

135141

LAZY H M ESTATES DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

This Declaration is made this 1 day of September 1997 by Realty L L C, hereinafter referred to as the Declarant.

WITNESSETH:

WHEREAS, Realty L L C, a Montana L L C, is the contract purchaser and equitable owner of certain real property in Broadwater County, Montana, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof as if set forth in full at this point;

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

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

ARTICLE I

Definitions

Section 1: "Association" shall mean and refer to the Lazy HM Estates Homeowners Association, its successors and assigns.

Section 2: "Properties" shall mean and refer to that certain real property hereinbefore described, and such other real property as is now or may hereafter be brought within the jurisdiction of the association.

Section 3: "Tract: shall mean and refer to any plot of land as originally surveyed for description of the properties as evidenced by the conveyance from the Declarant with the exception of any dedicated street or road easements. In the event a tract is subdivided, or altered so as to differ from the tract as originally conveyed by the Declarant, such modified plot shall thereafter be considered as a "tract". Any recorded documents, to include a deed, mortgage, or notice of purchaser's interest, indicating such a change, shall be deemed to establish the modified tract, provided, however, that no such alterations shall create a tract consisting of less than ten (10) acres and only one such division per original tract may occur with the exception of tract 5, Lasy HM Minor Sub. wherein two such division may occur. This provision shall not prohibit the release of a single one (1) acre tract from each ten (10) acre tract for procuring financing for the construction of a residence thereon.

Section 4: "Member" shall mean and refer to every person or entity who is a member of the Association.

Section 5: "Owner" shall mean and refer to the equitable owner, whether one or more persons or entities, of any tract which is a part of the properties, including buyers under a contract for deed and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6: "Declarant" shall mean and refer to Realty L L C a Montana L L C, its successors or assigns if such successors or assigns should acquire more than two undeveloped tracts from the Declarant for the purpose of development.

Section 7: "Class A Members" shall be all members except the Declarant.

Section 8: "Class B Members" shall be the Declarant.

ARTICLE II

Protective Covenants

The following protective covenants are designed to provide a uniform plan for the development of the properties. They shall constitute a covenant running with the land for each lot within the properties.

Section 1: Land Use. All tracts in the above described property shall be used for single family residential purposes only. There shall be no more than one dwelling on each ten (10) acre tract. No change in this density restriction shall be made.

Section 2: Building Type. All dwellings shall be of good quality, permanent construction, affixed to the land upon permanent foundations and esthetically compatible with the other structures in Lazy H M Estates. If the garage is not attached to the house it is to be constructed of a material and design similar to the house. Any outbuildings shall be of good quality, permanent construction and shall be esthetically compatible with surrounding developments. Each dwelling shall have not less than one thousand (1000) square feet on the main floor, measured on the outside perimeter of the top of the foundation, exclusive of porches, basements and garages. The architectural control committee, hereinafter described, is authorized in its absolute discretion to approve exceptions to this section. No structure of a temporary character shall be constructed, placed or used on any tract at any time as a residence or otherwise, except that unoccupied travel trailers and campers which are not unsightly may be stored on the premises when not in use. No old buildings may be moved onto said tract.

Section 3: No building shall be constructed nearer than fifty (50) feet to any property line or in a location that would obstruct natural drainage of the tract. The Declarant will make historical flood information available to the architectural committee for building location reference.

Section 4: Architectural Control. Realty LLC or its successors shall provide all approvals of structures and sight plans based on quality of materials and workmanship, harmony of design with surrounding structures and the landscape and location of structures with respect to topography and finished grade (see exhibit "B" for specific tract restrictions), until the sale of ninety percent of the tracts in Lazy HM Estates is complete. Thereafter the Home Owners Association shall assume responsibility for architectural control and designate a committee of three owners for review and recommendation. Any plan submitted must be responded to within thirty (30) days or it is presumed approved.

Section 5: Signs and Billboards. No signs, billboards, posters, or advertising displays or services of any kind or character shall be erected, placed or permitted to remain on any tract except land sale promotion signs, mailboxes or signs to identify the residences.

Section 6: Maintenance. Each property owner shall be responsible for maintaining their property and structures in an appealing and orderly manner. Fire hazards of dry grass and brush must be removed and noxious weeds controlled. Garbage, trash or refuse must not be allowed to accumulate on the property. Garbage containers must be emptied on at least a weekly basis.

Section 7: Commercial Usage Prohibited. No store, office, business, manufacturing plant, commercial enterprise, hospital, sanitarium, home for the care of the mentally or physically infirm, theater, or saloon of any kind, or any other manufacturing, commercial, industrial, or mineral enterprise of any type shall be carried on or conducted on any tract. Additionally, no noxious or offensive trade of activity shall be carried on upon the property, nor shall anything be done thereon which may, in the opinion of the Association, be or become an annoyance or nuisance to the neighboring owners or residents. Specific exceptions may be hobbies, recreational pursuits, work shops and work areas that are specifically related to ones occupation, provided such activities are pursued in a suitable enclosure and do not constitute a nuisance or become obnoxious to surrounding land owners. For the purposes hereof, leasing or renting of the property or any part thereof, shall not constitute a commercial use or enterprise.

Section 8: Fences. Property owners may fence their respective tracts and portions thereof, subject to the approval of the architectural control committee. Owners of tracts with a boundary of the property herein referred to as Exhibit "A" shall maintain a fence on that boundary.

Section 9: Animals and poultry. If under the normal care of a specie of animal or poultry, that care results in offensive odor or unsightly areas resulting in a nuisance and obnoxious activity to surrounding land owners than that animal or poultry is not permitted. Normal family pets, 4-H projects, horses and sheep will be allowed subject to covenants contained herein. No commercial breeding, training or feed lot facility is allowed.

All animals kept on any tract shall be properly fed, watered and sheltered and cared for in a humane and merciful fashion. All animals shall be kept in a suitable enclosure so as to prevent their being a nuisance to others. Livestock manure must be removed or otherwise disposed of. All carcasses of dead animals must be removed immediately. Violations of these requirements regarding animals shall be considered a complete breach of these protective and restrictive covenants giving rise to such remedies as are allowed by law.

Section 10: Nuisances and health and safety. No noxious or offensive activities shall be carried on or permitted on any tract, nor shall the property be used in any way which might endanger the health and safety or unreasonably disturb the surrounding residents. This specifically prohibits the use of firearms and hunting on the property.

Section 11: Motor Vehicles. No motor vehicle which cannot be moved under its own power may be left on any tract or parcel other than in a garage for more than seventy two (72) hours or on the road in the area. No scrap or junk vehicles or any parts thereof will be permitted on the property. Machinery and large vehicles that are commonly kept or stored on the property must be parked in an orderly manner next to the buildings or inside a closure or behind a fence in a manner that is not offensive to neighbors.

Section 12: Easements. There is hereby reserved for the purpose of public utilities, a permanent easement across a strip of land five (5) feet wide on each side of all property lines for the purpose of ingress and egress to install maintain and improve such utilities as may be required.

Section 13: Recreational Vehicle Use. No recreational vehicles including motorcycles, snowmobiles, all terrain vehicles, go carts, dune buggies and other recreational vehicles may be operated on the property without a functional muffler and spark arrestor. Such vehicles shall be operated only on the owners property and shall not be operated in a manner which creates a nuisance or annoyance to the neighborhood.

Section 14: Sanitary Restrictions: The owner of every tract shall comply with all governing laws and regulations relating to water supply, sanitation, sewage disposal and air pollution. No individual sewage disposal system shall be permitted on any lot unless such system is designed, located, and constructed in accordance with the requirements, standards and recommendations of the Montana State Department of Health and Broadwater County, Montana.

ARTICLE III

Owners Association

Section 1: Membership. Every person or entity who is an equitable or record owner of any tract which is subject by covenants of record to assessment by the Association shall be a member of the Association. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and inseparable from ownerships of the tract which is subject to assessment by the Association. Ownership of such tract shall be the sole qualification for membership.

Section 2: Voting--Class A. Class A members shall be entitled to one (1) vote for each tract in which they hold the interest required for membership. When more than one person or entity holds such interest in any tract, the vote for such tract shall be exercised as such owners, among themselves determine, but in no event shall more than one class A vote be cast with respect to any tract. Class B. The Declarant shall be entitled to three (3) votes for each tract in which it holds interest required for membership.

Single Class. The distinction between classes of membership shall terminate on the happening of either of the following events, whichever occurs first:

(A) When the total outstanding votes in Class A membership equal the total outstanding votes in Class B membership.

(B) January 1, 2003.

When such distinction of classes terminates, all members shall be entitled to one (1) vote for each tract in which they hold the interest required for membership.

ARTICLE IV

Covenant For Maintenance Assessments

Section 1: Creation of Lien and Personal Obligation Assessments. The Declarant, for each tract owned by it within the properties, hereby covenants, and each owner of any tract by acceptance of a deed therefore, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association:

(A) Annual assessments or charges;

(B) Special assessments for capital improvements, such assessments to be fixed, established and corrected from time to time as hereinafter provided.

The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided 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 such interest thereon and costs of collection thereof as hereinafter provided shall also be the personal obligation of the person or entity owning the property at the time when the assessment fell due.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the improvement and maintenance of the roads used within the properties, including roadside noxious weed control.

Section 3: Basis and Maximum of Annual Assessment. Assessments shall be levied as to each tract on the basis of the class of membership as is hereinabove set forth. The assessments for the Class B member for any vacant tract owned by it or any tract owned by it occupied by a vacant, unsold, dwelling unit shall be twenty-five percent (25%) of the annual assessment for a class A member.

(A) Until January 1, of the year immediately following the conveyance of the first tract to an owner, the maximum annual assessment shall be \$ 120.00 Dollars per tract.

(B) From and after January 1, of the year immediately following the conveyance of the first tract to an owner, the maximum annual assessments may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(C) From and after January 1, of the year immediately following the conveyance of the first tract to an owner, the maximum annual assessment may be increased above five percent (5%) by a two-thirds (2/3) vote of each class of members voting in person or by proxy at a meeting of the Board of Directors of the Association called for this purpose.

Section 4: Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of a capital improvement such as road maintenance equipment, including fixtures and personal property related thereto, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of members voting in person or by proxy at a meeting called for this purpose.

Section 5: Notice and Quorum For Any Actions Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members of the Association not less than (30) nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60) of all the votes of each class of membership 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 (1/2) of the required quorum at the preceding meeting. Such a subsequent meeting shall be held within sixty (60) days after the preceding meeting.

Section 6: Uniform Right of Assessment. Both annual and special assessments must be fixed at a uniform rate within each class of membership and may be collected on a monthly, quarterly or annual basis.

Section 7: The Association's Board of Directors shall fix the date of commencement and the amount of the assessment against each tract for each assessment period at least thirty (30) days in advance. Written notice of the assessment shall be sent to every tract owner, and every tract owner shall have the right to inspect all records relating to assessments. The Association shall, upon demand, and for a reasonable charge, at any time furnish to any owner a certificate in writing signed by an officer of the Association setting forth the existing outstanding assessments, if any, applicable to a specified tract.

Section 8: Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum plus a reasonable attorney's fee for the collection thereof. The Association may bring an action in law against the owner personally obligated to pay the same, or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein.

Section 9: Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any tract shall not affect the assessment lien. However, the sale or transfer of any tract pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such tract from liability for any assessments thereafter becoming due or from the lien thereof. Any person buying any of the properties herein hereby waives any right to contest the validity of the liens created herein if such lien is impressed or enforced according to the provisions of these covenants.

ARTICLE V
General Provisions

Section 1: Duration. The covenants, conditions and restrictions of this declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the Association or the owner of any tract subject to this Declaration, their respective legal representatives, heirs, successors, or assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically renewed for successive periods of ten (10) years thereafter; provided however, that these covenants may be modified, changed or eliminated by an instrument in writing filed with the Broadwater County Clerk and Recorder and signed by the owner or owners of sixty-six and two-thirds percent (66-2/3%) or more of the total land area to which these covenants apply.

Section 2: Enforcement. The Association, any owner, or the Declarant, shall have the option and right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, and charges now or hereafter imposed by the provisions of this Declaration. The method of enforcement may include proceedings to enjoin the violation, to recover damages, or both. Failure by the Association, or by any owner, or by the Declarants to enforce any such provisions shall in no event be deemed a waiver of the right to do so thereafter. Should any lawsuit or other legal proceeding be instituted by the association or the Declarant against an owner who has alleged to have violated one or more of the provisions of this Declaration, and should the Association or Declarants be wholly or partially successful in such proceeding, the offending owner shall be obligated to pay the costs of such proceeding, including a reasonable attorney's fee.

Section 3: Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid to the last known address of the person or entity appearing as a member or owner on the records of the Association at the time of such mailing.

Section 4: Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, THIS DOCUMENT HAS BEEN EXECUTED THE DAY AND YEAR FIRST ABOVE WRITTEN.

REALTY LLC
By Tim Moldenhauer

ATTEST:

Elaine Graueley

STATE OF MONTANA] ss.
COUNTY OF BROADWATER

I hereby certify that the within instrument was filed in my office on the 22nd day of Dec. a.d. 1997 at 59 minutes past 12 o'clock P.m. and entered on page 623 of book 42 of MICRO Records of Broadwater County, state of Montana.

Elaine Graueley
County Clerk and Recorder
By Chris J. J. J. J.
Deputy

Fees \$ 78.00

EXHIBIT "A"
LAZY HM ESTATES

Minor

Tract 1 West and North Boundary
Tract 2 North and East Boundary
Tract 3 West Boundary
Tract 5 East Boundary

PHASE I

Tract 1 North Boundary
Tract 6 West Boundary and NE Pond Boundary
Tract 7 West and North Boundary
Tract 8 West Boundaries
Tract 9 West Pond Boundary
Tract 18 North Boundary
Tract 19 West half of North Boundary

PHASE II

Tract 4 Northwest Boundary
Tract 5 West Boundary
Tract 6 West Boundary
Tract 7 West Boundary
Tract 8 West, 3/4 of South Boundary and West Boundary
Tract 11 West Boundary
Tract 12 West Boundary
Tract 13 West Boundary

EXHIBIT "B"
LAZY HM ESTATES

The Architectural Control Committee shall be responsible for maintaining natural drainage systems within the project. Site plans and structures submitted for review must show appropriate planning for continuance of all natural drainage systems.

Tracts with natural drainage systems of particular concern are listed below.

Lazy HM Minor subdivision:
Tracts, 1, 2, 3 and 4.

Lazy HM Major subdivision Phase I:
Tracts 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 23,
and 25.

Lazy HM Major subdivision Phase II
Tracts 4, 5, 6, 7, 8 and 10.

AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Realty, L.L.C. has caused to be surveyed and platted into lots that certain real estate known as LAZY HM ESTATES, MINOR SUBDIVISION, LAZY HM ESTATES - PHASE I and LAZY HM ESTATES - PHASE II in Broadwater County, Montana, and

WHEREAS, Realty, L.L.C. executed a certain Declaration of Covenants and Restrictions, and caused the same to be recorded in Book 42 of Micro., page 623; and

WHEREAS, the first Paragraph erroneously refers to property as described in Exhibit "A" as the property to which the covenants apply, when in reality Exhibit "A" is the exhibit referred to in Section 8 of the Covenants and Restrictions, and

WHEREAS, Realty L.L.C. desires to amend the covenants by making clear the property which is to be the subject of these Covenants and Restrictions;

NOW THEREFORE, the undersigned hereby declare that the first paragraph of is hereby amended to read as follows:

"WHEREAS, Realty L.L.C., a Montana L L C, is the contract purchaser and equitable owner of certain real property in Broadwater County, Montana, more particularly described as follows:

Lots 1 through 5 of Lazy HM Estates Minor Subdivison;
Lots 1 thorough 25 of Lazy HM Estates - Phase I, and
Lots 1 through 16 of Lazy HM Estates - Phase II

Except as hereinabove amended, said Covenants, Conditions and Restrictions are reaffirmed, and to remain in full force and effect.

Dated this 30 day of December, 1997.

REALTY, L.L.C.

By

Member

STATE OF MONTANA)
) ss
County of Broadwater)

This Instrument was acknowledged before me this 30th day of
DECEMBER, 1997, by NEIL W. MOLDENHAUER, Member of Realty
L.L.C.



Glen F. Kelly
Notary Public for the State of
Montana
Residing at: HELENA, MT
My Commission expires: AUG. 13, 1999

135192

STATE OF MONTANA] ss.
COUNTY OF BROADWATER

I hereby certify that the within
instrument was filed in my office on
the 31 day of DEC a.d.
19 97 at 18 minutes past 1 o'clock
P. m. and entered on page 758 of
book 42 of MICRO
Records of Broadwater County, State
of Montana.

Elaine Draveley
County Clerk and Recorder
By Valerie Middlemas
Deputy

Fees \$ 12.00