or streams, or any damage to the streambeds or banks. The outdoor use of potentially damaging or hazardous fertilizers, pesticides or herbicides by an Owner, unless approved by the Association, is expressly prohibited. Owners may, upon approval by the DRB, drill a well to provide potable water for homes and outbuildings located on the Property.

- (h) **Parking.** Passenger vehicles (including pickups or vans) normally used by the Owner, occupants, invitees or guests shall be kept and parked overnight within structures and/or specific areas as provided by the plans approved by the DRB for such DRA or other area. Other vehicles, including any other truck, bus, RV, mobile home, trailer unit, boat, tractor, wagon, other recreational vehicle, snowmobile or other mobile device, large construction or farm equipment or implements shall not be parked overnight or stored on any Lot after construction is completed unless properly housed and screened in the manner approved by the DRB so as to not be visible from the Common Easement Area or neighboring Lots. At the occasional request of an Owner, extra vehicles may remain unscreened or unenclosed on the Owner's DRA for short periods at the sole discretion and approval of the Association.
- (i) **No Commercial Activity.** No Lot or part thereof, building or improvement erected thereon shall at any time be used for the storage of agricultural (other than temporary wild farming) or commercial supplies or equipment or for purposes of any trade, profession, manufacturing or business of any description except the supplies, business and management of the Association. Notwithstanding the above, an Owner or Occupant, with the specific approval of the Association, may engage in his or her professional activities and maintain an office within their residence for such activities providing it involves no regular traffic with the public and the attendance of no more than two (2) employees.
- (j) **No Offensive Behavior.** No illegal, noxious, unsightly or offensive activities shall be carried on, nor shall anything be done on any Lot or in the Common Easement Area which may become an unreasonable annoyance or nuisance to the other Owners or occupants in the quiet and peaceful enjoyment of the Property.
- (k) **Renting.** Declarant has divided the Property into Lots for the purpose of providing Lots to accommodate a limited number of permanent single family residences, to maintain open spaces for wild life, the pursuit of agriculture and recreation, and to protect the natural scenic and environmental integrity of the Premises and to facilitate the security and quiet enjoyment of Owners, occupants and their guests. Consistent with this theme, the short term rental of a residence or guest quarters as a commercial or communal enterprise is not allowed, and no Owner shall permit communal activities in or lease or rent, for money or otherwise, such Lot, residence or guest quarters without first securing the written permission of the Association. No bed and breakfast operations are allowed.
- (l) **Owner Responsible for Tenants and Guests.** Owners shall be responsible to the Association for all acts of tenants or guests resulting in damage to Association property and for the tenant's and guests adherence to all

covenants and restrictions which may be applicable and to all guidelines, rules and regulations of the Association.

- (m) Exterior Maintenance. Each Owner shall provide exterior maintenance within his DRA and upon any structures thereon, including painting and repairing the structures, maintaining the grounds to preclude weeds, underbrush, and other unsightly growths, and not permitting fire hazards, refuse piles or other unsightly objects to accumulate or remain on the grounds. In providing such exterior maintenance, the Owner shall utilize materials, colors, plants and landscaping schemes harmonious with the surrounding area and consistent with generally accepted concepts of desirable upscale, rural residential developments and any prior approved plans by the DRB. In the event any Owner shall fail or neglect to provide such exterior maintenance, the Association shall notify such Owner in writing specifying the failure and demanding that it be remedied within thirty (30) days. If the Owner shall fail or refuse to provide such exterior maintenance within the thirty (30) day period, the Association may then enter such DRA and Lot and provide required maintenance at the expense of the Owner. The full amount shall be due and payable within thirty (30) days after the Owner is billed therefore. Such entry on DRA or Lot by the Association shall not be deemed a trespass.
- (n) Lots Not to be Subdivided. No Lot shall be subdivided other than those Lots originally designated for potential subdivision by the Declarant, and subdivision of a Lot may only occur on those Lots so designated by the Declarant. Lots which may be subdivided are listed on Exhibit C. Any lot on which subdivision is permitted may only be subdivided to contain the number of home sites designated on the master plan for the Property. Notwithstanding the foregoing, no lot may be subdivided if such subdivision results in any new or resulting tracts of record of less than 30 acres. Not more than one (1) single family detached residential unit may be located on any Lot, or approved subdivision thereof, and each residential unit shall be used only as a single family residence, which may include one or more guest houses. In the event a Lot is subdivided pursuant to this section, all such subdivided portions shall be designated as Lots as defined herein, the cost ratios for assessments shall be adjusted accordingly, and such new Lot shall be subject to these Covenants. These new restrictions on subdivision shall apply to all subdivisions of a lot occurring after the date of recording of these covenants.
- (o) Leases. As used herein, the term "lease" shall include any agreement for the leasing or rental of a Lot. Any Owner shall have the right to lease such Owner's Lot provided that all leases shall provide that the terms of the lease and the lessee's occupancy of the Lot shall be subject in all respects to the provisions of the Covenants, the Articles of Incorporation, Bylaws and rules and regulations of the Association, and that any failure by the lessee to comply with any of the aforesaid documents, in any respect, shall be a default under the lease. Any violation of these Covenants by a Lessee is subject to

the same actions by the Association as if the Lot Owner had violated the Covenants. A Lot Owner is responsible for any violations of the Covenants by a lessee or sub-lessee of the Owner.

- (p) Vehicles. Each residential unit shall include, at a minimum, a two car enclosed garage. Carports will not be allowed. All vehicles shall be parked in the garage or on driveways or designated parking areas approved by the DRB. No vehicles shall be parked upon or encroach upon the Common Area except on a temporary basis as defined by the Board or in designated parking spaces. Each Owner shall be responsible to see that visitors and Guests utilize the parking areas provided. No outdoor maintenance, service, rebuilding, dismantling, painting or repair work shall be performed except washing and polishing. Trucks exceeding a capacity of one ton may not be regularly parked or kept on the Property except as may be required in connection with construction, service and repair activities or unless kept in a building. Recreational vehicles, such as boats, mobile homes, RV's, campers and camper-trailers may not be kept or stored within the Property except on a temporary basis as defined by the Board. However, nothing shall prevent storage of such vehicles on any Lot in an enclosed garage as approved by DRB. The Association shall have the authority to promulgate safety rules and regulations regulating or restricting the types of vehicles which may be operated on roadways within the Property, including but not limited to golf carts, motorcycles, motorbikes, and bicycles.
- (q) Oil, Mining Operations or Timber. No operation of any kind for the purpose of discovering or removing any oil, gas, gravel, minerals or timber of any kind shall be conducted on any Lot, except as authorized by the DRB.
- (r) Drainage Control. Reasonable caution shall be taken during construction, and thereafter, to prevent erosion and drainage problems. All disturbed soil areas shall be revegetated within a reasonable time in such a fashion as to minimize erosion. Driveways shall be constructed so as not to interfere with drainage and shall include culverts of appropriate size to prevent obstruction of water flow.
- (s) Snowmobiles and Off-Road Vehicles. Use of snowmobiles, motorcycles, trail bikes or other off-road motorized vehicles on a Lot shall be conducted in accordance with rules established by the Association. Notwithstanding anything to the contrary, should, in the discretion of the Association, the use of any snowmobiles, motorcycles, trail bikes or other off-road motorized vehicles become a nuisance to neighbors or wildlife, the Association may restrict or prohibit the use of any such snowmobiles, motorcycles, trail bikes or other off-road motorized vehicles.
- (t) Kennels. Kennels must be placed in an area which is inconspicuous and removed from the direct view of neighbors and the primary road. All kennels

and dog runs must obtain the DRB's approval for size, materials and location. Commercial kennels are not allowed.

- (u) Solar Collectors. Solar collectors shall be integrated into the overall roof design, and shall be placed flush with the slope of the roof or wall of the building.
- (v) Garage Doors. Owners shall make every effort to keep Garage Doors closed as much as possible.

Section 7.3 Livestock Fencing. The Association, at its sole discretion, shall be and is hereby authorized to erect in the Common Easement Area for the benefit of the Owners or the Association, such stables, corrals, pastures, fences and other necessary structures for keeping horses or other livestock within the Property. The ownership and control of all horses or other livestock shall be governed by such rules and regulations of the Association as, in the discretion of the Board, may be necessary to permit the presence of horses or livestock without the same becoming a nuisance or burden to other Owners or the Association or detrimental to the land, wildlife habitat and environment. The Association shall be entitled to charge for use of the Association's stables or other facilities and shall be authorized to execute, regulate and rent horses, stable or pasturage areas with any owners of horses or other livestock. Notwithstanding the above, nothing contained herein shall create an obligation on the part of the Association to permit horses or livestock within the Premises or to construct any corrals, pastures, stables or other facilities if it shall be judged in the opinion of the Association to be detrimental to the Association or Premises or in contravention of any law or regulation of any governmental authority.

Section 7.4 Keeping of Horses. This Section contains general guidelines for the maintaining and keeping of horses on Lots with the Property. Lot Owners wishing to keep and maintain horses are strongly advised to take advantage of the Horse Barn located in the Common Area of the Property. Any corral / pasture area shall be maintained so as to prevent all nuisances of any type or nature. Measures shall be taken to control erosion, noxious odors, or the buildup of manure. Horses may not be kept in corrals or pastures for extended periods of time if the primary residence is not occupied. The number of horses allowed to be kept on any Lot shall not exceed four (4) in number for any Lot of thirty (30) acres or less, six (6) horses for any Lot over thirty (30) acres but less than ninety (90) acres, and ten (10) horses for any Lot over ninety (90) acres. The Association may modify, amend, expand or delete such general guidelines hereinabove set forth on a Lot-by-Lot basis. Additionally, the following guidelines shall be followed by each Owner:

- (1) No more than the specified amount of horses may be maintained on a Lot on a permanent basis. Up to two additional horses may be maintained on a lot for a period not to exceed 72 hours.
- (2) Fencing for corrals / pastures shall not exceed one (1) acre in size.

- (3) Fencing shall be no more than five (5) feet in height and constructed with wooden material or barbless smooth wire and wood post. Steel material may be used for gates. All corral / pasture facilities shall be approved by the DRB.
- (4) Corral and pasture areas shall be kept free of manure and shall be maintained so as to prevent all nuisances of any type. Measures shall be taken to control erosion, noxious odors, or the build-up of manure.

The Board may modify, amend, expand or delete the general guidelines hereinabove set forth on a lot-by-lot basis. The Board shall also have the authority to appoint a Horse Management Committee to further develop and oversee a horse management program.

ARTICLE VIII – GOOSE CREEK LOTS 1-5 AND 8-9

The seven (7) pre-existing lots on the Property are generally known and referred to as Lots 1-5 on Certificate of Survey No. 699A, and Lots 8-9 on Certificate of Survey No. 376A, filed among the records in the office of the Clerk and Recorder of Gallatin County, Montana. Such Lots are informally denominated as Montana Ranch Lots 23, 24, 25, 26, 27 and 28 and shall be referred to herein as the “Goose Creek Lots”. In addition to these Covenants, the Goose Creek Lots are further encumbered by pre-existing protective and restrictive covenants (“Goose Creek Covenants”) and such Goose Creek Covenants (as such may be amended from time to time) shall be adhered to by the Owner of any one or more of the Goose Creek Lots. The current version of the Goose Creek Covenants is the Second Amendment and Restatement to Protective Covenants, recorded at film 189, page 4774, as amended by the Third Amendment to Protective Covenants recorded on August 12, 2002 as Document No. 2077557, all in the records of the Clerk and Recorder of Gallatin County, Montana. The Goose Creek Covenants may be amended. Owners are responsible for obtaining a current version of the Goose Creek Covenants. In the event a conflict exists between these Covenants and the Goose Creek Covenants, the most restrictive covenant shall prevail.

ARTICLE IX – GENERAL PROVISIONS

Section 9.1 Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in the Covenants, Articles of Incorporation, Bylaws or rules and regulations of the Association, all as may be amended from time to time, shall be by any proceeding at law or in equity against any person or persons, including the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right (after notice and an opportunity to be heard) to levy and collect fines for the violation of any provision of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys’ fees incurred pursuant thereto, as

well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.2 Severability. Invalidation of any of the covenants, restrictions or other provisions contained in the Covenant by judgment or court order shall in no way affect or limit any other provisions, which shall remain in full force and effect.

Section 9.3 Conflict of Provisions. In case of any conflict between these Covenants, the Articles of Incorporation or Bylaws, these Covenants shall control. In the case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control. In the event these Covenants conflict with the Design Guidelines, the Design Guidelines shall control.

Section 9.4 Term. The provisions of these Covenants shall be binding for a term of twenty-five (25) years from the date of these Covenants, after which time the Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument agreeing to amend, revoke or terminate these Covenants has been signed by the Owners of seventy-five (75) percent of the Lots and has been recorded.

Section 9.5 Amendment. Prior to the termination of the Declarant's control of the Association (as set forth in Section 4.3), Declarant may amend these Covenants without the consent of the Owners or the Association. After the termination of the Declarant's control of the Association, and except those provisions requiring a greater consent, any provision herein may be amended or revoked and additional provisions added, at any time by a written instrument recorded in the office of et Clerk and Recorded of Gallatin County, Montana, duly signed and acknowledged by the Owners of record of not less than seventy-five (75) percent of the Lots subject to these Covenants.

Section 9.6 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of improvements upon the Project. The completion of that work and the sale of Lots are essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- A. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Lot, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Lots owned by others), such structures as may be reasonable and necessary for developing said Project as a residential community and disposing of the same by sale, including a sales office and design center; or

- C. Prevent Declarant from conducting on the Project (except upon Lots owned by others) its business of completing said work and of establishing a plan of residential ownership and of disposing of the Lots by sale; or
- D. Prevent Declarant from maintaining or displaying such signs, pennants and flag(s) on the Project (except upon Lots owned by others) as may be necessary for the sale, lease or disposition thereof, or
- E. Subject Declarant to the architectural control provisions of Article VI for the construction of any improvement on the Project.

Section 9.7 Registration by Owner of Mailing Address. Each Owner shall register such Owner's mailing address with the Association, and all notices or demands intended to be served upon an Owner shall be sent by mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. If any Owner fails to notify the Association of a registered address other than the Owner's Lot, then any notice or demand may be sent to such Owner at the address of such Owner's Lot. All notices and demands shall be deemed to have been duly served or given if delivered personally or if addressed as provided above and mailed, postage prepaid, in the U.S. mail system. All notices, demands or other notices intended to be served upon the Board of the Association or the Association shall be sent by certified mail, postage prepaid, to Montana Ranch Homeowners Association, PO Box 612, Gallatin Gateway, MT 59730, until such address is changed by the Association by notice to all Owners.

Section 9.8 Non-Liability of Board and DRB Members. Neither the DRB nor any member thereof nor the Board nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the DRB's or the Board's respective duties under these Covenants unless due to the willful misconduct or bad faith of the DRB or its member or the Board or its member, as the case may be.

Section 9.9 Non-Dedication to Public Uses. Nothing contained in these Covenants shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Premises or the Common Easement Area to or for any public use or purpose whatsoever.

IN WITNESS WHEREOF, the undersigned Owners have hereunto set their hands and seals as of the day and year first above written.

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LEGAL DESCRIPTION

Tracts 1, 2, 3, 4 and 5 of Certificate of Survey No. 699A, located in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17, Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tracts 8, 9, 10, 11 and 12 of Certificate of Survey No. 376A, located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17, Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tracts 1 and 2 of Certificate of Survey No. 510A, located in the NW $\frac{1}{4}$ of Section 9, Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tract B of Certificate of Survey No. 660, located in the NW $\frac{1}{4}$ of Section 9, Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tracts 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11 of Certificate of Survey No. 2278, located in Sections 7, 8, 17 and 18 of Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tract 8 of Certificate of Survey No. 2278A, located in Sections 7, 8, 17 and 18 of Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tract 1 and 2 of Certificate of Survey No. 2303, located in Sections 8, 9 and 17, Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

Tract 'L', 'M' and 'N' of Certificate of Survey No. 2641, located in the SW $\frac{1}{4}$ of Section 4, Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Gallatin County, Montana.

(continued)

EXHIBIT "A"



All that part of the S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 5 and all that part of the N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 8, all in Township 3 South, Range 4 East, P.M.M., Gallatin County, Montana, more particularly described as follows: Commencing at the Northeast corner of said Section 8, also being the Southeast corner of said Section 5, thence North 200 feet; thence West 640 feet to a point 200 feet North of the South line of said Section 5; thence in a straight line in a Southwesterly direction a distance of 460 feet to a point 50 feet North of the South line of said Section 5; thence from said point in a straight line in a Southeasterly direction a distance of 460 feet to a point 100 feet South of the North line of said Section 8; thence in a straight line in a Southerly direction 1,450 feet to a point, which point is 740 feet West of the East line of said Section 8; thence due East to the East line of said Section 8; thence North along the East line of said Section 8, a distance of 1,550 feet to the point of beginning. [Deed Reference: Film 41, page 1149]

END

**NOTICE OF TERMINATION
OF
DECLARANT CONTROL RIGHTS**

Pursuant to the authority of Sections 3.1 of the Bylaws of Ladigo Ranch Homeowners' Association, the Declarant shall control the Ladigo Ranch Homeowners' Association ("Association") until the earlier of (i) 90% of the Lots are sold from Declarant to third parties; or (ii) Declarant delivers notice to the Association that Declarant is waiving its control rights.

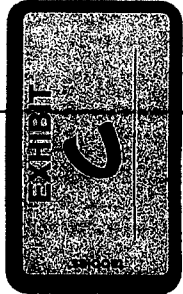
Declarant hereby gives notice to the Association that effective May 15, 2009, Declarant is waiving its control rights under Section 3.1 of the Bylaws of the Association. The Members of the Association shall, effective May 15, 2009, have all the voting rights set forth in the Bylaws and the Declaration (as defined in the Bylaws).

DATED this 6th day of May, 2009.

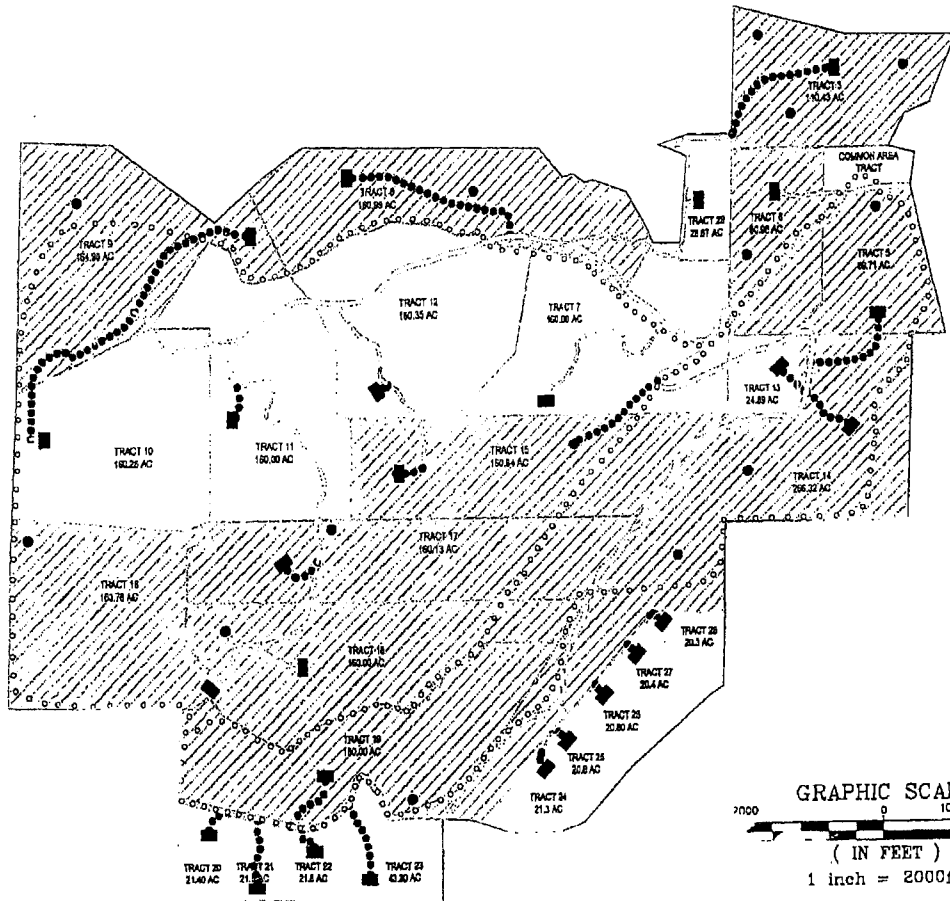
Montana Golf Enterprises, LLC,
a Montana limited liability Company, Declarant

By: [Signature]
Stephen M. Barrett, as Attorney in Fact for John
deMaine, Manager of Montana Golf
Enterprises, LLC





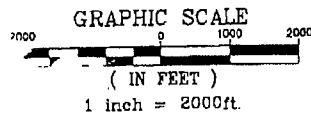
2334123 Page 34 of 34 06/19/2009 03:41:40 PM



MONTANA RANCH

- LEGEND:
- ○ ○ ○ ○ EQUESTRIAN TRAILS
 - EXISTING TRAILS
 - SECONDARY DESIGNATED RESIDENTIAL AREA
 - DESIGNATED RESIDENTIAL AREA
 - COMMON USE ROAD
 - LIMITED USE ROAD/DRIVEWAY
 - ● ● ● ● DRIVEWAY TO BE CONSTRUCTED BY OWNER

NOTE:
TRACTS AVAILABLE FOR FURTHER SUBDIVISION
ARE 3, 5, 6, 8, 14, 15, 16,
17, 18, AND 19.



MORRISON MAIERLE, Inc.
An Engineer-Cost Consultant

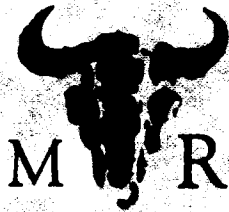
19 1st 1113 2nd Subdividing Bldg, Kansas, MO 64111 • Phone (816) 261-0201 Fax (816) 261-1176

CLIENT: _____

FIELD WORK: _____ DATE: 8-09-04
DRAWN BY: KSS SCALE: 1"=2000'

**MONTANA RANCH
ROAD & TRAIL
EASEMENT MAP**

PLOTTED DATE: Dec/28/2004 - 11:38:02 am
DRAWING NAME: H:\3314\REALTY\PLANS\Document Exhibit.dwg



~ Montana Ranch ~

HOA Rules Governing Use of Snowmobiles and Off-Road Vehicles

Effective July 2012

Section 7.2 (s) of the Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Montana Ranch (the "Declaration") governs the use of snowmobiles and off-road vehicles in the Ranch. As permitted by the Declaration, the HOA has hereby adopted the following additional rules associated with snowmobiles and off-road vehicles (the "Subject Vehicles"):

1. The Subject Vehicles are only to be used by an Owner and/or an Owner's Guest (as defined in the Declaration)
2. The Subject Vehicles are strictly prohibited on the Equestrian Trails, except to the extent an Owner and/or an Owner's Guest is using the Subject Vehicles ON THE OWNER'S OWN LOT where the Equestrian Trails happen to traverse
3. The Subject Vehicles are permitted on the roads within the Ranch, provided that they are not a nuisance to other Owners or wildlife.
4. Any party performing grounds maintenance work (including weed spraying and farming) on behalf of the HOA is permitted to use the Subject Vehicles in accordance with the Declaration.

By: Sara E. Schwerin
Secretary, Montana Ranch Homeowners' Association