

Plat 29-B

Flint Creek Estates

Declaration of Covenants, Conditions & Restrictions

Flint Creek Estates Owners Association

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FLINT CREEK ESTATES OWNERS ASSOCIATION

THIS DECLARATION is made this 24th day of September, 1997, by AMERIMONT, INC. a Montana Corporation, registered to do business in Montana, d/b/a Flint Creek Estates, 112 South Broadway II Level, P.O. Box 990, Manhattan, MT 59741, hereinafter called the "Developer" or "Declarant".

RECITALS

AMERIMONT INC. owns property located in Butte-Silverbow County, described as follows:

Flint Creek Estates Subdivision

These Covenants, Conditions and Restrictions ("CCRs") will apply to above described real property including any Final Plats, Retracement Surveys or Certificates of Survey as approved by and filed in Butte-Silver Bow County encompassing the real property described above.

NOW THEREFORE, Declarant hereby declares the above described real property, shall be held, sold and conveyed subject to the following Covenants, Conditions and Restrictions (hereinafter call "CCRs" or "Declarations") and these Declarations will bind all the owners, Declarant, grantees, heirs, successors, and assigns of the owners and any future owners of the above described real property.

DEFINITIONS

1. **Accessory Building.** A building, such as a garage, barn, or tack shed, detached from a dwelling and used for purposes which are incidental and subordinate to a residential, agriculture or permitted commercial uses.

2. **Agricultural Use.** The practice of the science or art of cultivating the soil, growing fruits, vegetables or crops and raising or grazing of domestic livestock or poultry, for personal use, but specifically excluding a feedlot or a commercial poultry farm.

3. **Association.** The terms "Association" or "Owners Association" shall mean and refer to the FLINT CREEK ESTATES OWNERS ASSOCIATION, INC., A Montana nonprofit corporation, its successors and assigns. This nonprofit corporation shall be a legal entity under Montana Law and have the right to sue and be sued under applicable State and Federal Law. Approval by the Association shall mean approval by the Association Board of Directors, or a committee appointed by the Association Directors, unless approval of Owner members is specifically required.

4. **Commercial Use.** Any enterprise or enterprises of any kind engaged in for a profit.

5. **Declaration.** The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, including lawful amendments. The term "CCRs" refers to this Declaration.

6. **Developer.** The Declarant is the "Developer," AmeriMont, Inc. a Corporation, its successors and assigns, with its principal place of business in Montana at 112 South Broadway, II Level, P.O. Box 990, Manhattan, MT 59741.

7. **Dwelling.** A single family residence, designed for and used as permanent living quarters having sleeping, cooking and complete sanitary facilities.

8. **Guest House.** A building for use as temporary living quarters by guests of owner or a dwelling which is clearly incidental or subordinate to a dwelling situated on the same tract of land. The guest house may have light cooking facilities including a refrigerator, but may not be used as a permanent dwelling.

9. **Industrial Use.** The processing, manufacture, production, sale or bulk storage of non-agricultural raw materials, wood working, crafts, art work, sculpture, and small home businesses enclosed in a single accessory building next to the dwelling are not considered industrial uses and such activities are intended to be permitted commercial uses.

10. **Junk Area.** The use of land for the wrecking, dismantling and/or storage of junk, including, but not limited to, garbage, inoperable motor vehicles and scrap materials of every sort.

11. **Mortgage.** The term "Mortgage" shall mean and refer to a mortgage, trust indenture, deed of trust or any other security arrangement encumbering a Tract, including a contract for deed.

12. **Mortgagee.** The term "Mortgagee" shall mean and refer to the mortgagee under a mortgage, the beneficiary of a deed of trust, contract seller, or beneficiary under a Montana Trust Indenture.

13. **Owner.** The term "Owner" shall mean and refer to the record owner, including Tracts owned by the Developer, whether one (1) or more persons or entities, of fee simple title to any Tract which is a part of the Property and is subject to this Declaration, including contract purchasers who have a possessory interest pursuant to their contract to purchase, but excluding contract sellers or mortgagees or persons having such interest merely as security for the performance of an obligation. Owner(s) shall include an owner or owners of any subdivided Tract.

If the Developer or any Tract Owner sells a Tract, the Seller will still be considered Owner of the Tract, until a deed, notice of purchaser's interest, or abstract of contract for deed, containing the address of the new owner, is recorded with the County Clerk and Recorder and a copy of the recorded document delivered to the Association. A Contract Seller or Vendor is jointly and severally responsible along with the Vendee or Purchaser for performance of these CCRs, including the payment of dues and assessments.

14. **Property.** The term "Property" shall mean and refer to Plats, retracement surveys, certificates of survey, proved and filed regarding the above described real property.

15. **Recreational Vehicle.** A vehicle, with self-contained sanitary facilities, designed for use as a temporary dwelling for travel, recreation and recreation use; provided, that a recreational vehicle occupied on a Tract for longer than sixty (60) days in any one year shall be deemed to be a prohibited mobile home.

16. **Residential Use.** The occupying of a dwelling for living purposes.

17. **Signs.** Any man-made structure, object, device, or part thereof, situated out of doors, or prominently visible from outside the building on which it is situated, which identifies, advertises, displays or otherwise attracts attention to either itself or some other object, person, institution, organization, business, product, service, event, activity, location, thing or happening of whatever nature, and by any means, including words, letters, numerals, figures, designs, symbols, fixtures, colors, mottos, illumination, projection, contrast, conspicuous and the like.

18. **Single family.** One or more persons living together as a single, non-profit, house-keeping unit, as distinguished from a group occupying a hotel, motel, club, fraternity or sorority, commune and the like.

19. **Subdivision.** Any division of land, or land so divided, resulting in the creation of two or more tracts of land out of a single, larger tract in order that title to, possession or occupancy of the tract(s) so created may be sold, rented, leased or otherwise conveyed, transferred or used separately and shall include any re-subdivision. Subdivision shall include the creation or attempted creation of two or more tracts out of a larger tract from whatever process or procedure including court order or lien foreclosure.

20. **Tract.** The term "Tract" or "Lot" shall mean and refer to any part, plot, lot or Tract of land of the property which is or has been made subject to this Declaration and is shown as a separate lot or tract upon any recorded deed, final plat, or certificate of survey or which can be lawfully transferred as a unit unto itself.

21. **Turn-over date.** The "turn-over date" is the date on which the Developer elects, at its discretion, to turn over certain responsibilities to the homeowners' association. This date shall be no earlier than the date on which 80% of the lots are sold and all access roads, main telephone lines and power main lines are completed and no later than when 100% of the lots are sold provided said improvements are completed.

SECTION 1: OWNERS ASSOCIATION: Each Owner of a Tract within his development will be required to belong to the Owners' Association. The Owner of any allowed subdivided Tract shall also be a member of the Owner's Association. The Owner of any Tract, including any

allowed newly created Tract, shall be entitled to one vote per Tract owned as a member of the Association and shall be required to pay the annual dues to the Association.

1.1 Rules and Regulations. No owner shall violate the rules and regulations for the use of the Tracts and the Property as set forth in these CCRs or adopted from time to time by the Association. No such rules or regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Tract by the owner thereof.

1.2 Dues to Association. The Association shall charge dues to each Tract to meet the duties and obligations of the Association. Any such dues or charges are a personal obligation of the Tract Owner. Each Tract Owner must pay all properly levied dues to the Association. The Association may file a lien against a Tract for any dues or charges that are delinquent. Until the "turn-over date," the Developer is exempt from paying dues on Tracts still owned by the Developer. Following the "turn-over date" the Developer will pay dues on all Tracts owned by the Developer.

1.3 Annual Dues. To cover the costs of meeting the Association's obligations, annual dues for each Tract (whether or not more than one Tract is owned by one owner) shall be \$75.00 per year until changed by the Board of Directors of the Association. The Board of Directors shall prepare a proposed annual budget setting forth the expected annual dues for the upcoming year, which proposed budget shall be presented to the members for discussion and voting at the annual meeting of the members of the association.

SECTION 2: SUBDIVISION AND SIZE OF TRACTS.

2.1 Tracts 8, 15 and 16 may be further subdivided, but no subdivided tract may be less than forty (40) acres.

2.2 Tracts 1 through 7, tracts 9 through 14 and tracts 17 through 21 may not be further subdivided.

SECTION 3: ROAD AND UTILITY EASEMENTS.

3.1 Road Easements. The Developer reserves to itself and its assigns and grants to all Tract Owners a perpetual right of way for ingress and egress on the road system set forth in the Attached Exhibit A. The road right of ways for the road system shall be sixty (60) feet wide measured as being thirty (30) feet on either side of the as-built roads. The roads shall have a road surface of twenty or twenty-four feet. The location of these access roads may vary depending upon the physical topographical characteristics of the as-built location. In some cases the road system may divide a Tract. The road rights of way will be surveyed showing the location. The Developer reserves the right to file of record in Butte-Silver Bow County a plat or certificate of survey showing the location of the roads shown on the attached Exhibit A in which case the perpetual right of ingress and egress on the road system granted herein shall be on the easements shown on any filed plat or certificates of survey. Until the Developer completes the road system, any Tract Owner may use existing roads and trails. Until the Developer completes the road system, in the event there is not an existing road or trail to a Tract, the Tract Owner may use a reasonable route across a neighboring Tract or Tracts from an existing road or trail to access the Tract Owner's Tract from the public road. Once the road system is completed, Tract Owners must use the road system for accessing their Tracts and shall not use existing roads or trails or other routes which vary from the as-built road system. All roads will be completed one year from final Plat approval.

3.2 Maintenance of Roads. Until the "turn-over date" the Developer will be constructing and maintaining all roads except public roads. Maintenance will include spraying for noxious weeds as needed. Following the "turn-over date" the Association is responsible for maintaining the roads and noxious weed containment. The Association shall have the sole discretion to determine what road maintenance will be performed by the Association within the terms of the

Association's budget. Nothing herein shall prohibit a Tract Owner from performing their own maintenance on the road so long as such maintenance is consistent with proper road construction and maintenance standards.

3.3 Utility Easements. The Developer reserves to itself and its assigns, and grants to all Tract Owners, utility easements to and across each Tract as follows: Common utilities, including telephone, cables and power, may be placed in any road right of way and in a strip of land thirty (30) feet adjacent to a road right of way; and along a thirty (30) foot wide strip adjacent to exterior Tract boundaries, and on any utility easements located on the Certificate of Survey(s); or any combination of the above methods and easements. Utility lines must be buried.

3.4 Obstructions. No gates or obstructions shall be placed upon or block any road unless approved by the Association and by all Owners using the road for access to their property. Any Owner may place, at Owner's expense, a cattle guard on a road easement if the cattle guard is approved by the Association and a gate is installed on one side of the cattle guard for livestock, horses, or for persons using the road. Approved cattle guards in any access road must be placed where such road passes through such Tract Owner's boundary.

3.5 Roads and Driveways. All roads will be open at all times to persons and vehicles providing public services, including but not limited to the fire and sheriff's department, ambulance, county sanitation, delivery companies and electrical, plumbing and building inspectors and the agents and invitee of a Tract Owner.

3.6 Private Roads. The purchaser and/or owner of each lot or parcel understands and agrees that private road construction, maintenance and snow removal shall be the obligation of the owner or homeowners' association and that the consolidated City and County of Butte-Silver Bow, State of Montana, is in no way obligated until the roads are brought up to standards adopted by the Planning Board and Council of Commissioners and dedicated to public use. Maintenance of private roads is to include spraying for noxious weeds as needed.

SECTION 4: USES ALLOWED, BUILDING RESTRICTIONS, TIMBER CUTTING AND SET BACK REQUIREMENTS.

4.1 Residential Density. Tracts shall be used primarily for single family residential purposes. There shall be no more than one (1) single family residence, however, each dwelling may also have an appurtenant, non-commercial guest house. Accessory buildings are also allowed.

4.1.1 Architectural Review. The Developer and the Association shall establish an architectural review committee which shall be responsible for reviewing and approving all building plans for improvements constructed or placed on the property.

4.1.2 Minimum Square Footage. Any residence constructed on a Tract must have at least 1,000 square feet of living space on the main floor exclusive of patios, porches or garages. Any questions or variances from this standard must be answered or approved by the Association and the Developer.

4.1.3 Moveable Living Conveniences and Mobile Homes. Except as provided in herein, no trailers, mobile homes, or other moveable living conveniences shall be lived in upon the property. This restriction does not prevent pre-built homes on permanent foundations that meet United States Federal Housing specifications as non-mobile, permanent, residential homes. Nothing herein is intended to prohibit the Tract Owners or Tract Owner's guests from parking or using recreational vehicles on said property next to a permanent dwelling on a temporary basis. This provision does not prevent the Owner of a Tract from storing a recreational vehicle on the Tract.

4.1.4 Recreational Vehicles. Each Tract Owner may live in a recreational vehicle for up to 60 days in any calendar year so long as health and sanitary laws regulating sewage and waste disposal are followed by the Tract Owner using the recreational vehicle. No recreational vehicle may be stored or left on a Tract unless it is next to a permanent dwelling. No sewer waste may be dumped or deposited on any Tract unless it is in an approved septic tank.

4.2 Commercial Uses. No Tracts may be used for commercial purposes, except as follows:

4.2.1 Commercial Business. Small commercial businesses conducted in the dwelling or in an accessory building next to the dwelling are permitted. Such allowed commercial businesses include activities such as wood working, crafts, studios, office for professional or consulting businesses and similar type family businesses that do not have non-family employees, provided there are no signs anywhere on the Tract or Tract improvements relating to the commercial business or enterprises. However, nothing in this Paragraph shall be deemed to prevent: (a) Developer or its duly authorized agent from using any Tract owned by Developer as a sales office, sales model, property management office or rental office; or (b) any Owner or his duly authorized agent from renting or leasing any residential building for residential uses from time to time, subject to all of the provisions of this Declaration.

4.3 Normal Agricultural Uses. Normal agricultural uses and activities, including the raising of horses or cattle in a husband-like manner for the purpose of selling to a third party; or agricultural uses such as the production and sale of any crop produced on any Tract shall be permitted, but said agricultural uses shall be restricted as follows:

4.3.1 Owner's Livestock. Any animals kept by an Owner must be kept within the boundaries of the Owner's Tract. No Tract Owner may operate a hog farm, livestock feed lot, or commercial poultry farm or conduct any other activities that cause an accumulation of manure on any Tract. Corrals, a barn, and livestock facilities near the Owner's dwelling are allowed, so long as manure is not allowed to accumulate. No Owner may allow animals, dogs or other household pets to run at large.

4.3.2 Open Range. The Developer intends to continue using the Property as an operating ranch. As a result, the Developer shall retain the right to have its livestock graze on all parcels not fenced by respective Owners.

4.4 Set Backs. All dwellings and other buildings, not including access roads, fences, and utilities, must be set back at least 50 feet from any Tract boundary line or road right of way boundary if the Tract boundary line is within the road right of way.

4.5 Sanitation Requirements. No outside toilets or privies shall be permitted on any Tract, except during periods of construction. All toilet facilities must be part of the residence or other structure and shall be of modern flush type and connected with a proper septic tank system.

4.5.1 Sewage. Sewage shall be disposed of only by and through a septic system of adequate dimension and capacity and of a type approved by the Board of Health of the State of Montana. No septic tank septic system or drain field of any kind shall be nearer than fifty (50) feet to any Tract line or road right of way if the Tract line is within the road right of way, and no sewage, waste water, trash, or debris shall be permitted to drain into any body of water in or adjacent to these Tracts.

4.6 Completion of Construction. Construction of any building or other structure on a Tract must become completed within eighteen (18) months from the date of start of construction, or it will be considered a nuisance, and may be removed or otherwise abated by the Association, at the sole cost and expense of the Owner of the Tract on which such building or other structure is situated. The Association may set shorter or longer periods of time for good cause shown.

4.7 Timber Cutting. An Owner may clear a building site of timber and shrubs and is encouraged to create fire safe zones around buildings. No other timber cutting is allowed which adversely affects the aesthetic quality of a Tract or Tracts.

4.8 Signs. Signs are not allowed, except a sign no larger than nine square feet identifying the architect and the prime contractor during the course of construction, and a sign no larger than nine square feet for the Owner to advertise his home or Tract for sale. No signs or advertising devices, including, but without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any of the Property, except signs approved in writing by the Association as to size, materials, color, and location: (a) as necessary to identify ownership of the Tract and its address; (b) as necessary to give directions; (c) necessary to advise of rules and regulations; (d) necessary to caution or warn of danger; and (e) as may be required by law.

SECTION 5: GENERAL RESTRICTIONS THAT APPLY TO ALL PROPERTY SUBJECT TO THESE COVENANTS.

5.1 Maintenance of Property. Each Owner shall maintain his Tract and improvements in good repair and appearance at all times. No Owner may overgraze their premises or allow manure to accumulate. Each Tract Owner shall be responsible for control and removal of noxious weeds on their Tract. In the event a Tract Owner does not remove noxious weeds on their Tract, the Developer prior to the "turn-over date" and Owners' Association, or its agents, after the turn-over date, or the applicable government authority (currently the county weed board) may enter the Tract and take whatever steps necessary to remove noxious weeds at the expense of the Tract Owner.

5.2 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out upon any portion of the Property, nor shall anything be done or placed on any portion of the Property which is or may become a nuisance to others.

5.3 No Hazardous Activities. No activities shall be conducted on any portion of the Property and no improvements may be constructed on any portion of the Property which are or might be unsafe or hazardous to any person or property.

5.4 No Annoying Lights, Sounds or Odors. No light shall be emitted from any Tract or other portion of the Property which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Tract or other portion of the Property which is unreasonably loud or annoying including, but without limitation, speakers, horns, whistles, bells, or other sound devices; and no odors shall be emitted from any Tract or other portion of the Property which are noxious or offensive to others.

5.5 Preservation. All current and future owners of property or lots within the Flint Creek Estates Major Subdivision must act to preserve the natural features of the property (vegetation, drainage areas, water quality, etc.) in an effort to reduce the potential negative impacts on wildlife and wildlife habitat.

SECTION 6: ENFORCEMENT.

6.1 Declaration Attaches to the Land. These Covenants, Conditions, and Restrictions, and Easements shall run with the land and shall be binding upon the present owners and all subsequent owners of any Tract.

6.2 Amendment of Declarations. These Declarations may be amended by a majority vote of the Tract Owners. Each Tract shall have one vote. No amendment of these Declarations may change or increase the obligations or rights of the Developer without its express written consent, as the case may be. No amendment of these Declarations may diminish a Tract Owner's right of ingress and egress.

- a) Statement of Income and Expenses for the Association.
- b) Balance Sheet, showing all assets and liabilities.
- c) Budget for each year. The budget must show expected income to the Association and expected expenses necessary to fulfill the duties and obligations of the Association. The Budget must be adequate to meet the obligations of the Association.

2. Dues and Assessments.

- a) Income from the Property must be used before the dues of Members are used or increased.
- b) The Association must charge dues to Owners to meet the duties and obligations of the Association. Any such dues or charges are a personal obligation of the Tract Owner. Each Tract Owner must pay dues to the Association. The Association may file a lien against the Owner's Tract for any dues or charges that are delinquent. Until the "turn-over date," the Developer is exempt from paying dues on Tracts still owned by the Developer. Any member, with the exception of the Developer, who has not paid his or her dues on the day of the meeting of the members is not entitled to cast their vote regarding any issues discussed at the meeting. Following the "turn-over date" the Developer will pay dues on all Tracts owned by Developer.
- c) The initial dues of the Association shall be \$75.00 per Tract per annum and shall remain \$75.00 per annum until changed by the Board of Directors of the Association. Each Owner will owe dues on the next calendar year following the closing of the purchase of their Tract. Annual dues to the Association are due on or before the annual meeting of the members of the Association. All dues paid by Owners shall be held in a reserve account until the "turn-over date." The Developer will pay all costs of the Association prior to the "turn-over date," including road improvements and road maintenance. The Developer may retain the income from the Property, including grazing fees, until the "turn-over date."

THESE BYLAWS WERE ADOPTED BY THE BOARD OF DIRECTORS ON THE 21ST DAY OF NOVEMBER, 1997.


Director


Director


Director

Moos # 51023

523992

STATE OF MONTANA
COUNTY OF SHELBY } SS

I hereby certify that the within instrument was
filed at my office on the 24 day of
Nov A.D. 1997 at 54
minutes past 4:00 o'clock PM
Attest my hand.

CLERK & RECORDER

By Deborah Weller Deputy

Fee 5.00