

**McCREADY MINOR SUBDIVISION****DECLARATION OF RESTRICTIONS, COVENANTS,  
CONDITIONS AND EASEMENTS**

THIS DECLARATION MADE this 24<sup>th</sup> day of December, 2001 by Jack and Claudia McCready, hereinafter called Declarants.

**WITNESSETH:**

WHEREAS, Declarants are the equitable owners of a tract of land known as the McCready Minor Subdivision and described as Lots 1-4, Tract B, Certificate of Survey 5246, Section 13, Township 18 North, Range 20 West, PMM;

WHEREAS, Declarants desire to place restrictions, covenants, and conditions upon said real property for the use and benefit of the Declarants as present owners and for the future owners thereof;

NOW THEREFORE, the Declarants declare 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. 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 protected property and shall inure to the benefit of, and be binding upon, each successor in interest to the owner.

**ARTICLE I: DEFINITIONS**

Section 1. "Association" shall mean and refer to **McCready Minor Subdivision Homeowner's Association**, if constituted, a proposed Montana non-profit corporation, its successors and assigns.

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

Section 3. "Tract" or "Lot" as used herein are interchangeable terms and shall mean and refer to any plot of land as originally surveyed for subdivision of the properties to be evidenced by the conveyance from Declarants with the exception of dedicated streets, road and other easements.

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. "Declarants" shall mean, and refer to, Jack and Claudia McCready, their successors and assigns.

Section 7. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association.

#### **ARTICLE II: ANNEXATION**

The Association may, at any time, annex additional residential properties that border property within the jurisdiction of the Association, and so add to its membership provided that such annexation shall have the assent of three-fourths (3/4) of the members voting in person or by proxy at a meeting duly called for this purpose.

#### **ARTICLE III: MEMBERSHIP**

Every person or entity who is an equitable or record owner of any lot which is subject by covenants of record to assessment by the Association, including buyers under a contract for deed, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of the lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

#### **ARTICLE IV: VOTING**

All members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership. When more than one person holds such interest in any lot, the vote for such tract shall be exercised as such persons among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

#### **ARTICLE V: PURPOSES**

The Association shall represent the members and serve them in accordance with the provisions of this Declaration.

## ARTICLE VI: ASSESSMENTS

Section 1. Creation of the Lien of Assessments. Each lot owner hereby covenants and agrees to pay to the Association annual assessments, all such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual assessment, together with such interest thereon and costs of collection thereof as is hereinafter provided, shall be a charge and continuing lien upon the lot against which each such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof as hereinafter provided, shall be the obligation of the owner of such lot from the date when such assessment becomes payable. The Declarants shall not be responsible for any assessments on lots owned by them. Assessments for each lot owned by the Declarants shall commence upon sale of said lot and after this Declaration has gone into effect.

Section 2. Creation of Personal Obligation. Each owner of any lot by acceptance of a deed or contract for the purchase of any lot within McCready Minor Subdivision, whether or not it shall be so expressed in said deed or contract, is deemed to covenant and agree to, and shall be a member of, and subject to the assessments and duly elected By-laws and other rules of the Association.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used for such purposes as are deemed desirable by the Association for promoting the recreation, health, safety and welfare of McCready Minor Subdivision, or as required.

Section 4. Rate of Annual Assessments. The Board of Directors shall set the amount of assessments, subject to approval by three-fourths (3/4) of the membership. All undeveloped lots shall be subject to assessment at one-fourth (1/4) the amount of the fixed assessment. Partial year assessments shall be pro-rated accordingly.

Section 5. Payment of Annual Assessments. The assessments provided for herein shall be computed on an annual basis, commencing on the first day of January each year and terminating on the thirty-first day of December of the same calendar year. Assessments shall be paid in full by April 1<sup>st</sup> of the calendar year in which said assessments are due. All members shall receive written notice of the next years assessment by December 1<sup>st</sup> preceding. The Board of Directors shall maintain a roster of lots and assessments applicable thereto, which shall be kept in the residence of the Association President or another location chosen by the Association, and shall be open to inspection by any member.

Section 6. Non-payment of Assessment. Any assessments which are not paid when due shall be delinquent. If not paid within thirty (30) days after the due date, the amount shall accrue interest from the due date at the rate of twelve (12) per cent per annum. The Association may bring an action at law and/or foreclose the lien, in order to collect the amount of the assessment, together with interest, costs and reasonable attorney's fees for such action. The member against

whom the action is brought shall be liable for all costs associated with such action. The obligation of the then owner to pay any assessment, interest, costs or fees, shall not be affected by a conveyance or transfer of title to said lot. Judgment liens placed against the property shall run with the property so attached.

#### ARTICLE VII: PROTECTIVE COVENANTS

The following protective covenants are designed to provide a uniform plan for the development and maintenance of the properties within the McCready Minor Subdivision and for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property.

Section 1. Land Use. Lots 1 through 4 of McCready Minor Subdivision can not be subdivided. The only land uses permitted on Lots 1-4 are single family residential and home occupational as defined and allowed by Lake County zoning regulations. Any other type of commercial, manufacturing, or industrial uses is prohibited, except for non-intrusive home-based businesses. Activities which create noise or pollution beyond levels expected by said permitted uses are prohibited. The intent is to create a desirable subdivision that maintains and respects the quality of the existing semi-rural neighborhood atmosphere.

Section 2. Buildings. No buildings shall be erected, altered, placed or permitted to remain on any lot other than a single family dwelling, a private garage and related out-buildings. No multiple-family dwellings shall be placed on said premises. No temporary structure, basement, tent, shack, garage, barn or other out-building shall be used as a residence on said premises. Travel trailers may be occupied only on a temporary basis.

Section 3. Building Construction, Location, Colors and Type. All residences shall be on-site constructed of new and permanent materials or double-wide or modular manufactured homes less than 10 years of age and attached to a permanent foundation. No single-wide or modular manufactured homes shall be permitted. A small number of reasonable out-buildings are allowed. Buildings shall not be located closer than twenty-five (25) feet from any property boundary line or roadway access easement line, whichever is nearest the building. All buildings for residential use shall conform to the latest editions of the "Uniform Building Code," "National Plumbing Code," and "National Electric Code." No structure within the premises shall be used for occupancy by people without first having complied with the laws of the State of Montana and any rules or regulations prescribed by the County of Lake, now or hereafter in effect. All buildings shall be sided and roofed with materials utilizing earth tone and neighborly colors only. Any outbuildings shall match the architectural style, siding type and color scheme of the residence. All buildings shall be completed externally within one year of commencement of construction. *Building permit from Lake County Required.*

Section 4. Building Size. The ground floor living area of the main dwelling house shall not be less than one thousand (1000) square feet. Living area does not include garages.

Section 5. Fences and Landscaping. All fences shall be of reasonable height and construction and shall be compatible with the topography of the area. Fencing shall be sufficient to retain pets and livestock within the premises. Landscaping shall be completed within two years from the completion of the exterior house construction. Landscaping shall be compatible with the surrounding natural environment.

Section 6. Signs. No advertising signs (except for a reasonable "for sale" sign), billboards or unsightly objects shall be erected, placed, or permitted to remain on any lot.

Section 7. Maintenance. Each property owner shall provide exterior maintenance. The premises, improvements and appurtenances shall be maintained in a safe, clean, neat and orderly condition. No rubbish or other waste shall be allowed to accumulate on the property. All containers for the storage and disposal of garbage shall be kept in a clean and orderly condition.

Section 8. Sanitary Restrictions. The owner of any property shall comply with all governing laws and regulations relating to sanitation, sewage disposal and air pollution.

Section 9. Animals. No more than two dogs and two cats are allowed per lot. No commercial dog kennels shall be allowed on any of the lots. Electronic control "fencing" for dogs is permissible within the homeowners property. Dogs off their owner's premises shall be on leashes and under control. Animals shall not be permitted to become a nuisance or annoyance to neighbors. Livestock on any of the lots shall be limited to not more than two animals.

Section 10. Nuisances. No noxious or offensive activity shall be carried on or permitted on any lot, nor shall any lot be used in any way which may endanger the health or safety of or unreasonably disturb the neighborhood. No rubbish, trash, machinery parts, junk, or other waste shall be buried on the lot or be allowed to accumulate, except in sanitary containers which shall be emptied and removed from the premises on at least a weekly basis. Storage of firewood shall not be considered in violation of this section, but only if such firewood is neatly stacked. All garbage shall be stored in animal-proof containers of metal, plastic or other suitable material that has sufficiently tight fitting covers to prevent the escape of noxious odors and to prevent entrance or destruction by wild animals.

Section 11. Vehicles. Recreational vehicles, boats and similar vehicles may be parked on the premises. Inoperable or junk vehicles or vehicle parts are not allowed on any lot unless kept within an enclosed building.

Section 12. Hunting, Firearms and Fireworks. No firearms shall be discharged on any lot except in emergencies and no fireworks shall be used on any lot at any time. The purpose of this provision is for the protection against injury and damage. Hunting and trapping is prohibited.

Section 13. Fire Standards.

a. Purpose and Intent. The property owner shall reduce the risk of fire damage by reducing

and managing the buildup of fire fuels, building and maintaining adequate road systems, and providing adequate access to firefighters

c. Fuel Management. The owner shall create a defensible space around structures on the lots for fire protection purposes and vegetation removed and reduced around each building, as approved by the appropriate fire jurisdiction.

Section 14. Mineral Development. No mineral development or ground extraction of any kind is allowed. No mining, quarrying, excavation, drilling or other similar activity shall be allowed within any lot except as may be necessary in connection with the construction or placing of improvements thereon.

Section 15. Utility Easements. Easements for utilities are reserved for a width of fifteen feet along the east side of each lot.

Section 16. Utilities. All utilities, wherever located, shall be installed underground.

Section 17. Driveways. Lot owners shall maintain their individual driveways at their own cost. Driveway maintenance shall include continual winter snow plowing of the driveway and emergency vehicle turnaround to a minimum of twelve (12) feet in width. In the event that two lots share one driveway, then maintenance costs for the shared portion of the driveway shall be equally divided between the users of the driveway. No driveway, or portion thereof, shall exceed a grade of ten (10) percent.

Section 18. Weed Control and Re-vegetation at Disturbed Sites. To reduce fire danger and prevent the spread of weeds, the owner of each lot shall be responsible for the control of noxious weeds and the vegetation thereon, in compliance with the Montana County Noxious Weed Control Act and the Lake County Noxious Weed Control Management Plan and relevant regulations. All ground cover areas disturbed by construction or maintenance shall be re-vegetated at the earliest opportunity. .

Section 19. Exterior lighting. No yard lights shall be permitted, however, non-intrusive motion and exterior lights affixed to a home or garage are allowed. *Downward shielded*

Section 20. Reflective Address Signs. Reflective sign panels with the address of each home shall be posted at the driveway entrance into the individual lots as approved by the St. Ignatius Rural Fire District.

Section 21. Irrigation. Each lot will be permitted one main hook-up to the East Mission Irrigation gravity flow irrigation line. The purchase of a lot will automatically make the owner a member of the East Mission Irrigation Sub-district and subject the owner to any and all fees and assessments of said irrigation district.

Section 22. Adjacent Agricultural use. By purchasing a lot in the said Sub-division, each

owner understands that their lot is adjacent to agricultural land. The owner consents to the reasonable and legal use of the adjacent agricultural land, including the use of fertilizers and herbicides, and waives any and all objections to such use.

Section 23. Adjacent Airport. Each owner understands that the McCready Minor Subdivision is located in proximity to an existing airport and waives any objections that might arise out of the customary activities of the Airport.

Section 24. Waiver of Protest Rights--Rural Improvement Districts (RIDs). Each owner waives their right to protest future rural improvement districts (RIDs) to improve or pave the County road adjacent to the lots.

#### **ARTICLE VIII: ENFORCEMENT**

These covenants, conditions and restrictions and all parts thereof, may be enforced by the Declarants, the Association or the owner of any lot by an appropriate legal action after having exhausted any and all Association proceedings, if appropriate. Legal actions may include proceedings to enjoin the violation and recover damages. Invalidation of any one of the restrictions shall in no way affect other provisions which shall remain in full force and effect. Failure to enforce any provision shall not be deemed a waiver of the right to do so thereafter. **All legal costs and attorney's fees associated with a claim arising out of this Declaration shall be awarded to the prevailing party.**

#### **ARTICLE IX: DURATION**

The covenants, conditions and restrictions of this Declaration shall run with the protected property in perpetuity and shall inure to the benefit of, and be enforceable by, the Declarant or by the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors or assigns.

#### **ARTICLE X: LIABILITY OF DECLARANTS**

The Declarants shall have no liability for any of its actions or failures to act, or for any actions or failures to act of the Association or any owners of property within the protected property. The relationship between the Declarants, the Association and the property owners shall be deemed to be that of independent contractors, and not that of principal and agent, partnership or joint venture. In addition, the Declarants shall have no liability or obligation under this Declaration to any person or entity except such liabilities and obligations as the Declarants have expressly assumed herein. Lot 5, Tract B, Certificate of Survey 5246, Section 13, Township 18 North, Range 20 West, PMM, owned by the Declarants, is expressly excluded from all terms and provisions of this Declaration.

#### **ARTICLE XI: AMENDMENT**

