

## **DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

This Declaration is made and entered by Dorothy P. Leiber, the owner in fee simple of the real property located in Sanders County, State of Montana, legally described as:

A tract of land located in Section 8 Township 22 North, Range 30 West, P.M.M., further described as Tract B on Certificate of Survey No. 2471-RB, filed for record July 13, 2004, Sanders County, Montana;

and made and entered by Daniel L. Evans and Karen R. Evans, the owners in fee simple of the real property located in Sanders County, State of Montana, legally described as:

A tract of land located in Sections 7, 8, and 18, Township 22 North, Range 30 West, P.M.M., further described as Tract A on Certificate of Survey No. 2471-RB, filed for record July 13, 2004, Sanders County, Montana.

Leiber and Evans (Declarants) do hereby declare and set forth covenants, conditions, and restrictions to run with all of the lands described herein as provided by law, which covenants, conditions and restrictions shall be binding upon all parties and persons claiming an interest in any of the property described herein, and which covenants, conditions and restrictions shall be for the benefit of and impose limitations upon all future owners, and being for the purpose of providing reasonably necessary services and keeping said real estate desirable, uniform and suitable for the uses specified herein.

Declarant Leiber, having divided and transferred a portion of her property to Declarants Evans, and the parties desiring to incorporate in said division of property certain protective covenants, conditions, and restrictions to be applicable to the property described herein, these protective covenants, conditions and restrictions are hereby declared as being for the mutual benefit and burden of said Owners, their heirs and assigns.

All structures, houses, storage units, outbuildings, property uses, equipment storage, and any violations existing as of the date of these Covenants, Conditions and Restrictions shall be exempt from any restriction herein.

### **ARTICLE I. RESIDENTIAL BUILDING AND PROPERTY USE COVENANTS FOR LARGE PARCELS**

A. Building Type. All residential buildings constructed on the property shall be single family dwellings, with a private two car or more garage, and a shop and outbuildings. All buildings, residential or otherwise, shall be of frame or log construction. Guest houses, a recreational lodge or apartments (so long as any apartment is incorporated into a garage) are allowed, but duplexes, triplexes, motels, hotels and multiple unit apartments are prohibited.

All such residences and Owners shall comply with all relevant state and local regulations with respect to water supply, sewage disposal, sanitation and garbage, and burning. Sewage disposal systems shall comply with Sanders County septic regulations, and all state regulations and approval requirements, as may be applicable.

No mobile home, trailer, modular or manufactured home may be placed or kept on the subject properties for any purpose. The occasional use of camper trailers or recreational vehicles on a temporary basis is permissible, for a period not to exceed six (6) months during any calendar year or for up to one year during construction, except that such camper trailers or recreational vehicles may be stored on the subject properties so long as they are not used for residential purposes.

**B. Land Use.** No portion of the property described herein may be subdivided or further subdivided to create a parcel smaller than 20 acres.

No tract described herein may be used for a non-public educational institution, school, or large commercial activity as defined herein. No trade, craft, business, educational institute or school, large commercial or manufacturing activity, may be conducted on the property or within any building located thereon, except that arts, crafts, or other professions or hobbies conducted by the occupants and their family members also residing there shall be permissible so long as that activity is contained within a structure or building. For purposes of this provision, large commercial or manufacturing activity shall be defined as having or employing more than five persons not related to the occupant, and shall also include those activities or occupations which involve customers, vendors, or suppliers coming to the premises on a regular and frequent basis, e.g. on a daily basis. Nothing in this provision shall be deemed to prohibit commercial agricultural uses, except as restricted herein.

Notwithstanding the foregoing, the following shall be allowed: a recreational lodge and guest cabins; and the use of the gravel pit as defined below.

Large commercial or manufacturing activity shall not include the use and excavation of the existing gravel pit on the Tract A property, so long as such use does not exceed excavation and removal off of Tract A of over five 10 - 12 yard loads of gravel per day.

Agricultural activities, including the raising of domesticated stock animals and other farming activities are allowed on the premises. However, pigs and poultry may not be raised for commercial purposes, and no feed lot may be established or maintained on the property. In the event that domesticated stock animals are raised and maintained on the property, the Owner keeping such animals shall maintain at all times sufficient and adequate fencing on the property to prevent such animals from being at large. Any Owner keeping such animals shall be responsible for establishing and erecting a fence on that Owner's side of the creek (Little Beaver Creek) where it serves as the boundary for the properties.

Household pets, such as dogs and cats may be kept but may not be raised for commercial purposes, and such pets shall not be allowed to be at large or otherwise be off such Owner's property, nor shall they become a nuisance due to persistent howling or barking.

No noxious or offensive activity shall be carried on upon any parcel nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighboring landowners. Except as provided for herein, no materials or mechanical equipment shall be kept or used on the property that are detrimental to or interfere with the residential and agricultural use of the property due to excessive noise, vibration, dust, smoke, or odor; and excepting on a

temporary basis for the construction of improvements on the property. Owners shall comply with all weed district requirements in the control of noxious weeds. Any activity on the property which is a violation of law shall be deemed to be a violation of these covenants.

**IN ADDITION to the above covenants, conditions, and restrictions, the following Article II provisions shall apply to any tract of land, parcel, or portion of the real property described above that is created, sold, segregated, demised and is 40 acres or less. The following provisions are intended to be cumulative to the above provisions, and in case of any conflict between provisions, the more restrictive provisions shall be given force and effect:**

## **ARTICLE II. RESIDENTIAL BUILDING AND PROPERTY USE COVENANTS**

The residential building and property use covenants below shall apply to all parcels included in the above-described property that are 40 acres or less. Any owner who owns a parcel governed by these Article II provisions, and who later acquires additional property thereby owning property totaling over 40 acres, shall still be governed by the provisions of this section. Should a parcel of property that was, at the time of installation of improvements, originally not subject to these following provisions be reduced to acreage that falls under these provisions, the provisions for building type and uses for that parcel shall not be subject to the provisions of this Article. These Article II provisions shall not apply to the Declarants, regardless of what remaining parcel they may own.

A. Building Type. All residential buildings constructed on the property shall be detached single family dwellings, with a private two car, or more, garage, and a shop and outbuildings. All residential buildings must be a minimum of 1,200 square feet of living space, exclusive of decks, porches, garages, and breezeways. Buildings shall be of frame or log construction.

No more than one residence shall be constructed on any parcel of property, with the exception that one guest house, or apartment that is incorporated into another structure, is allowed in addition to the main residential building. Any constructed shop or outbuilding may not be used for commercial purposes, excepting agricultural uses, and as further defined in part L. herein. All such residences and Owners shall comply with all relevant state and local regulations with respect to water supply, sewage disposal, sanitation and garbage, and burning. Sewage disposal systems shall comply with Sanders County septic regulations, and all state regulations and approval requirements, as may be applicable.

B. Building Location. All building locations on the parcels affected by this section shall be as required by Sanders County Building Department Requirements, but in no event shall a structure be placed closer than 100 feet to a parcel boundary nor any closer than 50 feet to any roadway easement.

C. Easements. Any Owner who creates and sells or transfers a parcel subject to the provisions of this section will create or have produced an easement and road maintenance agreement for the roadway(s) and utility easements which shall serve the parcel created, assuming the parcel does not otherwise front or have access otherwise suitable. Said Easement shall also contain provisions for its use as a utility easement, for gas, electricity, water, sewer, phone, and cable TV, as is necessary and available.

D. Noxious Activity. No noxious or offensive activity shall be carried on upon any parcel nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighboring landowners.

E. Temporary Structures. No structure of a temporary character, basement, shack, garage, barn or other outbuilding shall be used on any parcel at any time as a residence either temporarily or permanently. Owners shall be permitted to occupy an RV Motorhome or camper trailer during the construction stages of a residence, in order to supervise the building process of said residence.

F. Recreational Vehicle Storage and Use. A maximum of two such recreational vehicle or camper trailer may be occupied or stored on the lots so long as they are not used for residential purposes.

G. Completion of Structures. All building commenced on any parcel shall be completed to a point of habitability or use, including having a finished exterior, no later than one year after construction is commenced.

H. Roofs. All roofs on all structures shall be of asphalt, composition, tile, metal, cedar or wood shakes, or comparable alternate product. All metal roofs shall be factory painted or colored; and bare and unpainted metal may not be used for roofing or siding.

I. Sign. Signs by the owner or his authorized agent advertising the property for sale or rent, no trespass or hunting signs, and address, name, and entry statement signs or gateways identifying the property are permitted on the property, in appropriate locations. Otherwise, no sign of any kind shall be displayed to the public view on any parcel.

J. Livestock, Large Animals, and Poultry. No more than ten large animals, i.e.: horses and cattle, shall be raised or kept on each parcel of 30 to 40 acres. No more than five such large animals shall be raised or kept on each parcel of 20 to 30 acres. No poultry for commercial purposes, shall be raised, bred or kept on any parcel. Dogs, cats, and other ordinary household pets may be kept, provided they are not kept, breed or maintained for any commercial purpose, and they are not allowed to be at large. No pigs, goats, sheep, llamas, alpacas, emus, or other large birds, are allowed.

K. Garbage and Refuse Disposal. No parcel shall be used or maintained as a dumping ground for garbage. Trash, garbage or other waste shall not be kept except in sanitary containers. No garbage shall be disposed of by burning.

L. Business Use. No business or commercial activity, excepting agricultural uses, shall be maintained on any parcel except for those type of businesses or commercial activities (e.g. home offices, telecommuting) which do not involve customers, vendors, or suppliers coming to the residence, except on an infrequent or irregular basis.

M. Sewage Disposal. Each residence shall have a working sewage disposal system approved by the Sanders County Health Department.

N. Storage of Vehicles. No parcel shall be used for the storing or keeping of junk or non-functioning vehicles, unless such junk vehicle is being restored and in such a case the vehicle shall be kept in a garage area in such a manner than it cannot be viewed from any other parcel.

O. Tree Cutting. Cutting of trees is permitted to facilitate construction of buildings, driveways, yards and lawns, etc. Cutting of dead and/or dying trees is also permitted. Thinning trees is recommended as needed to promote healthy forest practices. Clear cutting of any wooded parcel for commercial or other purposes is prohibited.

### **ARTICLE III. FENCES FOR PASTURE PURPOSES**

Fences for pasture purposes for parcels of 40 acres or less shall be a minimum of four strand barb wire placed on treated wood post, or metal "T" post, which posts shall be placed not over sixteen feet apart or in the alternative said pasture fences shall be of wood or vinyl with a horizontal design with a minimum of three boards per post and said posts placed not more than ten feet apart. All wood fences are to be uniformly painted or stained, or left natural.

### **ARTICLE IV. MODIFICATION OF COVENANTS**

A. These protective covenants, conditions, and restrictions may be waived, abandoned, terminated, modified, altered, changed or amended only by an instrument in writing signed by the owners of more than ninety percent (90%) of the property that is subject to these covenants, in terms of total acreage. Said written instrument shall be recorded in the office of the Sanders County Clerk and Recorder. Each parcel of property may only 'vote' its acreage once, no matter how many owners it may have.

### **ARTICLE V. TERM, ENFORCEMENT AND CONSTRUCTION**

A. Terms. These protective covenants, conditions, and restrictions shall run with the land and shall be binding on all parties and persons claiming under them for a period of 15 years from the date the same are recorded and after said time, the same shall be automatically extended for three successive periods of ten years each, unless an instrument signed by the owners of more than ninety percent (90%) of property that is subject to these covenants, in terms of total acreage, has been recorded agreeing to waive, abandon, terminate, modify or alter said covenants, conditions and restrictions in whole or in part.

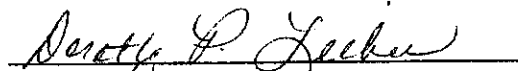
B. Enforcement. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages of such violation. In the event litigation is commenced, the prevailing party shall be entitled to receive attorney's fees and costs incurred.


C. Severability. Invalidation of any of these covenants by judgment or court order shall in no way effect any of the other provisions which shall remain in full force and effect.


D. Construction. The provisions of this Declaration of Covenants, Conditions, and Restrictions, shall be construed under the laws of the State of Montana, and shall further be liberally construed to effectuate the purposes as stated herein. Article or section headings have

been inserted for convenience only, and shall not be considered in resolving questions of interpretation or construction.

DATED this day of 6<sup>th</sup>, 2004.

  
Dorothy P. Leiber

  
Daniel L. Evans

  
Karen R. Evans

STATE OF MONTANA )  
County of Sanders : SS )

46644

This instrument was acknowledged before me on the 6<sup>th</sup> day of August, 2004 by Dorothy P. Leiber.

*Claude I. Burlingame*

Notary Public for the State of Montana  
Printed Name: CLAUDE I. BURLINGAME  
Residing at : THOMPSON FALLS, MT.  
My Commission expires: July 18, 2007

STATE OF MONTANA )  
County of Sanders : SS )

This instrument was acknowledged before me on the 6<sup>th</sup> day of August, 2004 by Daniel L. Evans and Karen R. Evans.

*Claude I. Burlingame*

Notary Public for the State of Montana  
Printed Name: CLAUDE I. BURLINGAME  
Residing at : THOMPSON FALLS, MT.  
My Commission expires: July 18, 2007

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STATE OF MONTANA SANDERS COUNTY  
RECORDED: 08/06/2004 4:05 KOI: MISC.

PAT INGRAHAM CLERK AND RECORDER

FEE: \$42.00

BY: *[Signature]*

TO: CLARK FORK TITLE CO BOX 9, THOMPSON FALLS, MT 59873