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State of Montana }  
County of Carbon } SS

This instrument file # 320576 was filed in my  
office this 28 day of Nov 20 05  
at 3:46 o'clock P. m.

320576

Linda M. Ladvala  
County Clerk - Recorder  
by Linda M. Ladvala  
Fee \$ 41.00

**DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS FOR  
GRAND VIEW SOUTH SUBDIVISION  
RED LODGE, MONTANA**

WHEREAS, the undersigned, Western Investments, Inc. ("declarant"), has caused to be surveyed and platted the lands described below under the name of "Grand View South Subdivision"; and,

WHEREAS, the declarant desires to impose upon the Subdivision owned by it the restrictions, covenants and conditions hereinafter set forth for the benefit of itself and any other subsequent owners of all or a portion of said Grand View South Subdivision; and

NOW, THEREFORE, said declarant hereby declares to and agrees with each and every person, his, hers, theirs, or its, heirs, executors, administrators, personal representatives, successors and assigns, and all persons who shall become an owner of any of the said lots, that said lots in addition to the regulations of Carbon County, Montana, shall be and are hereby bound to the restrictions, covenants and conditions set forth in this Declaration of Restrictions and that the Grand View South Subdivision and each lot shall be held and enjoyed subject to and with the benefit and advantages of the following restrictions, limitations, conditions, covenants and agreements, as follows:

**SECTION ONE  
DEDICATION**

1.1 Declarant has caused to be surveyed and platted the lands described below under the name of "Grand View South Subdivision", and has caused the same to be divided into lots and ways.

1.2 Declarant, fee owner of the lands described below located in Carbon County, Montana, a major subdivision, makes the following declarations as to limitations, restrictions and uses to which the lots or tracts constituting the

Subdivision may be put, and specifies that such declarations shall constitute covenants to run with all the land, as provided by law, and shall be binding on and be for the benefit and value of it and persons claiming under it, its grantees, successors, and assigns, and for the benefit of and limitations on all future owners in the Subdivision, this declaration of restrictions being designed for the purpose of maintaining a uniform and stable value, character, architectural design, use and development of the property as specified in this instrument. These covenants shall apply to the entire premises and to all improvements placed or erected thereon unless otherwise specifically excepted and shall have perpetual existence unless terminated by law or amended as provided herein.

## **SECTION TWO DESCRIPTION OF PREMISES**

The following is a particular description of the lands embraced within the above-mentioned Subdivision and within the terms and provisions of this declaration.

That part of the NE1/4 and SE1/4 of Section 28, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana, described as Tracts 9, 10 and 19 of Certificate of Survey No. 1620 Amended on file in the office of the Clerk and Recorder of said County.

## **SECTION THREE DEFINITIONS**

3.1 Outbuilding. Outbuilding means a structure not directly attached to the dwelling which it serves.

3.2 Premises. Premises means the lands described in Section Two above.

3.3 Lot. Lot means all single family residential lots shown on the recorded final plat of the Subdivision and any amendments thereto and described thereon as a "lot."

3.4 Subdivision. Subdivision means the Grand View South Subdivision.

3.5 Declarant. Declarant means Western Investments, Inc..

3.6 Structure. Structure means any building of any kind, whether temporary or permanent.

3.7 Maintenance. Maintenance shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed free environment.

3.8 Owner. Owner shall mean the record owner, whether one or more persons or entities, of a fee simple title to any lot that is part of the Subdivision, and shall include purchasers under a contract for deed, but shall not include those holding title merely as security for performance of an obligation other than a contract seller, mortgagee or other security holder in actual possession of a lot.

3.9 Dwelling. Dwelling shall mean a structure in which people reside whether temporarily, occasionally or permanently.

#### **SECTION FOUR USE RESTRICTIONS**

4.1 All lots shall be known and described as residential lots and shall be used only for single family residences. No dwelling shall be placed, constructed, reconstructed, altered or remodeled on any site except to provide for a single family dwelling. All lots in said Subdivision shall be used solely for residential dwelling purposes. No more than one dwelling shall be allowed on a lot together with one attached or detached garage and one storage outbuilding not greater than two hundred (200) square feet in area. Mobile homes, manufactured homes and trailer houses are prohibited except as allowed as a temporary residence under Section 4.3 below and only for the one year time period provided in Section 4.3. All buildings shall be owner occupied, except that a dwelling may be the subject of one rental agreement (as rental agreement is defined in Section 70-24-103, MCA, as that statute exists at the date hereof) creating one continuous tenancy not exceeding twenty-four months duration during any five year period, with any such five year period being deemed to commence on the date any such tenancy commences. Upon the termination of such tenancy no further rental of the dwelling shall be permitted during the remainder of such five year period. Under no circumstances shall a dwelling be used for a hotel, roominghouse, tourist home or any other establishment, lodging or use described in Section 50-51-102, MCA, as that statute exists at the date hereof.

4.2 No lot or lots may be subdivided. Each lot must remain as in the Subdivision plat of the said Subdivision. This restriction shall not be altered or amended. This does not preclude the merger of any lot into another lot.

4.3 No trailer, basement, tent, shack, mobile home, motor home, trailer house, garage, barn, or other outbuilding erected in or brought onto the premises shall remain on a lot for more than seven (7) consecutive days or be used as a residence temporarily or permanently, nor shall any residence of a temporary character be permitted; provided, however, that a lot owner may, only during construction of a permanent dwelling, construct or bring onto that lot owner's lot, a structure to use as a temporary dwelling so long as any such temporary dwelling is removed from the lot within the one year time period allowed for construction of a permanent dwelling as specified in Section "6.4" below. No more than one outbuilding may be erected, constructed, maintained or permitted on each lot.

4.4 All business and commercial activity shall be conducted and contained within residential dwellings and such activities shall be limited to only those types recognized as home occupations. No equipment, machinery, appliance or structure shall be placed or operated on the premises the purpose of which is to facilitate the carrying on of any trading, manufacturing or repair business or selling of any article of commerce.

4.5 Household pets kept and maintained exclusively indoors, as well as dogs, cats, birds are permitted to be kept in the Subdivision only and so long as they do not constitute or become a nuisance or threat to others. Dogs shall be leashed or confined to the tract or residence of the owner, and shall not be permitted to run at large.

No animals of any kind shall be bred, housed, boarded, raised or kept on any lot either temporarily or permanently for commercial purposes. No poultry, livestock or barnyard animals shall be permitted in the Subdivision.

4.6 All waste, refuse, rubbish, trash and junk shall be kept and disposed of in a sanitary manner and shall be regularly removed from the premises and shall not be allowed to accumulate on the premises. All household waste refuse, rubbish, and trash shall be kept in closed containers. Also, no automobiles, trucks, tractors, or other vehicles, whether self-propelled or not, shall be permitted to remain on the premises in a non operable condition except within an enclosed building. "Non operable condition" means that the automobile, truck, tractor or other vehicle cannot be immediately used for the purposes for which it was manufactured without repair or addition or change of any part or parts. All refuse, rubbish and trash of every kind (except leaves and dead limbs to be burned) and junk shall be removed by the lot owner.

4.7 Any area on any lot which is or becomes barren as a result of any construction or improvement shall be replanted or landscaped by the owner of said lot within one year of construction completion. No person shall interfere

with or direct the natural course of any drainage or runoff so as to alter the natural flow onto or across the site or lot of another. Each owner shall exercise care to retain existing trees except those necessarily removed as a normal incident to construction of the residence or those that become dangerous or hazardous or impede proper drainage of the lot.

4.8 All lines or wires for telephone, power, cable television, satellite television, or otherwise shall be placed underground and no such wires shall be shown on the exterior of any building unless the same shall be underground or in a conduit attached to a building. This section 4.8 shall not apply to utility lines, wires or poles existing at the date hereof.

4.9 No noxious, illegal or offensive use of property shall be carried on any lot, nor shall anything be done on it that may be, or become, an annoyance or nuisance to others.

4.10 Noxious weeds are defined as any exotic plant species established or that may be introduced in the State of Montana which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated: (i) as a statewide noxious weed by the Montana Department of Agriculture, or (ii) as a district noxious weed by a district weed board, following public notice of intent and a public hearing. Noxious weeds must be constantly controlled, contained and suppressed, and where possible, eradicated by the land owner in accordance with all federal, state and local law, ordinances and regulations.

4.11 In order to protect the environment and provide privacy for neighbors all outdoor lighting fixtures shall be downward directed and recessed or downward directed and full cutoff. "Full cutoff" or "recessed" means that there shall be no line of sight bulb (translucent or otherwise) visibility from the lot boundary. No light fixture shall be located higher than eight feet above ground level. This section 4.11 shall not apply to decorative outdoor holiday lighting displays, provided that such displays shall not be illuminated during more than forty-five (45) days of each calendar year.

4.12 No sound shall be emitted on any lot which is unreasonably loud or annoying; and no odor shall be emitted on any lot which is noxious or offensive to others.

4.13 Operation of "off road" vehicles such as trail bikes, snowmobiles or all terrain vehicles is prohibited.

4.14 All irrigation water rights and ditch rights appurtenant to or used on or in connection with the premises shall be retained by the declarant unless and

until transferred by the declarant to such persons as declarant may determine. No diversion or use of such water rights shall be made without consent of the owner of the water right.

4.15 No lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for oil, gas, coal or other hydrocarbons, minerals, rocks, stones, gravel or earth. No such materials shall be removed from a lot that would change the level of the lot other than as a normal incident to residential construction.

4.16 Television, radio and other antennae are to be located so as to be inconspicuous.

4.17 No satellite dishes may be installed, erected, constructed or placed on the premises that are greater than two feet in diameter.

4.18 Any tank for use in connection with any residence on the site, including gasoline, oil, petroleum, water, other fluids, propane or other bottled gas tanks must be buried or shielded from view by either a fence or by planting of trees and shrubbery.

4.19 No firearms, fireworks or firecrackers shall be discharged on the premises and no hunting shall be permitted on the premises.

4.20 No signs, billboards, posters or advertising devices of any kind or character shall be erected or displayed upon any of the lots or on any buildings or vehicles thereon excepting modest house signs or driveway entrance signs identifying the address or occupants of a dwelling, normal door signs on business vehicles and one realtor's sign when a lot is for sale not to exceed eight (8) square feet in size. Specific temporary exceptions to this section 4.20, not to exceed ninety (90) days duration at a time, may be granted by the Association Board of Directors.

## **SECTION FIVE EASEMENTS**

5.1 Easements for access, and for the installation and maintenance of utilities, irrigation ditches and drainage facilities will be shown on the final, recorded plat of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain that may damage or interfere with the use or maintenance of the easements for their intended purposes. No building or other permanent structure shall be erected or maintained on any part of any area indicated as an easement on the plat of the Subdivision.

5.2 Such easements, reservations and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to declarant, and declarant's successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under and above such locations to carry out any of the purposes for which the easements, reservations, and rights of way are reserved.

## **SECTION SIX BUILDING RESTRICTIONS**

6.1 No structure shall be located in the Subdivision without having been first approved by the Architectural Committee, which shall be a committee of the corporation described in Section Nine hereof. The purpose, membership, authority and procedures of the Architectural Committee shall be as further set forth in the bylaws of the corporation.

6.2 All structures shall be frame or log, constructed on the site and have an exterior surface of natural wood (which may have a clear finish or stain), stones, brick, rock or glass or a combination thereof with earth tone colors. Roofs will be earth tone. No wood or shake shingle roofs are permitted. Dwelling structures will be a minimum of 1500 square feet of first floor area, excluding garage area. Other materials may be used for exterior walls provided that such materials are designed and located in harmony with the surrounding structures and natural land features and are earth tones in color. No structures shall have an exterior surface of tar paper, asbestos or cinder block. Cinder block as herein used shall include any building blocks or other manufactured materials that exceed four inches in face heights.

6.3 Metal structures and modular or other pre-built homes are prohibited.

6.4 Any construction commenced on any structure in the Subdivision shall be substantially completed, including, but not limited to, all painting, within one year from the date the construction is commenced. Construction shall be deemed as begun on the date that any building material is placed upon a lot or upon the date that any foundation work is begun, whichever is earlier.

6.5 The height and location of any structure shall be designed and located so as to assist in the preservation of the views of others and shall conform to the City of Red Lodge ordinances, regulations and codes. No structure shall be located within twenty feet of a lot line.

6.6 All structures and improvements shall be constructed in compliance with all pertinent zoning and building codes of Carbon County, Montana, the State of Montana, and any and all other governmental entities that have jurisdiction at the time of undertaking the structures and improvements. All required permits shall be obtained in a timely fashion, including, where required, in advance.

6.7 Each owner, at the owner's sole expense, shall maintain and repair the owner's dwelling and all outbuildings and other improvements, including the improvements on the owner's lot described in the Subdivision storm drainage plan approved by the Montana Department of Environmental Quality, keeping the same in a condition comparable to the condition of the residence at the time of its initial construction, excepting only normal wear and tear. Each owner shall install and maintain on the owner's lot landscaping, vegetation, dry swales, berms, and bioretention areas sufficient to prevent any increase in the volume of surface water runoff discharging from the owner's lot resulting from development of and improvements on such lot.

6.8 If all or any portion of a dwelling, outbuilding or other improvement is damaged or destroyed by fire or other casualty, it shall be the duty of the owner or owners, with all due diligence, to rebuild, repair or reconstruct such structure in a manner that will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within six months after the damage occurs, unless prevented by causes beyond the control of the owner or owners.

## **SECTION SEVEN GENERAL PROVISIONS**

7.1 The restrictions, covenants and conditions herein set forth are to be construed as covenants running with the land and shall be binding on all parties and all persons claiming any part of the above-described real property. Said restrictions, covenants and conditions shall bind real property for a term of twenty years from the date this declaration is recorded after which time they shall be automatically extended for successive periods of ten years unless otherwise amended as provided hereafter.

7.2 This Declaration of Restrictions, Covenants and Conditions may be amended or altered in whole or in part by a seventy-five percent (75%) majority vote of the owner or owners of the total lots; provided, however, that each lot shall have one vote, regardless of how many persons or entities own a lot. Any amendment or alteration shall be effective upon the recording date in the office of the County Clerk and Recorder.

7.3 Invalidation of any of the restrictions, covenants and conditions herein set forth by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

7.4 Failure to enforce any provisions, restrictions, covenants, conditions or agreements in this declaration or in any supplemental declaration shall not operate as a waiver of any such provision, restriction, covenant, condition or agreement or of any other provision, restriction, covenant, condition or agreement contained herein.

## **SECTION EIGHT ENFORCEMENT**

8.1 Enforcement of these Restrictions, Covenants and Conditions shall be by proceeding at law or in equity against any person or persons violating or attempting to violate them either to restrain violation or to recover damages. If court proceedings are instituted in connection with the rights of enforcement and remedies provided in this declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorney's fees.

8.2 All persons and entities claiming by, through, or under the declarant shall be taken to hold, agree, and covenant with the declarant, his successors and assigns, and with each of them to conform to and observe this Declaration of Restrictions, Covenants and Conditions. Any owner or owners of any of the above-described real property shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of any of the restrictions, covenants and conditions contained herein, in addition to ordinary legal actions for damages. The failure of any owner or owners of any other lot or lots in the Subdivision to enforce any of these restrictions, conditions and covenants at the time of its violation shall in no event be deemed to be a waiver of a right to do so subsequently.

8.3 The undersigned and all persons and entities who shall hereafter acquire any interest in and to the above-described real estate shall be taken and held to agree and covenant each with the other and with their heirs, devisees, trustees and assigns to conform to and observe the above restrictions, covenants and conditions as to the use thereof and as to the construction of dwellings and improvements thereon.

8.4 All lots within the Subdivision shall be deemed residential lots, subject to the above listed restrictions.

**SECTION NINE  
NON PROFIT CORPORATION  
FEES, DUES AND ASSESSMENTS**

9.1 Declarant has caused to be formed a mutual benefit non profit corporation under the laws of the State of Montana, known as the Grand View South Subdivision Property Owners' Association. ("the Association"). All persons and entities claiming by, through or under the Declarant shall be deemed to have agreed to become, and shall be, a member of the Association, which membership shall be limited to every beneficial owner, as distinguished from a security owner, of a lot in the Subdivision and which membership shall be appurtenant to and may not be separated from ownership of any such lot.

9.2 The terms "member" and "owner" shall be further defined in the bylaws of the Association.

9.3 The bylaws shall provide, among other things, for the payment of fees, dues and assessments by all of the members of the Association for the purposes stated in the bylaws. All members shall be responsible for payment of such fees, dues and assessments as are provided for in the bylaws in such amounts as may be specified in the bylaws and determined by the Board of Directors of the Association from time to time.

9.4 Voting rights of members shall be as specified in the bylaws as they exist and as they may be amended from time to time.

9.5 The powers and duties of the Association shall be as stated in the Articles of Incorporation of the Association and as stated in the bylaws as they exist and as they may be amended from time to time.

9.6 By acceptance of a deed or other instrument of conveyance for a lot or lots in the Subdivision, each lot owner shall be deemed to covenant and agree to pay to the Association such fees, dues and assessments as may be determined in accordance with the bylaws of the Association, and to abide by the Association's bylaws as they exist and as they may be amended from time to time.

**SECTION TEN  
REMINGTON RANCH ASSOCIATION, INC.**

10.1 There has been formed a mutual benefit non profit corporation under the laws of the State of Montana, known as the Remington Ranch Association, Inc. ("the Ranch Association"). All persons and entities claiming by, through or under the Declarant shall be deemed to have agreed to become, and

shall be, a member of the Ranch Association, which membership shall be limited to every beneficial owner, as distinguished from a security owner, of a lot in the Subdivision or in the rest of the property comprising original Certificate of Survey No. 1620, and which membership shall be appurtenant to and may not be separated from ownership of any such lot.

10.2 The terms "member" and "owner" shall be further defined in the bylaws of the Ranch Association.

10.3 The bylaws shall provide, among other things, for the payment of fees, dues and assessments by all of the members of the Ranch Association for the purposes stated in the bylaws. All members shall be responsible for payment of such fees, dues and assessments as are provided for in the bylaws in such amounts as may be specified in the bylaws and determined by the Board of Directors of the Ranch Association from time to time.

10.4 Voting rights of members shall be as specified in the bylaws as they exist and as they may be amended from time to time.

10.5 The powers and duties of the Ranch Association shall be as stated in the Articles of Incorporation of the Ranch Association and as stated in the bylaws as they exist and as they may be amended from time to time.

10.6 By acceptance of a deed or other instrument of conveyance for a lot or lots in the Subdivision, each lot owner shall be deemed to covenant and agree to pay to the Ranch Association such fees, dues and assessments as may be determined in accordance with the bylaws of the Ranch Association, and to abide by the Ranch Association's bylaws as they exist and as they may be amended from time to time.

## **SECTION ELEVEN AGREEMENTS WITH THE CITY OF RED LODGE**

11.1 Declarant, and all persons and entities claiming by, through or under Declarant, hereby waive the right to protest annexation of the Subdivision by the City of Red Lodge upon the occurrence of the earliest of the following:

- (a) Five years after the date of the filing of the final plat of the Subdivision,
- (b) The sale of ninety-five percent (95%) of the lots in the Subdivision,  
or

- (c) The construction of residences on eighty percent (80%) of the Subdivision lots.

11.2 Individual lot owners shall be responsible to pay all City sewer service hook-up fees.

11.3 Water use from individual wells shall be metered in order for the City to determine and collect sanitary sewer user fees.

11.4 A Subdivision homeowner's association, funded at no expense to the City, shall be responsible for maintenance and repair of Subdivision roads and other common facilities until the Subdivision is annexed by the City.

11.5 All construction within the Subdivision shall comply with applicable City of Red Lodge Building Codes and the owner shall obtain a valid building permit prior to commencing construction. Appropriate employees or agents designated by the City shall have authority to inspect all construction within the Subdivision to determine compliance with this paragraph 11.5.

11.6 Wastewater and sanitary sewer service shall be provided by the City of Red Lodge. Septic systems, drainfields, and all other individual or on site wastewater or sewage disposal systems are prohibited.

## **SECTION TWELVE FIRE PROTECTION**

12.1 Each residence constructed in the Subdivision shall have installed therein an NFPA compliant residential sprinkler system, designed and installed by persons qualified to design and install the NFPA compliant residential sprinkler system, as determined by the Fire Chief of Red Lodge Rural Fire District #7.

12.2 The Homeowners Association established pursuant to the Declaration of Restrictions, Covenants and Conditions shall have the responsibility to require that the NFPA sprinkler systems are properly installed in each residence. The Homeowners Association shall satisfy this responsibility by requiring that appropriate governmental authorities inspect the NFPA sprinkler systems installed in each residence prior to the issuance of a certificate of occupancy for each residence constructed in the Subdivision.

12.3 The fire pond is located in Tract 19 of Certificate of Survey No. 1620 and lies in the SW1/4SE1/4 of Section 28, Township 7 South, Range 20 East, P.M.M. Carbon County, Montana. The fire pond and access to it shall be maintained by the Remington Ranch Association, Inc. referred to in Section Ten.

