

288633

**WILLOW CREEK CROSSING at REMINGTON RANCH  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
CARBON COUNTY, MONTANA**

WHEREAS, Alvin L. Swanson, Jr. (Hereinafter referred to as the "Declarant") is the owner of the following described real property:

That certain real property located in a portion of Tract 25 of Certificate of Survey No. 1620 Amended in the NW1/4SE1/4 of Section 28, Township 7 South, Range 20 East, also known as Lots 25A, 25B and 25C;

AND WHEREAS, the Declarant desire to place protective covenants and building restrictions on the Subject Property to insure for the benefit of the Declarant and for all future purchasers and owners of said Tracts (hereinafter referred to as the "Owners") the use and enjoyment of the Subject Property for ranch and residential use in a residential neighborhood, of the highest quality, desirability and attractiveness wherein the natural beauty and agricultural utility of the Subject Property may be preserved and its value protected and enhanced for all owners;

NOW THEREFORE, in consideration of these premises, the undersigned Declarant hereby sets forth and establish this Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Covenants") which shall hereafter be attached to the Subject Property and be applicable to and binding upon Declarants and all subsequent and future Owners of the Subject Property and any subdivided portion thereof.

**1.0 PERSONS BOUND BY THESE COVENANTS**

1.01 Those bound by these Covenants are the Declarant and all subsequent Owners, whether present or future, and whether individuals, partnerships, corporations, cooperatives, associations or any other legal entity who or which may possess or hereafter acquire any interest in and to the Subject Property or any portions thereof. All such parties shall be taken and held to agree and to covenant with each other and with their heirs, devisees, trustees, assigns and successors in interest of every kind to conform to and observe these Covenants and to take their interest in the Subject Property subject hereto.

**2.0 LAND-USE RESTRICTIONS**

2.01 The use of all Tracts and all buildings and improvements which may be constructed thereon shall be restricted to residential and related family-agricultural uses. No commercial, industrial, retail, hotel, bed and breakfast inn or other business uses, nor church use or religious gatherings shall be allowed, however, a personal home-office shall be permitted within a residence provided any business conducted therein does not result in any increased vehicular traffic in the area of the subject property beyond a residential or family-agricultural use, nor any increased parking of vehicles or the posting of advertising or business identification signs.

2.02 It shall be the responsibility of the owner of each Tract to install and bear the cost of any boundary fencing which the owner may desire, together with the maintenance thereof, in order to fence out any pre-existing and unwanted livestock of Declarant which may be pastured from time to time on adjacent property. In addition, it shall also be the obligation and responsibility of each owner to fence in and to restrain any new livestock which any such owner may choose to run within the boundaries of his or her own Tract as set forth in Paragraph 7.01 herein. Boundary fences on Willow Creek Crossing Road and Remington Ranch Road will be of wood post and rail construction.

2.03 Further subdivision of subject Tracts shall not be prohibited provided that any such further subdivision shall be subject to review and approval by the Architectural Committee as set forth in Section 3 herein as well as by all applicable branches of local government having jurisdiction. Subdivision into parcels, smaller than six acres in size shall not take place until the property is annexed into the City of Red Lodge.

2.04 Only one single-family dwelling shall be allowed per Tract or on any future subdivided portion thereof together with such other reasonable and related ancillary structures as may be necessary or desired by the Tract Owner such as a guest house or cabin, barn, corrals, a workshop and a detached garage or a storage building. No multiple-unit residential structures shall be allowed. A guest house or studio not to exceed 1,600 sq. feet, may be allowed with Architectural Committee approval. County Sanitation permits shall be obtained prior to construction.

2.05 No structures of any kind shall be located closer than twenty-five feet (25') from any property line nor closer than twenty-five feet (25') from any right of way or access easement. The building of a structure in violation of this restriction may result in enforcement requiring the removal of said structure at the owner's expense. This provision may be waived where adjoining property owners desire to use a common facility such as a barn, with the written agreement of those involved.

2.06 Utilities and service connections in or across the Subject Property and within the individual tracts shall be installed underground, including but not limited to any further electrical and telephone services and including as well any future water, sewer, natural gas, cable television and any other services or utilities of each and every kind.

2.07 No tract shall be used for the purpose of mining, boring, drilling or the exploration for or extraction of oil, gas, minerals, rock, stone, gravel or earth other than as may be reasonably incidental to the construction of authorized structures, access ways, drives or other authorized improvements. No sand, gravel, soil or surface material shall be removed from any Tract or portion thereof which would result in change of topography, elevation or appearance of the land other than for the preparation of a building site, a stream bed or a decorative pond. Any barren areas which may be cleared or stripped of vegetation in the process of construction of buildings or improvements on a Tract shall be completely replanted or restored by the owner to its original or improved condition within six (6) months following completion of construction.

2.08 No owner shall alter or interfere with the natural or existing course of any stream bed or irrigation ditch which may traverse a Tract carrying water to other owners downstream whether within the Subject Property or beyond, nor alter the course or direction of any existing surface drainage or run-off patterns which results or may result in the diversion of storm water onto the property of another without written permission from such other party having first been obtained in advance. No owner of tracts smaller than 18.0 (eighteen) acres shall be permitted to flood irrigate. Sprinkle irrigation is allowed.

Every Tract Owner or occupier shall exercise care and diligence to control soil erosion, including but not limited to the construction of appropriate ditches and/or the installation of corrective landscaping and seeding.

2.9 No signs, billboards, posters or advertising devices of any kind or character shall be erected or displayed upon any of the Tracts 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 Tract is for sale or lease not to exceed four (4) square feet in size.

2.10 It is recognized that at some point in the future the Red Lodge area could well develop and grow to the point where a more intensive and profitable use or development of the Subject property or of any of the individual Tracts thereof may be deemed by some or by all of the Tract owners to be more desirable than the present low-intensity agricultural and residential use as provided herein. Any owner or group of owners who may at some time in the future desire such a more intensive use or development of their Tract(s) may propose by petition to the other owners the modification of these Covenants as may be necessary in order to permit, regulate and control such new use or development for the benefit of all owners. In such an event, the petitioners shall follow the procedure set forth in Paragraph 10.04 herein and must secure the unanimous approval of the owners of all three Tracts in order to modify these covenants and to permit such more intensive development.

### **3.0 ARCHITECTURAL COMMITTEE AND ARCHITECTURAL STANDARDS**

3.01 No structure, building, wall, fence, landscaping, grading, tree removal or other improvement of any kind or nature on the land or to the buildings or any existing improvements on any tract within the Subject Property (hereinafter referred to as "Projects of Improvement") may be constructed, placed, erected, converted, altered or added to without such Project of Improvement having first been approved in writing by the Declarants or an architectural committee of three (3) or more volunteer owners approved by a simple majority of all Tract owners (hereinafter referred to as the "Architectural Committee" or the "Committee") which Committee shall have the authority to approve or disapprove such Projects of Improvement on the basis of compliance or non-compliance with the architectural standards herein set forth and with the Committee's good-faith judgement as to whether or not such Projects of Improvement are in keeping with the spirit, intent and stated purpose of these Covenants. The initial composition of the architectural committee shall be Alvin L. Swanson, Jr. As each residential structure (home) is completed, one owner of that structure may be added to the committee. After three residential structures (homes) have been completed (one on each of the three six-acre tracts), Mr. Swanson will cease to be a member of the Committee.

3.02 Committee may adopt such additional rules, regulations and procedures as it deems necessary to carry out its function and purpose provided that such rules and regulations are not inconsistent with the provisions of these Covenants.

3.03 The Architectural Committee and the individual members thereof, including Declarants, shall not be held liable by any applicant or other party for any damages alleged to have been incurred as the result of actions taken by the Committee or Declarants in good faith pursuant to these Covenants.

3.04 All applications for approval of Projects of Improvement must be in writing and shall be hand-delivered or mailed to the Architectural Committee in care of Declarants at P.O. Box 1326, Red Lodge, Montana 59068 or to such other address as may be established from time to time as the membership of the Committee may change in the future. Each application shall be accompanied by construction plans, plot plans and specifications showing the precise location and placement of all improvements, exterior elevations, details materials, colors and any other information which the Committee may deem necessary for the complete explanation and understanding of the desired Project of Improvement. Whenever possible the Committee shall act on all applications within thirty (30) days following delivery of a complete application and attendant information to the Committee. The

Committee shall render its approval, disapproval or its request for any necessary additional information in a timely manner.

- 3.05 All structures to be erected on the Subject Property shall be of normal and traditional shape, design, style, materials and colors consistent with quality residential architecture and a western ranch theme. Design details which contribute to such a theme are encouraged and include covered porches, stone fireplaces and chimneys, wood or log siding, wood window casements and frames, natural colors, etc. Geodesic dome homes, "A" frames, flat tops and other unconventional, modernistic or experimental styles shall not be allowed.
- 3.06 Exterior siding on residential structures shall preferably be of round-log, slab-log, rough-sawn wood, finished wood, brick, stone, glass or other natural materials, either left untreated in their natural condition or stained or painted a natural color. High-quality, simulated wood siding and processed wood products are also acceptable such as hard-board panels manufactured by Masonite or equal. No bright or garish colors shall be allowed. No stucco, plastic, cinder block or metal siding shall be allowed on residential or other structures, however, metal siding on barns or storage buildings is permitted as long as it is painted a compatible color.
- 3.07 Roofing shall preferably be of wood-shingle or wood shake, however, other materials are also acceptable such as high-quality Masonite shingle, concrete tile, color-coated metal or composition asphalt shingle of a dark color (either black, dark gray or dark brown but no bright colors or light shades such as white light grey or light tan). No hot-mop, tar-and-gravel, tin, galvanized metal or sod roofs shall be allowed.
- 3.08 All buildings shall be of new and permanent construction and of attractive design.
- 3.09 No temporary or pre-fabricated structure, metal buildings, mobile homes, basements, or campers, shall be allowed as a residential dwelling even as a temporary residence during construction of the permanent residence. No pre-existing structures shall be moved onto any Tract except with the approval of the Architectural Committee. The exception is that tepees shall be allowed on the property.
- 3.10 Campers, mobile homes, RVs, may be used on a temporary basis in good faith for a duration not to exceed three consecutive weeks for camping purpose, for children's play or for the temporary accommodation of visiting guests or relatives provided that such provision shall not be used to circumvent the intent and provisions of paragraph 3.09 or Section 5.0 herein.
- 3.11 No primary residential dwelling shall be permitted on any Tract or subdivided portion thereof which contains less than twelve hundred (1,200) square feet on the main floor level exclusive of open porches decks, garages, carports, breeze ways and other such non-living areas.
- 3.12 Structures shall be limited to two (2) stories in height on any side or elevation.
- 3.13 Any and all roof-mounted television antennae and satellite micro-dishes shall be installed on the rear portion of the roof and out of public view as much as possible from common roadways, access easements and neighboring houses. Larger ground-based satellite dishes shall be located behind a structure or otherwise shielded inconspicuously from public view by the use of appropriate fencing, screening, shrubbery or trees and shall be painted black, dark gray, dark brown or dark green in color. No ham radio antennae shall be allowed nor other vertical antennae or towers of any type or height.

3.14 Propane tanks, gasoline tanks or other bottled gas tanks shall likewise be painted black, dark brown or dark green in color and shall also be shielded from public view by being enclosed inside a proper structure designed for such purpose or by outdoor positioning behind structures or otherwise shielded inconspicuously by the use of appropriate fencing, screening, shrubbery or trees.

#### **4.0 CONSTRUCTION STANDARDS**

4.01 There shall be no requirement that construction ever take place on the Subject Tracts. However, once equipment or materials have been delivered to the site or excavation of a foundation or basement has begun, construction must thereafter commence immediately and be continuously and expeditiously carried out to completion within a maximum construction period not to exceed 24 months. Failure to comply with the provisions of this paragraph shall expose the owner to the liability of having such uncompleted structures, equipment and/or materials demolished or removed at the owner's expense.

4.02 Construction shall comply with all applicable federal and state laws as well as the regulations and ordinances of Carbon County.

4.03 All sewage treatment systems shall be constructed in accordance with the requirements of and permits issued by Carbon County and the State of Montana. No such sanitary sewer facilities shall be allowed so near to a property boundary as to affect the water quality of a water well upon an adjoining Tract.

4.04 Prior to the commencement of construction on any Tract, both the permanent electrical service and the domestic water well shall first be installed with a frost-free hydrant or outdoor water faucet located no nearer than fifty (50) feet from structure and with sufficient hose on hand to fight a house fire. The hose shall be stored other than in the structure.

4.05 All water pumps shall be wired separately from the electrical wiring in any structure so that the water pump can operate to facilitate the fighting of a structural fire, brush fire, grass fire or forest fire even though the electrical power in the structure may be turned off or damaged.

4.06 All woodburning fireplaces and stoves whether located indoors or out must be equipped with chimney spark arrestors meeting United States Forest Service specifications.

#### **5.0 VEHICLE PARKING AND STORAGE**

5.01 It is the intent of these Covenants that all vehicles belonging to the owners or occupiers of the Subject Tracts shall have an appropriate garage or other storage facility whereby vehicles may be parked or stored out of sight in order to minimize the unsightliness of numerous vehicles parked visibly outdoors. Nevertheless, each owner shall be entitled to park up to two primary, family cars, a horse trailer, or light trucks which are in daily or frequent use in an appropriate outdoor location at or near the residence or other appropriate structure.

5.02 Any and all other cars, trucks, tractors, RVs, motorhomes, snowmobiles, motorcycles, dirt bikes, ATVs, golf carts, campers, boats, trailers and the like which may be kept on any tract must be stored out of sight in a garage or other appropriate structure.

5.03 No such vehicles whether or not self-propelled, operable, under repair, hobby projects or junk shall be permitted to be continually or permanently stored outdoors.

5.04 Vehicles shall be operated, parked and/or stored in such a manner so as not to constitute or create a functional nuisance or aesthetic eyesore to other owners or occupiers.

5.05 No junk cars or vehicles wrecking yards or salvage yards shall be allowed on any Tract.

#### **6.9 MAINTENANCE OF INDIVIDUAL TRACTS**

6.01 All Tracts including all improvements thereon shall be kept and maintained in a neat, clean, safe and attractive condition and in good repair at all times.

6.02 The raising and care of livestock shall be permitted, with the quantity limited to five horses, two each of cattle, sheep, goats and other normal and traditional farm animals, however, no hogs, nor peacocks, wolves or other exotic or wild animals shall be allowed without the written, unanimous consent of all Tract owners as set forth in Paragraph 10.04 herein. Dogs, cats, birds and the like may be kept as family pets, however, no such animals shall be bred, kept or boarded as a commercial business and no such pets or other animals shall be allowed to become a nuisance or a vicious threat to other owners. Wandering dogs if objected to by other owners shall be leashed or otherwise confined to the Tract or residence of their owner.

6.03 No pasture land within the Subject Property shall be overgrazed or grazed in such a manner as may cause dusty conditions, noticeably offensive odor or soil erosion.

6.04 There shall be no feedlots or other areas for large concentrations of animals which may create offensive noise, odor or disturbance to other Tracts within the Subject Property.

6.05 Any animal or livestock pens or corrals shall be regularly and adequately cleaned to prevent noxious odors, and the unreasonable accumulation of manure shall not be allowed.

6.06 Any and all refuse, rubbish, trash, junk, and waste of any and every kind and of whatever origin shall be kept in closed containers inside a residence, garage or ancillary building, shall not be allowed to remain on or be burned or buried on any tract, shall be regularly removed by the owner or occupier of said Tract and disposed of in a sanitary manner in an authorized and approved land fill or collection site.

#### **7.0 FENCING AND LIVESTOCK GRAZING**

7.01 The fencing of individual Tracts is permitted but not required. However, in the event that the owner of any Tract intends to run livestock on his or her Tract, such owner shall be required to restrain such livestock upon such Tract by means of a fence and shall be required to construct and maintain such fence at his sole expense. In such an event, there shall be no requirement that the expense of constructing and/or maintaining such boundary fencing be shared by the adjoining Tract owner(s) unless both owners desire the fencing and there is a written agreement between the owners as to such sharing.

7.02 Any perimeter fencing to be installed around individual tracts bordering Remington Ranch Road or Willow Creek Crossing Road shall be of wood post and rail. However, the fencing of individual residences and yards within individual tracts shall not be so restricted as to either fence design or materials and shall be subject only to approval by the Architectural Committee.

### **8.0 NUISANCES AND NOXIOUS OR HAZARDOUS ACTIVITIES**

- 8.1 No thing or activity shall be done, performed, carried out or permitted to exist on any Tract, and no improvements shall be constructed thereon which are or may become unsightly, unsafe, illegal, hazardous, noxious, reasonably offensive to others or which may unreasonably become an annoyance or nuisance to any of the other owners of other Tracts within the Subject Property.
- 8.02 No light shall be emitted from any property which is unreasonably bright or causes unreasonable glare or interference with the use and enjoyment of other Tracts. No outdoor lighting shall be installed higher than ten (10) feet above the ground whether mounted on a pole or attached to a structure. All such lighting shall be positioned in such a way and/or be shielded as much as possible so as not to spill unwanted light in the direction of other residences, and no spot lights or floodlights shall be allowed to point in the direction of other residences.
- 8.03 The shooting of firearms shall not be allowed.
- 8.04 The operation of chain saws, lawn mowers, leaf blowers and other noisy equipment shall be restricted to the hours between 8:00 am and 6:00 p.m.
- 8.05 Loud music, radios, stereos and the like which interfere with the peace, quiet and tranquility of others in the area shall be prohibited.
- 8.06 Parties and social gatherings shall be conducted in such a way so as not to constitute a nuisance or an infringement upon the peace, quiet and tranquility of the area.
- 8.07 All Owners shall be charged with the responsibility of maintaining their Tract and all areas thereon free of Knapweed and other noxious weeds and for performing any and all necessary weed spraying in connection therewith as required by State and County ordinance and by good agricultural practice.
- 8.08 Any burning of brush, pruning, weeds, dead tree branches and the like shall only be done under controlled conditions, under the constant supervision of a responsible adult, with the proper and prior notification and approval of the Carbon County Fire Department and in full compliance with all local and county fire regulations.
- ### **9.0 COMMON EASEMENTS AND ROADWAYS - THE REMINGTON RANCH MASTER ASSOCIATION**
- 9.01 The Subject Tracts are located within an area of real property commonly known as "Remington Ranch," a hay and cattle ranch undergoing transition to mixed-use and on-going planned development currently involving agricultural and rural-residential uses but eventually to include commercial, light-industrial, institutional and other uses as well. The deeds to the Subject Tracts include the right of access to and from surrounding public highways by means of certain common and private easements and rural roadways through and across certain other tracts of real property within Certificate of Survey 1620. Similarly and simultaneously, access rights for that same purpose and by means of those same private easements and rural roadways are also enjoyed by the owners of all other such tracts within the same Certificate of Survey 1620. In order to provide for the orderly and beneficial maintenance of such common roadways including snow removal in the wintertime and an equitable sharing of the costs therefor, a master property owner's associate, the "Remington Ranch Master Association," (herein referred to as the "RMMA" and/or the "Master Association"), has been formed which includes

a common maintenance and cost-sharing agreement as well as overall covenants similar to the Subject Covenants but which shall be limited in scope only to issues of common interest and concern to all owners and all tracts collectively and which can not adequately be provided for in the associations and covenants of individual developments and tracts such as the Subject Tracts and the Subject Covenants.

9.02 All owners are hereby deemed by their purchase of the Subject Tracts and by their acceptance of these Covenants to have approved the creation of such a Master Association for such purposes together with the vesting in such Association of the power to levy assessments on all the Subject Tracts for the expenses associated with such common maintenance. Such assessments, if not paid, shall become a lien against the title to the Tract of the delinquent Owner and the Master Association shall be vested with the power of foreclosure and sale of the Tract as the ultimate means of collecting such assessments if necessary.

9.03 Each owner of the Subject Tracts, together with all the other owners in Certificate of Survey 1620, shall be represented and involved in the business affairs of the Master Association, including the contracting for such common maintenance and levying of assessments therefor, on the basis of his or her continuing membership in the Master Association which shall run with the title to each Tract.

#### **10.0 ADMINISTRATION AND ENFORCEMENT**

10.01 Any owner of any Tract within the Subject Property shall be entitled to enforce the provisions of these Covenants. Should such enforcement require litigation and court action, the prevailing party shall be entitled to recover reasonable costs and attorney's fees expended. It shall not be necessary for the enforcing party to be directly offended by the violation, it being sufficient that the violation exists.

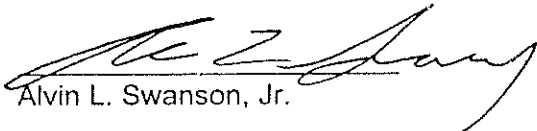
10.02 Enforcement of these Covenants, or as such Covenants may be amended in the future, shall be by proceedings in law or in equity against any person or persons or anyone herein above described who violates or attempts to violate any covenant, condition or restriction, either by restraining the violation, removing nonconforming improvements or by action to recover damages.

10.03 Every effort shall be made by the owners of the Subject Property to fairly and equitably enforce the provisions of these covenants and/or any supplemental or amended Covenants equally on all Owners and Tracts within the Subject Property. However, failure to enforce any of the provisions of these Covenants and/or any supplemental or amended Covenants shall in no way be deemed to constitute a waiver of the right to enforcement of the same or other covenants thereafter.

10.04 These Covenants may be revoked, amended or changed in whole or in part, or an owner's association may be formed with power to levy assessments for the maintenance of common ways pursuant to Paragraph 8.01 herein, by an instrument in writing signed by the owners of all the Subject Tracts, i.e., by owners representing the three Tracts constituting the Subject Property and at least sixty (60) days advance written notice of, intended vote shall first be given to all Tract owners. All signatures shall be notarized and such amendment or change once properly enacted shall be recorded in the official public records of the office of the Carbon County Clerk and Recorder and shall thereafter be binding on all owners.

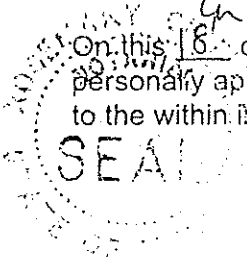
10.05 Invalidation of any portion of these Covenants by judgement of a Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

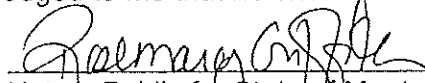
10.06 Subject to the provisions of paragraph 10.04 above, these covenants shall run with the land and to remain in full force and effect and be binding on the Subject Property and the owners thereof for a minimum period of twenty (20) years, after which time they shall be automatically extended for successive periods of ten (10) years each unless rescinded or amended by one hundred percent (100%) of the owners of the Subject Property. Any Owner who sells, transfers or conveys any of the Subject Property which is subject to these Covenants shall specifically inform the buyer or transferee in writing that the conveyance is subject to these previously recorded Covenants.

  
Alvin L. Swanson, Jr.

STATE OF MONTANA        )  
  ) ss.  
County of Red Lodge     )

On this 18<sup>th</sup> day of February, 1999, before me, a Notary Public for the State of Montana, personally appeared Alvin L. Swanson, Jr., known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



  
Notary Public for State of Montana  
Residing at RED LODGE  
My commission expires 5/27/00

State of Montana } This instrument No. 288633  
County of Carbon } ss. office this 18 day of Feb. 1999  
at 10:33 o'clock AM  
Roger D. Newell  
County Clerk & Recorder  
By Angie M. Fudwick  
Fee \$ 54.00