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Frank Lloyd Wright Building  
341 Central Avenue  
Whitefish, Montana 59937

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
for  
INDIAN SPRINGS RANCH**

This Declaration of Covenants, Conditions and Restrictions for Indian Springs Ranch ("Declaration") is made as of August 24, 2007, by Indian Springs Ranch, LLC, a Montana limited liability company, (hereinafter collectively referred to as the "Declarant", whether one or more).

**ARTICLE I**

**STATEMENT AND PURPOSE AND IMPOSITION OF COVENANTS**

**1.1 Declarant:** Declarant is the owner of the real property legally described in Exhibit "A" attached hereto, which is within the master planned community commonly referred to as Indian Springs Ranch, or Indian Springs Subdivision, in Eureka, Montana (hereinafter referred to as "Indian Springs Ranch" and/or the "Property").

**1.2 Purpose:** The purpose of Declarant in making this Declaration is to subject the Property to the covenants, conditions and restrictions herein provided and to provide for the Property's maintenance and care by creating a community association for the Property, to be known as Indian Springs Ranch Homeowners Association, Inc., ("ISRA") an association composed of all Owners in Indian Springs Ranch. This Declaration creates mutually beneficial covenants, conditions and restrictions for the Property and establishes a flexible but reasonable procedure for its overall development, administration, maintenance and preservation. By executing this Declaration, Declarant intends to create an environmentally-sensitive community boasting a high quality of life for its residents. ISRA will be responsible for implementing the Declarant's goals for the community, as they are expressed herein. Foremost among these goals is the Declarant's desire to preserve and display the natural beauty of the surrounding environment through the plan of development and the uses of the land.

**1.3 Right to Expand:** Declarant may wish to incorporate additional Lots into ISRA and/or incorporate additional real estate in Lincoln County, Montana, into ISRA. Declarant has reserved the right, but will not be obligated, to add and/or incorporate additional Lots

and/or real estate in Lincoln County, Montana, into the Association, so that the additional real property, if and when developed, will be treated as an integral part of the community based project known as Indian Springs Ranch.

**1.4 Imposition of Covenants:** To accomplish the purposes indicated above, the Declarant hereby declares that from the date of recording of this Declaration forward, the Property, described in Exhibit "A" and any additional property subjected to this Declaration by Supplemental Declaration, shall be held, sold, used, and conveyed subject to the covenants, conditions, and restrictions herein which shall run with the title to the land. This Declaration shall be binding on and shall inure to the benefits of all parties having any right, title, or interest in the Properties or any part thereof, their heirs, successors, successors-in-title, and assigns.

**1.5 Duration:** Unless terminated as provided below, this Declaration shall have perpetual duration. Unless otherwise provided by Montana law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the unanimous consent of all Owners. After 20 years from the date of recording, this Declaration may be terminated only by an instrument in writing, signed by ISRA and approved by seventy-five percent (75%) of the then Owners. Such an instrument shall then be recorded in the Official Records to evidence the termination of this Declaration.

## ARTICLE II

### CONCEPTS AND DEFINITIONS

**2.1 Terms:** The terms used in this Declaration and not otherwise defined shall generally be given their natural, commonly accepted definitions except as otherwise specified. Certain capitalized terms shall be defined as set forth below.

"Area of Common Responsibility" means the Common Property, together with any other areas which become the responsibility of ISRA.

"Articles" means the Articles of Incorporation of ISRA, as they may be amended from time to time.

"Maintenance Fees" means assessments levied on all Lots to fund Common Expenses, as more particularly described in Article VIII.

"Benefited Assessment" means an assessment levied on one or more but less than all Lots, as more particularly described under Section 8.6.

"Board of Directors" or "Board" means the body responsible for administration of ISRA.

"Builder" means any Person which purchases a Lot or Lots or parcels of land within Indian Springs Ranch for the purpose of constructing improvements for later sale to consumers, or for development and/or resale in the ordinary course of such Person's business, or a Person engaged by an Owner to construct improvements on the Owner's Lot.

"By-Laws" means the bylaws of ISRA, as they may be amended from time to time.

"Class "B" Control Period" means the period during which the Class "B" Member is entitled to appoint a majority of the Board as provided in Article VI below.

"Common Asset" means personal property held by or on behalf of ISRA; and land and/or improvements (which may be a Lot) held in the name of or on behalf of ISRA, as distinct from Common Property.

"Common Property" means all real and personal property which ISRA now or hereafter owns, leases, has easement rights to, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term may include, without limitation, recreational facilities, entry features, signage, landscaped medians, lakes, streams, water courses and wetlands, as well as hiking, walking and bicycle trails that Declaration may convey to ISRA on such terms and conditions as ISRA may approve.

"Common Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by ISRA that are deemed by the Board to be for the general benefits of all Lots, including expenses with respect to the Common Property and Area of Common Responsibility, reasonable management fees, expenditures for capital-type items, expenses payable under any Covenant to Share Costs, and any reasonable reserve, as the Board may find necessary or appropriate.

"Contingency Reserve Fund" means a fund for common expenses that usually occur less often than once a year, or that do not usually occur,

"Covenant to Share Costs" means any declaration or other instrument executed by Declarant or ISRA which creates easements or other rights for the benefit of ISRA (or its Members) and the present and future owners of the real property subject to such declaration or other instrument and/or which obligates ISRA and such owners to share the costs as described therein. Any Covenant to Share Costs may affect less than all Owners.

"Declarant" means Rogers-Long Development, LLC, or any successor, or assignee thereof designated as the Declarant in a written instrument executed by the immediately-preceding Declarant.

"Design Guidelines" means the architectural, design, development, and other guidelines, standards, controls, and procedures promulgated by the Declarant or the Board including, but not limited to, application and review procedures, as they may be amended from time to time; including, but not limited to, the Indian Springs Ranch Design Guidelines.

"Design Review Committee" or "DRC" means the committee which the Declarant or Board may create, subject to provisions of Article V, and at such time as it shall determine in its discretion, to review construction and administer and enforce architectural standards.

"Governing Documents" means this Declaration together with the Articles and By-Laws of ISRA, any declaration of easements, Covenants to Share Costs, the Design Guidelines, Use Restrictions, and any rules, regulations or policies adopted by the Board which contain the standards for the Properties and ISRA.

"Home" means all buildings located within a Lot and used or intended to be used for a single-family residential use in conformity with the Governing Documents, including any garages, carports, accessory buildings, open or closed patios and basements, as originally constructed.

"ISRA" means Indian Springs Ranch Homeowners Association, Inc., a Montana non-profit corporation, its successors and assigns.

"Lot" means a portion of the Properties, whether improved or unimproved, which may be independently owned or is intended for development, use, and occupancy as an attached or detached residence for a single family, or for commercial use. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

"Maintenance Fees" means the amounts assessed to Owners on a monthly basis by ISRA to cover Operating Expenses, including assessments for the Contingency Reserve Fund

"Master Plan" means the Master Plan for the development of Indian Springs Ranch filed with the County of Lincoln, City of Eureka, Montana, as it may be amended, updated, or supplemented from time to time. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration nor shall the exclusion of property from the Master Plan bar its later annexation.

"Member" means a Person entitled to membership in ISRA as an Owner of a Lot.

"Mortgage" means a mortgage, deed of trust, deed to secure debt, or any other form of security deed.

"Mortgagee" means a beneficiary or holder of a Mortgage.

"Official Records" means the Office of the County Recorder of Lincoln County, Montana.

"Owner" means, collectively, one or more Persons who hold the legal or equitable title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a contract of sale, the Purchaser (rather than the fee owner) will be considered the Owner, unless the contract specifically provides otherwise.

"Person" means an individual, a corporation, a limited liability company, a partnership, a trustee, or any other legal entity.

"Properties" mean the real property described in Exhibit "A", together with any additional property annexed and made subject to this Declaration.

"Special Levy" means assessments levied against all Owners to cover unanticipated costs, as more particularly described in Article VIII.

"Supplemental Declaration" means an amendment or supplement to this declaration filed pursuant to Article IX which subjects additional property to this Declaration, identifies any Common Property within the additional property, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

"Use Restrictions" means (a) the use restrictions that "run with the land" under Covenants placed on the land prior to purchase by Declarant, as listed in Article XVII, which are not subject to modification by ISRA, or (b) Bylaws or rules adopted by the Board, which may be modified, cancelled, limited or expanded under Article IV.

## **CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

### **ARTICLE III**

#### **ENVIRONMENTAL ACTIVITIES**

The Declarant intends for the development and future use of Indian Springs Ranch to be carried out in an environmentally sensitive manner. In this regard, the Declarant has two goals: (1) to incorporate and feature the natural beauty of the surrounding environment into the physical development of Indian Springs Ranch, and (2) to regulate the use of the Properties such that any interference with the surrounding environment is minimized. It is the intention of this Declaration that ISRA is given the authority, through both express and implied powers, to regulate site planning, building design, construction, landscaping, and activities on the Properties to achieve these goals.

ISRA shall specifically be authorized to take an active role in raising the environmental consciousness of the residents of Indian Springs Ranch by, among other things, organizing environmental and educational programs for Indian Springs Ranch residents and the public. Such programs may be designed to promote public awareness of and participation in environmental activities throughout Indian Springs Ranch, and may address topics which include but need not be limited to conservation, management, and enhancement of the natural environment.

The Declarant, on behalf of itself, its successors and assigns, and ISRA, acknowledges and agrees that the architectural and landscaping requirements and guidelines set forth in the Design Guidelines, as initially prepared, and as may be amended from time to time, shall remain consistent with the environmental and design philosophy espoused in this Article.

### **ARTICLE IV**

#### **USE AND CONDUCT**

**4.1 Framework for Regulation:** The Declarant has established a general plan of development for Indian Springs Ranch in order to enhance the aesthetics and environment within Indian Springs Ranch and to engender a sense of community with the Properties. To accomplish this objective, the Properties are subject to the provisions of the Governing Documents governing individual conduct and use of or actions upon the Properties. In accordance with the Governing Documents, the Board and the Members shall have the ability to respond to changes in circumstances, conditions, needs, and desires affecting the Owners.

All provisions of the Governing Document shall apply to all Persons on the Properties. The lessee and all occupants of leased Lots shall be bound by the terms thereof, whether

or not the lease so provides. All Owners shall be responsible for inserting a provision in any lease informing the lessee and all occupants of the Lot of the applicable rules and use restrictions affecting the Lot, the Common Property or Exclusive Common Property. Owners are liable for all actions of invitees, guests, lessees and/or occupants of the owners' property. If there are any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and any other Governing Documents, the provisions of this Declaration will prevail in all instances.

**4.2 Rule Making Authority:**

- (a) Subject to the terms of this Article and the Bylaws, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions. Any modification must be approved by the members according to the terms of the Bylaws.
- (b) Alternatively, with the approval of the Declarant during the Class "B" Control Period, the Members, at a meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Use Restrictions.
- (c) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Governing Documents to circumvent any requirements of the State of Montana, the County of Lincoln, Montana, or the City of Eureka, Montana, concerning the development of the Properties. This Declaration shall be implemented and interpreted consistent with the provisions of Montana law.

**4.3 Owners' Acknowledgment:** All Owners are subject to the Use Restrictions and are given notice that:

- (a) Their ability to use their privately-owned property is limited thereby, and,
- (b) The Board may add, delete, modify, create exceptions to, or amend the Use Restrictions.

Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and rules may change from time to time. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control.

**4.4 Protection of Owners:** Except as set forth in the initial Use Restrictions, neither the Board nor the Members may adopt any rule in violation of the following provisions:

- (a) **Similar Treatment:** Similarly-situated Owners and occupants shall be treated similarly.
- (b) **Speech:** The rights of Owners and occupants to display on their Lot political signs and symbols of the kinds normally placed in or outside of residences located in single-family residential neighborhoods in individually owned property shall not be abridged, except that ISRA may adopt reasonable time, place, and manner restrictions regulating signs and symbols which are visible from outside the Lot.

- (c) Religion and Holiday Displays: The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds customarily displayed in residences in single-family residential neighborhoods shall not be abridged, except that ISRA may adopt reasonable time, place, and manner restrictions regulating displays which are visible from outside the Lot.
- (d) Assembly: The rights of Owners and occupants to assemble on such portions of the Common Property as are designated by the Board from time to time shall not be eliminated; provided, however, the Board may adopt reasonable time, place, and manner restrictions. At no time shall the Common Property be construed as a place of public assembly.
- (e) Household Composition: No rule shall interfere with the freedom of occupants of Lots to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Lot on the basis of the size and facilities of the Lot and its fair-share use of the Common Property. Notwithstanding the nature of any entity that may be an Owner, it is the intent of this Declaration that each Lot be occupied and utilized for residential purposes only by a single household, except with the express consent of ISRA or as otherwise provided in a Supplemental Declaration.
- (f) Activities within Dwellings: No rule shall interfere with the activities carried on within the confines of dwellings, except that ISRA may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for ISRA or other Owners, that create a danger to the health or safety of occupants of other dwellings, generate excessive noise or traffic, create unsightly conditions visible outside the dwelling, create an unreasonable source of annoyance or a nuisance, or are illegal.
- (g) Pets: Any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent ISRA from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance as determined by the Board or its designee.
- (h) Alienation: No rule shall prohibit the leasing or transferring of any Lot, or require consent of ISRA or the Board for the leasing or transferring of any Lot; provided, however, ISRA or the Board may require a minimum lease term of up to 12 months on a Lot-by-Lot basis, and may require short-term rentals of under one month to be administered through a Rental Management Company designated by ISRA. ISRA may require that Owners use lease forms approved by ISRA.
- (i) Reasonable Rights to Develop: No rule or action by ISRA or the Board shall impede Declarant's right to develop, as generally anticipated in the Master

Plan, including, but not limited to, the rights of the Declarant as set forth in Article IX.

- (j) **Abridging Existing Rights:** Any rule which would require Owners to dispose of personal property being kept on the Properties shall apply prospectively only and shall not require the removal of any property which was kept on the Properties prior to the adoption of such rule in compliance with all rules in force at such time, unless otherwise required to be removed by law, or unless it constitutes a nuisance or a threat to the health or safety of any persons or property. Notwithstanding the above, the rights conferred under this subsection are for the benefit of affected Owners only and shall not be transferable or run with title to any Lot.
- (k) **Application of Rules:** No rule shall be applied retroactively except as otherwise required by law.

## **ARTICLE V**

### **ARCHITECTURAL APPROVAL**

**5.1 Requirement for Prior Approval:** No structure or improvements of any type whatsoever shall be placed, erected or installed upon any portion of the Properties, no alterations or improvements of or additions to the existing landscaping and no improvements (including staking other than preliminary staking of a building envelope, clearing, excavation, grading, and other site work, and exterior alteration of existing improvements) shall take place within the Properties without the approval of the Reviewing Body, as established pursuant to Section 5.3. In addition to the construction of dwellings and other buildings, it is specifically intended that the placement or posting of other structures (e.g., without limitation, fences, signs, antennae and satellite dishes, clotheslines, playground equipment, basketball hoops, pools, propane and other fuel tanks other than portable gas grills, lighting, temporary structures, solar devices, and artificial vegetation) on the exterior of any Lot or other portion of the Properties shall require the approval of the DRC which approval shall be consistent with applicable law. Modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to this Article.

**5.2 Construction to Commence within 24 Months of Purchase from Declarant:** For phases one (1) and two (2) of Indian Springs Ranch, there is no time restriction for which construction and, or improvements must commence.

For all subsequent phases, the Declarant reserves the right to require that construction of a Home or improvements on a Lot purchased from Declarant shall substantially commence no later than 24 months after the closing date of the purchase, unless otherwise agreed at or before purchase, and subject to seasonal constraints. Owners should therefore plan their architectural approval process as described below and in the Design Guidelines to meet this requirement. The DRC is hereby authorized to grant waivers for limited periods to this requirement, for reasonable cause (which shall not include failure to apply for architectural approval).

### 5.3 Architectural/Design Review

- (a) New Construction: The Declarant or the Design Review Committee ("DRC"), if one has been established, shall have exclusive authority to administer and enforce the architectural controls created pursuant to this declaration and to review and act upon all applications submitted for approval. There shall be no surrender of this right prior to the expiration of the Class "B" Control Period except in a written instrument executed by Declarant and delivered to the Board. The DRC, if established, shall consist of at least three persons who shall serve and may be removed in the Declarant's sole discretion during the Class "B" Control Period and thereafter shall be appointed as described in the Design Guidelines.
- (b) Fees; Assistance: The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs of review of any application by architects, landscape architects, engineers or other professionals, and may also include an additional refundable deposit, all or any portion of which may be retained by ISRA if it is determined by the DRC that the applicant or any Person acting on behalf of the applicant has failed to comply with the Governing Documents. The Declarant and ISRA may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in ISRA's budget as a Common Expense.

### 5.4 Guidelines and Procedures

- (a) Design Guidelines: The Declarant has prepared initial Design Guidelines which shall apply to all matters requiring approval pursuant to this Declaration, which are attached hereto as Appendix "B", and incorporated herein by this reference. The Design Guidelines, as amended from time to time, may contain general provisions applicable to all the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon location, unique characteristics, intended use, the Master Plan, and any applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the DRC, and compliance with the Design Guidelines does not guarantee approval of any application.
- (b) Amendment of Design Guidelines: During the Class "B" Control Period, the Declarant shall have the sole authority to amend the Design Guidelines from time to time in its discretion. Thereafter, the DRC shall have the authority to amend the design Guidelines, in a manner consistent with the philosophy for the development of Indian Springs Ranch as set forth in Articles I and III, with the consent of the Board, and ratification by the affirmative vote or the written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes. Declarant is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part, but must remain consistent with Articles I & III.

- (c) Availability of Design Guidelines: ISRA shall make the Design Guidelines, as amended from time to time, available to Owners and Builders who seek to engage in development or construction within the Properties, and all such Persons shall conduct their activities in accordance with such Design Guidelines. At the Declarant's discretion, any amended Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.
- (d) Construction in Compliance: All structures and improvements constructed upon a Lot shall be constructed in substantial compliance with the plans and specifications for such improvements submitted and approved by the DRC. So long as the DRC has acted in good faith, its finding and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Declaration shall be final, subject to the appeal as set out in the Design Guidelines after the Class "B" Control Period.
- (e) Procedures: Prior to commencing any activity requiring approval under this Article V, an Owner shall submit an application for approval of the proposed work to the DRC. Such application shall be in the form required by the DRC and shall include, but not be limited to the plans and specifications ("Plans") set out in the Design Guidelines. The DRC may require the submission of such additional information as it deems necessary to consider any application.
- (f) Review: In reviewing each submission, the DRC may consider whatever reasonable factors it deems relevant, including, but not limited to, visual and environmental impact, ecological and archeological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the environmental and design philosophy stated in Articles I and III, and architectural merit. Decisions may be based to some extent on aesthetic considerations. By accepting this Declaration, each Owner acknowledges that determinations as to such matters are somewhat subjective, and opinions may vary as to the desirability and/or attractiveness of particular improvements.
- (g) Advice of Approval/Non-Approval: The DRC shall, within the period specified in the Design Guidelines, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of (i) approval of Plans, or (ii) segments or features of the Plans which are deemed to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines. If the DRC fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing objections, approval shall be deemed to have been denied unless the DRC fails to respond within an additional 14 days following a written request from the applicant, in which case approval shall be deemed as having been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or

certified mail, return receipt requested. Personal delivery, facsimile transmission, and email of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

- (h) **Construction Must Commence:** If construction does not commence on a project for which Plans have been approved within 180 days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the DRC for reconsideration. If construction is not completed on a project for which Plans have been approved within one and one-half years of such approval, such approval may, in the sole discretion of the DRC, be deemed withdrawn, and such incomplete construction shall then be deemed in violation of this Declaration.

**5.5 No Waiver of Future Approvals:** Each Owner acknowledges that the members of the Board and DRC will change from time to time and that interpretation, application and enforcement of the Governing Documents may vary accordingly. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval. Should the DRC permit non-conforming improvements, it shall not be construed as a waiver of future enforcement rights or permission for future noncompliance.

**5.6 Variances:** The DRC may authorize variances or deny approvals when reasonable circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and when construction in substantial accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining properties. To that end, a variance shall not be authorized unless the DRC shall find, upon sufficient evidence that:

- (a) Special circumstances or conditions apply to the Lot, building or use referred to in the plans which do not apply to other properties with Indian Springs Ranch; and,
- (b) Such special circumstances were not created by the Owner/applicant; and,
- (c) Approval of the variance is necessary for the preservation and enjoyment of substantial property rights; and,
- (d) Approval of the variance will not be materially detrimental to the existing and anticipated use of adjoining properties or Indian Springs Ranch.

Notwithstanding the above, the DRC may not authorize variances without the consent of the Declarant during the Class "B" Control Period.

**5.7 Limitation of Liability:** None of the Declarant, ISRA, the Board, the DRC, or any member or officer of the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. None of the Declarant, ISRA, the Board, the DRC, or any member or officer of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of

approved construction on or modifications to any Lot. In all such matters, the Declarant, the Board, the DRC and their members and officers shall be defended and indemnified on demand by ISRA, including as provided in the By-Laws.

**5.8 Enforcement:** All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. ISRA shall be primarily responsible for enforcement of this Article in accordance with the Governing Documents. If, however, in the discretion of the Declarant, ISRA fails to take appropriate enforcement action within a reasonable time period, the Declarant, during the Class "B" Control Period, shall be authorized to exercise any enforcement rights which could have been exercised by ISRA.

## **COMMUNITY GOVERNANCE AND ADMINISTRATION**

### **ARTICLE VI**

#### **ISRA AND ITS MEMBERS**

**6.1 Functions of ISRA:** ISRA shall be (i) the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility; (ii) the primary entity responsible for compliance with and enforcement of the Governing Documents; and (iii) the entity permitted to provide for and fund such community activities and services as deemed necessary, appropriate or desired in accordance with the Governing Documents. ISRA shall also be responsible for preparing those statements and certificates required under Montana law. Any action, approval, duty or other matter to be performed or undertaken by ISRA or the Board under the terms of the Governing Documents may be delegated in writing to any other person if the Board determines such delegation to be in the best interests of the Owners. ISRA shall perform its functions in accordance with the Governing Documents and Montana law.

**6.2 Membership:** Every Owner shall be a Member of ISRA. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised only by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of ISRA.

**6.3 Voting:** ISRA shall have two classes of membership, Class "A" and Class "B".

- (a) Class "A": Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.12. All Class "A" votes shall be cast as provided in Section 6.3(c) below. If a Lot consists of real

property which has not been platted into individual Lots, the Owner of such Lot shall be deemed to own the number of Lots equal to the maximum number of individual Lots permitted for such Lot under the appropriate Master Plan.

- (b) Class "B": The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board, and each Lot held by the Class "B" Member shall have ten (10) votes in an annual or special meeting of ISRA, until termination of the Class "B" Control Period, as set forth below. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles.
- (c) Termination of Class "B" Membership: The Class "B" membership, and thus the Class "B" Control Period, shall terminate upon the earlier of:
  - 1) When 95% of the total number of Lots permitted under the most current Master Plan have been conveyed to Owners other than the Declarant or affiliates thereof;
  - 2) December 31, 2015; provided that, if the Declarant annexes additional property pursuant to the Declaration at any time after December 31, 2012, this date shall be extended for additional three-year periods for every 40 acres of property annexed, or any fraction thereof; or,
  - 3) When, in its discretion, exercised in writing and delivered to the Board and recorded in the Official Records, the Declarant so determines.

Upon termination of the Class "B" Membership, the Declarant shall be a Class "A" Member, entitled to as many votes as it owns Lots.

- (d) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Lot owned by a Class "A" Member shall be exercised by such Owner. In any situation where a Member is entitled personally to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of ISRA in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it. Unless otherwise provided in this Declaration, any act for which the vote of the Members is required shall be approved if consented to by those Members whose combined votes constitute more than fifty percent (50%) of all votes attributable to the Members entitled to vote thereon at any meeting or action in lieu of a meeting at which a quorum is present.

## **ARTICLE VII**

### **ASSOCIATION POWERS AND RESPONSIBILITIES**

**7.1 Acceptance and Control of Association Property:** ISRA may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to ISRA improved or unimproved real estate located within the Properties,

including personal property and leasehold and other property interests. Such property shall be accepted by ISRA and thereafter shall be maintained as Area of Common Responsibility by ISRA at its expense for the benefit of its Members.

**7.2 Golf Course and Other Recreational Facilities:** With a limited number of Homes in Indian Springs Ranch, the Indian Springs Ranch Golf Course must rely on strong support from the Eureka community and visitors for memberships, play-card and green fee play, and driving range, restaurant/bar, and pro shop patronage. Strong professional management is required to execute this plan, with an overall incentive to ensure the golf operation starts and remains financially viable. This will ensure that the course becomes a cash flow generator to ISRA rather than a burden. Accordingly, ISRA is required by this Declaration to lease the golf operation to a course operator, which should be a company or individual qualified in professional golf operation.

"Golf operations" will include the land for the course and the driving range, and the portion of the clubhouse dedicated to golf and tennis. Declarant reserves the right to include the planned tennis facilities under the lease also. Declarant reserves the right to appoint an affiliate of the Declarant as the golf course operator until the termination of the Class "B" Control Period or Dec. 31, 2017, whichever is later.

Declarant commits that as owners of the Common Property including the golf course, through ISRA, Owners of Lots in Indian Springs Ranch will be entitled to golf memberships (and/or tennis) at substantially less than public prices, and will receive booking preference over green fee or play-card players. If the course is at capacity, green fee and public memberships may be restricted to ensure residents adequate opportunity to play.

Declarant also reserves the right to require leasing of other recreational facilities to qualified operators if Declarant believes this arrangement is necessary to allow the facilities to be self-supporting and not a drain on ISRA. The recommendation of Board members elected by the Owners shall be requested for the terms of any such leases.

**7.3 Maintenance of Common Area of Responsibility:**

- (a) ISRA shall maintain and keep in good repair the Area of Common Responsibility. ISRA may also maintain and improve other property which it does not own, including, without limitation, arroyos, wetlands, streams, water courses, and stream beds, wildlife habitats, and property, including any trail systems which may be dedicated to public use, if the Board determines that such maintenance is necessary or desirable and if otherwise permitted by applicable law.
- (b) Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Maintenance Fees, without prejudice to the right of ISRA to seek reimbursement from Persons responsible for such work pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with such Persons.
- (c) ISRA shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required

maintenance or repairs, unless the Board and the Class "B" Member, if any, agree in writing to discontinue such operation.

- (d) The costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense; provided, ISRA may seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. Nothing in this Section 7.3 shall prejudice the right of ISRA to seek reimbursement from any Person whose negligent or wrongful acts or omissions necessitated such repairs or replacement.

**7.4 Maintenance in Public Rights-of-Way:** ISRA may, in its reasonable discretion, locate and maintain improvements that are located within or on public easements or public rights-of-way in accordance with applicable ordinances, if any, of state or local governing authorities, and the terms of any easements or licenses applicable.

**7.5 Insurance:** To the extent deemed reasonably necessary by the Board, and as required in the Bylaws, ISRA shall obtain and continue in effect the insurance the Board deems necessary, including, but not limited to, property insurance, liability insurance, and Directors and Officers Errors and Omissions insurance.

**7.6 Compliance and Enforcement:**

- (a) Every Owner and every occupant of a Lot shall comply with the Governing Documents and all rules, regulation and policies of ISRA. The Board may impose sanctions for violation of the foregoing, after notice and an opportunity for a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation, some or all of the following:
  - 1) Reasonable monetary fines (including for failure to grant reasonable Permission to enter a Lot as may be reasonably requested by ISRA in accordance with this Declaration) which shall constitute a lien upon the violator's Lot. (If any occupant, guest or invitee of a Lot violates the Declaration, the By-Laws or any rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board). Such fines shall be levied in accordance with the Bylaws and shall be consistent with applicable law;
  - 2) Suspending an Owner's right to vote;
  - 3) Suspending any Person's right to use any recreational facilities within the Common Property (provided, however, nothing herein shall authorize the Board to prohibit ingress or egress to or from a Lot);
  - 4) Suspending any services provided by ISRA to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to ISRA;

- 5) Taking action to abate any violation of the Governing Documents in a non-emergency situation (specifically including, but not limited to, the towing of vehicles that are, after appropriate warning, in violation of any applicable parking rules and regulations);
  - 6) Requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of Article V and to restore the Lot to its previous condition. If the Owner fails to do so, the Board or its designee may seek a court order to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed;
  - 7) Without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article V from continuing or performing any further work activities in the Properties; and,
  - 8) Levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.
- (b) In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:
- 1) Exercising self-help in any emergency situation; and,
  - 2) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.
- (c) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents or any rule or regulation, ISRA shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.
- (d) ISRA shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with the applicable law, or in any case in which the Board reasonably determines that it would not be economically prudent or would otherwise not be sufficient benefit to ISRA to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of ISRA to enforce such provision at a later time under other circumstances or stop ISRA from enforcing any other covenant, restriction or rule.

**7.7 Implied Rights; Board Authority:** ISRA may exercise any right or privilege given to it expressly by the Governing Documents or which may be reasonably implied from, or reasonably necessary to effectuate, any such right or privilege. The Board may exercise all rights and powers of ISRA without a vote of the membership, except as otherwise specifically provided in the Governing Documents or by law.

**7.8 Disclaimer of Liability:** None of ISRA, the Board, any officers or committee members of ISRA, ISRA's management company, the Declarant, or any successor

Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of utility lines, or utility sub-stations adjacent to, near, over or on the Properties. Each Owner and occupant of a Lot and each tenant, guest, and invitee of any Owner, Declarant, or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence or malfunction of utility lines, utility sub-stations, and electromagnetic fields and further acknowledges that ISRA, the Board, the officers of ISRA, the management company of ISRA, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner, Declarant, or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations, or electromagnetic fields.

No provision of the Governing Documents shall be interpreted as creating a duty of ISRA, the Board, the officers of ISRA, the management company of ISRA, the Declarant nor any successor Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of ISRA are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section 7.8 and shall be deemed to have waived any and all rights, claims, demands and causes of action against ISRA, the Board, the officers of ISRA, ISRA's management company, the Declarant and any successor Declarant arising from or connected with any matter for which the liability has been disclaimed.

**7.9 Security:** It is the goal of all Owners, including Declarant, to have a safe and healthy environment. ISRA may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided, neither ISRA, the Board, the officers of ISRA, ISRA's management company, nor the Declarant or any successor Declarant, shall in any way be considered insurers or guarantors of security within the Properties. Neither ISRA, the Board, the officers of ISRA, ISRA's management company, nor the Declarant or any successor Declarant shall be held liable for any loss or damage for failure to provide adequate security or for the ineffectiveness of security measures undertaken.

**7.10 Pedestrian Trail System Open to the Public:** All Owners hereby acknowledge that hiking, bicycle, pedestrian or similar type trail system or systems located within all or a portion of the Properties may be maintained by ISRA, and may be open for the use and enjoyment of the public in accordance with any applicable rules, regulations and ordinances of the state or local governing authorities.

**7.11 Property Management Company for First Five Years:** Declarant reserves the right to appoint an affiliate of Declarant as the property management company for Indian Springs Ranch for the first five years after this declaration. If Declarant exercises this right, the contract for property management services will include performance clauses, and will provide that one year after the first ISRA Board members are elected by the Owners, and annually thereafter, the Board members elected by the Owners must review the contract to ensure it is appropriate and competitive. Those Board members shall then recommend continuation of the contract, cancellation, or renegotiation to the Board. Declarant will direct the Board members nominated by Declarant during the Class "B" Control Period to abstain from the Board Vote on this matter.

## ARTICLE VIII

### ASSOCIATION FINANCES

**8.1 Budgeting and Allocating Common Expenses:** Not less than 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the Common Expenses estimated to be incurred during the coming year. The budget must include a contribution to a Contingency Reserve Fund as provided below.

The Maintenance Fees shall be levied equally against all Lots subject to assessment based on the Lot Entitlement as described in the Bylaws and any other services particular Lots or sections are to receive, such as townhome and motorhome Lots for which all outside maintenance will be performed by ISRA. Maintenance Fees shall be set at a level which is reasonably expected to produce total receipts for ISRA equal to the total budgeted Common Expenses, including contributions to reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to ISRA. In addition, the Board shall take into account the number of Lots subject to assessment under Section 8.9 on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Maintenance Fees for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.4), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the Common Expense budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years.

Notice of assessments shall be posted in a prominent place within the Properties and included in ISRA's newsletter, if any. If the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

**8.2 Budgeting for Reserves:** The Board shall prepare, on an annual basis, reserve budgets which take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost of each asset. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in the Maintenance Fees reserve contributions in amounts sufficient to meet these projected needs, if any, as well as reserves to meet any other reasonable purpose, including reserves for delinquent assessments. During the first five years of ISRA, the contribution to the Contingency Reserve Fund shall be a minimum of 5% of the projected common expenses. As required in the Bylaws, ISRA must account for money in the Contingency Reserve Fund separately from other money of ISRA.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. During the Class "B" Control Period, neither ISRA nor the Board shall adopt, modify, limit, or expand such policies without the Declarant's prior written consent.

**8.3 Authority to Assess Owners, Time of Payment:** ISRA may levy assessments against each Lot for Association expenses as the Board may specifically authorize from time to time. There shall be three types of assessments for Association expenses:

- (a) Maintenance Fees, including contribution to the Contingency Reserve Fund;
- (b) Special Levies, as described in Section 8.5; and
- (c) Benefited Assessments, assessed to one or more Lots but not all Lots (Section 8.6).

Each Owner, by acquiring legal or equitable title for any portion of the Properties, is deemed to covenant and agree to pay these assessments. Assessments shall be paid in such manner and by such dates as the Board may establish. If an Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may assess interest, at the maximum legal rate, on the late payments and require unpaid installments of all outstanding assessments to be paid in full immediately.

**8.4 Declarant's Option to Fund Budget Deficits:** During the Class "B" Control Period, Declarant may annually elect either to pay assessments on all of its unsold Lots or to pay the shortage (or operating deficit), if any, for such fiscal year; provided however, Declarant shall not be responsible for any shortage resulting from the failure of any Owner to pay assessments applicable to such Owner. Such "shortage" shall be deemed to exist if Income and Revenues are less than Expenditures (defined in paragraphs (a) and (b) below

- (a) Income and Revenues are the amount of all income and revenue of any kind received and/or earned by ISRA, excluding refundable deposits and assessments for contribution to the Contingency Reserve Fund.
- (b) Expenditures are the amount of all actual Common Expenses incurred, or obligated for, by ISRA during the fiscal year, but excluding all non-cash expenses such as depreciation or amortization, all expenditures and reserve contributions for making additional capital improvements or purchasing additional capital assets, and all expenditures made from reserve funds.
- (c) Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. ISRA is specifically authorized to enter into subsidy contracts or contracts for "in-kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

**8.5 Special Levies:** In addition to other authorized assessments, the Board may levy Special Levies from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including sums expended on capital-type items, to the extent not included within Maintenance Fees. Such Special Levy may be levied against the entire membership, if for Common Expenses. Such Special Levies shall become effective unless, during the Class "B" Control Period, they are disapproved by the Declarant within 60 days following the levy of such assessment. Special Levies shall be payable in such

manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Levy is approved.

**8.6 Benefited Assessments:** The Board may levy Benefited Assessments against particular Lots for expenses incurred or to be incurred by ISRA as follows to cover:

- (a) The costs or reasonable portion thereof, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize, which assessments may at Board discretion be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and,
- (b) Costs incurred (including overhead and administrative costs) in bringing the Lot into compliance with the Governing Documents or costs incurred (including overhead and administrative costs) as a consequence of the conduct of the Owner or occupants of the Lot, their licensees, invitees or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying a Benefited Assessment under this subsection (b).

**8.7 Personal Obligation:** Each Owner is deemed to covenant and agree to pay all assessments authorized in this declaration (and, with respect to Lots owned jointly, all such Owners are deemed to covenant and agree to pay assessments jointly and severally). All assessments, together with interest from the due date of such assessment at the maximum legal rate per annum unless a different rate is determined by the Board, reasonable late charges established by the Board, costs, and attorney's fees, shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of legal or equitable title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

**8.8 No Exemption for Non-Use:** No Owner may exempt himself from liability for assessments by non-use of Common Property, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of ISRA or the Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

**8.9 Lien for Assessments:** The annual and special assessments (including monthly installments thereof) and any and all default assessments (together with any and all interest, costs, late charges, expenses and reasonable attorney's fees which may arise), shall be burdens running with and a perpetual lien in favor of ISRA upon the specific lot to which such assessments apply unless otherwise specifically precluded in this Declaration. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. ISRA may enforce such lien, when

any assessment or other charge is delinquent, or take any other action either independently or simultaneous to the extent permitted at law or in equity.

During the Class "B" Control Period, the Declarant, and after the termination of the Class "B" Control Period, ISRA, may bid for a Lot at a foreclosure sale, and acquire, hold, lease, mortgage, and convey the Lot. ISRA may sue or take any other action permitted at law or in equity for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, a Mortgagee holding a first Mortgage of record or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment, including such acquirer, its successors and assigns.

**8.10 Date of Commencement of Assessment Obligations:** The obligation to pay assessments shall commence as to each Lot on the first day of the month following the date:

- (a) The Lot is made subject to this Declaration, or,
- (b) On which ISRA first determines a budget and levies assessments pursuant to this Article, whichever is later.

The first annual Maintenance Fees against each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

**8.11 Failure to Assess:** Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time ISRA may retroactively assess any shortfalls in collections.

**8.12 Exempt Property:** All Common Property, and all property dedicated to and accepted by any governmental authority or public utility shall be exempt from payment of assessments. Lots owned by or on behalf of ISRA shall not be exempt from assessments.

In addition, the Declarant and/or ISRA shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own and operate property subject to this Declaration for purposes listed in Section 501(c) and for the purposes for which such exemption was granted.

## **COMMUNITY DEVELOPMENT**

### **ARTICLE IX**

#### **EXPANSION AND REDUCTION OF THE COMMUNITY**

**9.1 Expansion by the Declarant:** The Declarant's right to expand the community pursuant to Section 1.3 shall expire upon termination of the Class "B" Control Period. Nothing in this Declaration shall be construed to require the Declarant or any successor to subject additional property to this Declaration or to develop any other property in any manner whatsoever.

**9.2 Expansion by ISRA:** ISRA may also subject additional property to the provisions of this Declaration by filing a Supplemental Declaration in the Official Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Members representing a majority of the Class "A" votes of ISRA and the consent of the owner of the additional property. In addition, during the Class "B" Control Period, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of ISRA, by the owner of the additional property, and by Declarant, if Declarant's consent is necessary.

**9.3 Additional Covenants and Easements:** The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating ISRA to maintain and insure such property and authorizing ISRA to recover its costs through Assessments (which must be assessed to such Lots as benefit from the assessments). Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**9.4 Effect of Filing Supplemental Declaration:** Any Supplemental Declaration filed pursuant to this Article shall be effective upon recording in the Official Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in ISRA and assessment liability in accordance with the provisions of this Declaration.

**9.5 De-annexation of Property:** Declarant reserves the right to de-annex any real property from the terms of this Declaration at any time during the Class "B" Control Period without prior notice and without the consent of any Person, for the purpose of removing such real property from the coverage of this Declaration or clarifying that such property is no longer subject to annexation, provided such action is not materially adverse to the overall scheme or development for the Properties. If Declarant elects to de-annex any property, Declarant shall record a Supplemental Declaration in the Official Records.

## ARTICLE X

### **RIGHTS RESERVED TO DECLARANT**

**10.1 Construction of Improvements:** The Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Property for the purpose of making, constructing, installing, modifying, expanding, replacing, and removing any improvements to the Common Property as it deems appropriate in its sole discretion.

**10.2 Rights to Use Common Property:** The Declarant and its designees may maintain and carry on upon portions of the Common Property such facilities and activities as, in the sole opinion of the Declarant, may be required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and its designees shall have easements for access to and use of such facilities.

The Declarant and its designees, during the course of construction on the Properties adjacent to any Common Property, may use such Common Property for temporary storage and for facilitating construction on adjacent property. The user of such Common Property must return the Common Property to the condition it was in prior to its use. If the Declarant's use under this Section results in additional costs to ISRA, the Declarant shall reimburse ISRA for such costs, but the Declarant shall not be obligated to pay any use fees, rent or similar charges for its use of Common Property pursuant to this Section.

The Declarant and its employees, agents and designees shall also have a right and easement over and upon all of the Common Property for the purpose of making, constructing and installing such improvements to the Common Property as it deems appropriate in its sole discretion.

**10.3 Other Covenants Prohibited:** No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties during the Class "B" Control Period without Declarant's written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

**10.4 Right to Approve Changes:** Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Bylaws, rules, use guidelines or restrictions, or Governing Documents affecting the Properties shall be effective without prior notice to and the written approval of the Declarant during the Class "B" Control Period.

**10.5 Right to Transfer or Assign Declarant Rights:** Any or all of the rights and obligations of the Declarant set forth in this Declaration may be transferred to other Persons. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Official Records.

**10.6 Amendment:** This Article shall not be amended without the prior written consent of Declarant during the Class "B" Control Period. The rights contained in this Article shall terminate upon the earlier of (a) 50 years after the conveyance of the first Lot to an Owner, or (b) the recording of Declarant of a written statement terminating such rights. Thereafter, the Declarant and its designees may continue to use the Common Property for

purposes stated in this Article only pursuant to a rental or lease agreement between the Declarant and/or such designee and ISRA.

## PROPERTY RIGHTS WITHIN THE COMMUNITY

### ARTICLE XI

#### EASEMENTS

**11.1 Easements in Common Property:** Every Owner shall have a right and non-exclusive easement of use, access, and enjoyment in and to the Common Property, and such right and nonexclusive easement shall be appurtenant to such Owner's Lot, subject to:

- (a) This Declaration, and any other applicable covenants;
- (b) Restrictions or limitations contained in any deed conveying such property to ISRA;
- (c) The right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Property, including rules restricting use of recreational facilities within the Common Property to Owners and their guests, and rules limiting the number of occupants and guests who may use the Common Property;
- (d) The right of the Board to suspend the right of an Owner to use recreational facilities;
- (e) The right of ISRA to dedicate or transfer all or any part of the Common Property to governmental entities;
- (f) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission, or other fees for the use of any recreational facility situated upon the Common Property;
- (g) The right of the Board to permit use of any Common Property recreational, educational, or cultural facilities by non-owners, their families, lessees, invitees and guests;
- (h) The right of the Board to create, enter agreements with, grant easements to, and transfer portions of the Common Property to, non-profit or tax-exempt organizations;
- (i) The right of the Board, with respect to Common Property, to enter agreements with or grant easements to neighboring property owners;
- (j) The right of ISRA to mortgage, pledge, or hypothecate any or all of its real or personal property (but not Common Property) as security for Association obligations;
- (k) The right of ISRA to change the use of any portion of the Common Property (with the consent of the Declarant during the Class "B" Control Period); and,

- (l) The rights and obligations of ISRA, acting through its Board, to restrict, regulate or limit Owners' and occupants' use of the Common Property for health and safety purposes, or for environmental preservation purposes, including, without limitation, wildlife corridors, wildlife ranges and natural wildlife habitat.

**11.2 Easements for Utilities, Etc:** Declarant reserves unto itself, and grants to ISRA, an easement for the purpose of access and maintenance upon, across, over and under all of the Properties to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, streams or other watercourses, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or ISRA may assign these rights to any local utility supplier, cable company, security company, or other company providing a service or utility to Indian Springs Ranch subject to the limitations herein.

This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Home, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Home on any Lot, nor shall any utilities be installed or relocated on the Properties, except as approved by the Board and, during the Class "B" Control Period, Declarant.

**11.3 Easements to Serve Additional Property:** The Declarant hereby reserves unto itself and its duly authorized agents, representatives, employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Property for the purpose of enjoyment, use, access, and development of the real properties adjacent to Indian Springs Ranch, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Property for construction of roads and for connecting and installing utilities on such property. Declarant further agrees that if the easement is exercised for permanent enjoyment and use of and/or access to such property, and such property or any portion thereof is not made subject to this declaration, the Declarant shall enter into a reasonable agreement with ISRA to share the cost of maintenance of any access roadway serving such property.

**11.4 Easements for Cross-Drainage:** Every Lot and the Common Property shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall discharge any water, backwash any pool, spa or similar improvements, or alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties or the Common Property without the consent of the Owner(s) of the affected property, the Board, and the Declarant during the Class "B" Control Period.

**11.5 Right of Entry:** ISRA shall have the right, but not the obligation, and a perpetual easement is hereby granted to ISRA, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of ISRA, its Board, officers or committees, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any dwelling on any Lot to cure any condition which increases the risk of fire or other hazard if any Owner fails or refuses to cure the conditions within a reasonable time after request by the Board, but does not authorize entry into any Home without permission of the Owner, except by emergency personnel acting in their official capacities. Public providers of emergency services shall have access to Lots in an emergency as provided by state law and, if applicable local governing authorities operating policies.

**11.6 Easements for Maintenance and Enforcement:** Authorized agents of ISRA, shall have the right, and a perpetual easement is hereby granted to ISRA, to enter all portions of the Properties, including each Lot to (a) perform its maintenance responsibilities, if any, and (b) make inspections to ensure compliance with this Declaration. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any physical damage caused by ISRA shall be repaired by ISRA at its expense. ISRA also may enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents.

**11.7 Rights to Storm Water Runoff, Effluent and Water Reclamation:** Declarant hereby reserves for itself and its designees, all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties. Such right shall include an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff and effluent. This Section may not be amended without the consent of the Declarant or its successor, and the rights created in this Section shall survive termination of this Declaration.

The Properties are hereby burdened with a non-exclusive easement in favor of ISRA for overspray of water from any irrigation system serving the Area of Common Responsibility. ISRA may use treated effluent in the irrigation of any Area of Common Responsibility. Under no circumstances shall ISRA or any other Person be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

**11.8 Easements for Lake and Pond Maintenance and Flood Water:** Declarant reserves for itself, ISRA, and their successors, assigns, and designees, the non-exclusive right and easement, but not the obligation, to enter upon the arroyos, ponds, rivers, streams and wetlands located within the Area of Common Responsibility to, without limitation, (a) construct, maintain, and repair wells, pumps and water distribution facilities to provide water for irrigation for any Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining or channeling water; and (c) remove trash and other debris and fulfill their maintenance responsibilities as provided in this declaration. Declarant, ISRA, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting

or containing any portion of any of the arroyos, ponds, rivers, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, ISRA, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Property and Lots (but not the dwellings thereon) adjacent to or within one hundred feet of arroyos, ponds, river, streams and wetlands with the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the arroyos, ponds, rivers, streams, and wetlands within the Area of Common Responsibility, subject to the approval of all appropriate regulatory bodies; (c) maintain and landscape the slopes and banks-pertaining to such arroyos, ponds, rivers, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising their rights under this Section.

All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from, the intentional exercise of the rights granted under such easements. Nothing herein shall be construed to make Declarant, ISRA, or any other Person liable for damage resulting from flooding due to heavy rainfall, or other natural occurrences.

**11.9 Easement for Use of Private Streets:** The Declarant hereby creates a perpetual, non-exclusive easement for access, ingress and egress over the private streets within the Common Property (and any Exclusive Common Property), for law enforcement, fire fighting, paramedics, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; private delivery or courier services; and for vehicles, equipment and personnel providing garbage collection service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities.

**11.10 Easements for Tax Exempt Organizations:** Tax-exempt organizations designated or established by the Declarant or ISRA to maintain or assist in preservation of any environmentally-sensitive areas, including but not limited to any wetlands or wildlife habitat areas, shall have easements over the Common Property to the extent necessary to carry out their responsibilities.

## ARTICLE XII

### **PARTY WALLS AND OTHER SHARED STRUCTURES**

**12.1 General Rules of Law to Apply:** Each wall, driveway or similar structure built as a part of the original construction on the Lots which services and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**12.2 Maintenance; Damage and Destruction:** All Owners whose Lot is served or separated by any party structure shall share the cost of reasonable repair and maintenance of such structure equally. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance

and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners subsequently use the structure they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

**12.3 Right to Contribution Runs with Land:** The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**12.4 Disputes:** Any dispute concerning a party structure shall be subject to the dispute resolution procedures set forth in Article XIII.

## **RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

### **ARTICLE XIII**

#### **DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

**13.1 Agreement to Avoid Litigation:** The Declarant, ISRA, its officers, directors, and committee members, all Persons subject to this Declaration (including Owners, their family members and tenants), and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that specified claims, grievances, controversies, disagreements or disputes described in this Section ("Claims") shall be resolved using alternative dispute resolution procedures in lieu of filing suit in any court, provided that the term "Claim" shall not include the acts of ISRA and its agents to enforce the terms of this Declaration.

**13.2 Claims:** Unless specifically exempted in this Article XIII, all Claims arising out of or relating to (i) the interpretation, application or enforcement of the Governing Documents, or (ii) the failure of the Declarant, ISRA or the Board to properly conduct elections, give adequate notice of meetings, properly conduct meetings, allow inspection of books and records, or establish adequate reserve funds or (iii) the authority of ISRA or the Board to take or not take any action under the Governing Documents; or (iv) the performance or non-performance by any Bound Parties of any of the respective obligations or responsibilities under the Governing Documents to or on behalf of any other Bound Parties; or (v) the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements shall be subject to the provisions of Section 13.3.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 13.3:

- (a) Any action or suit by ISRA to enforce the provisions of Article VIII (Association Finances) including, without limitations, actions taken to enforce the collection of any assessments, to enforce or foreclose any lien in favor of ISRA, or to determine the priority of any lien for assessments;

- (b) Any suit by ISRA to obtain a temporary or permanent restraining order (or emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve ISRA's ability to enforce the provisions of Article IV (Use and Conduct) and Article V (Architectural/Design Approval);
- (c) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
- (d) Any claim, grievance, controversy, disagreement or dispute that primarily involves (i) title to any Lot or Common Property, (ii) the interpretation or enforcement of any express or implied warranty made in connection with the sale of a Lot; (iii) the eviction of a tenant from a Lot, or (iv) and employment matter between ISRA and any employee of ISRA;
- (e) Any action taken arising out of any separate written contract between Owners, between Declarant and any Owner, or between Declarant and any Builder that would constitute a cause of action under the laws of the State of Montana in absence of the Governing Documents;
- (f) Any suit in which any indispensable party is not a Bound Party; and
- (g) Any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.3(a) unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 13.3.

### **13.3 Mandatory Procedures.**

- (a) Notice: Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing and provide a copy to the Board (the "Notice"), stating plainly and concisely:
  - 1) The nature of the Claim, including the date, time, location, Persons involved and Respondent's role in the Claim;
  - 2) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
  - 3) Claimant's proposed remedy; and
  - 4) That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.
- (b) Negotiation and Mediation.
  - 1) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing by the Board, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

- 2) If the Parties do not resolve the Claim within 30 days of the date of the Notice (or such other period as may be agreed upon by the Parties), Claimant shall have 30 additional days to subject the Claim to such entity as is designated by ISRA for mediating claims or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in Montana.
- 3) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
- 4) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, the nature of the impasse, and the date that mediation was terminated. The Termination of Mediation may also establish any undisputed factual findings or agreed resolutions, as agreed upon by the Parties.
- 5) All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without the consent of the Parties. Any mediation resolution may be enforced in a court of law. Each of the Parties to a Claim will bear its own costs incurred prior to and during the negotiation and mediation proceeding described herein, including the fees of its attorney or other representative. Each Party to a Claim will share equally all costs of the mediator and, if and to the extent required, will pay its respective share of the costs in advance of the mediation as a condition to its continuation of the prosecution or defense of the Claim.

The Claimant shall thereafter be entitled to sue in any court of competent jurisdiction or to initiate proceedings before any appropriate administrative tribunal on the Claim.

**13.4 Enforcement of Resolution:** If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 13.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 13.3. In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

## **CHANGES IN THE COMMUNITY**

### **ARTICLE XIV**

#### **CHANGES IN OWNERSHIP OF LOTS**

**14.1 Notice of Change of Ownership:** Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least fourteen days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. In addition, all Owners acknowledge that ISRA may be required to provide resale disclosure statements or other similar type information required by applicable law and may charge such Owner a reasonable fee, in addition to any assessments, for the provisions of such information. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the later of the date upon which such notice is received by the Board or title to the Lot is transferred.

**14.2 Declarant May Appoint Real Estate Agency:** The Declarant has appointed a lead real estate agency for sales of Lots in Indian Springs Ranch to ensure that a message consistent with the philosophy of Indian Springs Ranch is provided to all potential Purchasers. To protect the value of the Lots and Homes and ensure this message continues, Declarant reserves the right to direct that during the Class "B" Control Period all resales of Lots, with or without homes constructed, shall be managed through this lead agency. The lead agency shall have the right to maintain sales and management offices, signs advertising the Project and model residences on the Common Area and on Lots owned by Declarant, whether contained within the Property initially subject to this Declaration, or within the Expansion Property.

**14.3 Declarant shall have a Right of First Refusal on Lot Re-sales:** During the Class "B" Control Period, Declarant has a right of first refusal to purchase any lot, except as provided in the immediately following subparagraph. An Owner intending to make a sale of a Lot except to immediate family members, will deliver written notice of such intention to the Declarant and will furnish the name and address of the intended purchaser and such other information as the Declarant shall reasonably request. At the time of giving such notice, such unit owner will also furnish the Declarant with copies of all instruments setting forth the terms and conditions of the proposed transaction. The giving of such notice will constitute a warranty and representation by such Owner to the Declarant that the Owner believes the proposed sale to be bona fide in all respects.

The Owner will be responsible to the Declarant for any damages suffered by it in exercise of its rights hereunder in the event any proposed sale is not bona fide; such damages will include, but not be limited to, the difference between the price paid by the Declarant for the Lot and the fair market value thereof. Within forty-eight (48) hours after receipt of such notice of intention to sell, the Declarant will either waive its right to purchase the Lot by written notice delivered to the Owner, or execute and deliver to such Owner a contract of sale upon terms as favorable to the Owner as the terms furnished with the notice. The Declarant will have not less than a thirty (30) day period to complete the transaction.

The Declarant will be responsible to the Owner for any damages suffered as a result of Declarant's failure to complete the transaction after exercising the right of first refusal.

Such Owner may then sell the Lot to the proposed purchaser provided that the sale is on the terms and conditions and for the price set forth in the notice of intention to sell delivered to the Declarant. In the event a sale is consummated between an Owner and any proposed purchaser upon any basis other than as disclosed to the Declarant, the Declarant will then have the same right of first refusal as expressed above, which right shall expire thirty (30) days after the Declarant receives knowledge of the actual terms of the transaction, or one (1) year after consummation of the original transaction, whichever occurs first.

This provision does not apply to a public or private sale held pursuant to foreclosure of a first mortgage on any Lot, by an entity who or which obtained title to the Lot covered by such mortgage pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed in lieu of foreclosure.

The waiver of the right to purchase by the Declarant with respect to a proposed sale of a Lot does not constitute a waiver of the Declarant's right of first refusal with respect to any future proposed sales by an Owner thereof.

- (a) Exceptions: The grant to Declarant of the foregoing right of first refusal to purchase any lot or any interest therein does not extend to transfers between immediate family members, such being defined to include and be limited to transfers between spouses, between parent(s) and child(ren), and between siblings. The grant also does not extend to transfers between organized business entities, including corporations, partnerships and sole proprietorships, and individuals who are major stockholders, partners or the owners of such business entities, nor to transfers between two business entities wherein the same individual is a major shareholder, partner or owner of each such business.

**14.4 Combining or Subdividing Lots:** An Owner of two contiguous Lots may combine the Lots into a single Lot only with the prior consent of the DRC. When considering combining Lots, the Owner must recognize that the size and location of the Building Envelope shall remain the same as depicted on the original Custom Lot Criteria of the original Lots. Any request for changes to the Building Envelope due to the specific Lot configurations is subject to DRC approval. If such a revision is desired, the Owner or his representative is urged to submit a proposed revised Building Envelope for combined Lots prior to acquisition and/or as early in the design process as is reasonable prior to preliminary submittal. Specific focus will be placed on, but not limited to the following:

1. Adverse impacts to adjacent properties due to adjustments in Building Envelope.
2. Preservation of view corridors both to and from the newly configured Lot.
3. Building height restrictions.
4. Architectural massing (specifically with respect to overwhelming the natural setting).

The plat for a newly configured single Lot must be approved (if required) by appropriate governing authorities and must be recorded. All expenses associated with recording the new Lot and pursuing governmental approvals are the responsibility of the Owner.

Lots included in the final Plat of ISR may not be further divided in any way. Only Lots that have been combined to create a larger Lot may be broken apart. Boundary line adjustments may be utilized upon review by the board of ISR.

## **ARTICLE XV**

### **CHANGES IN COMMON PROPERTY**

**15.1 Condemnation:** If any part of the Common Property shall be taken or conveyed under threat of condemnation by any authority having the power of eminent domain, each Owner shall be entitled to notice thereof by posting in a prominent place within the Properties and included in ISRA's newsletter, if any. The Board may convey Common Property under threat of condemnation if the Board reasonably determines that it is in the best interest of ISRA and is approved in writing by Declarant during the Class "B" Control Period. The award made for such taking shall be payable to ISRA as trustee for all Owners to be disbursed as follows:

- (a) If the taking involves a portion of the Common Property on which improvements have been constructed, ISRA shall restore or replace such improvements on remaining land included in the Common Property to the extent practicable, unless within 60 days after such taking the Declarant, so long as the Declarant owns any portion of the Properties or has the right to annex property, shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board.
- (b) If the taking does not involve any improvements on the Common Property, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to ISRA and used for such purposes as the Board shall determine.

**15.2 No Partition:** Except as permitted in this Declaration, the Common Property shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees.

**15.3 Dedication of Common Property:** ISRA may dedicate or grant easements over portions of the Common Property to any local, state, or federal governmental entity.

## **ARTICLE XVI**

### **AMENDMENT OF DECLARATION**

**16.1 Amendment by Declarant.** Until termination of the Class "B" Control Period, Declarant may unilaterally amend this declaration for any purpose, provided, however, that such amendment shall not materially adversely affect the value, enjoyment or right of any Owner. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii)

required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make or purchase Mortgage loans on the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency for approval of this Declaration. However, any such amendment shall not adversely affect the title to any Lot unless the affected Owner shall consent thereto in writing.

**16.2 Amendment by Owners:** Except as otherwise specifically provided in this Declaration, this Declaration may also be amended by the affirmative vote or written consent, or any combination thereof, of Members representing at least 75% of the total Class "A" votes, and during the Class "B" Control Period, the consent of Declarant.

**16.3 Validity and Effective Date of Amendments:** Amendments in accordance with this Declaration shall become effective upon recordation in the Official Records, unless a later effective date is specified therein.

## ARTICLE XVII

### USE RESTRICTIONS

**17.1 Covenanted Use Restrictions – Background:** Land at Indian Springs Ranch is subject to a set of restrictive covenants benefiting the owners of the adjoining 69 Ranch. These were placed into effect before the previous owners of the land of Indian Springs Ranch sold to the principals of Indian Springs Ranch. These covenants were and are fully consistent with Declarant's plans for Indian Springs Ranch. As some of these Covenants were, in effect, use restrictions, they are included in this Declaration. Additional use restrictions, which may be modified, cancelled, limited or expanded under Article IV, are included in the Bylaws or rules adopted by the Board.

**17.2 Covenanted Use Restrictions:** The following Use Restrictions "run with the land" and are not subject to modification or cancellation by ISRA:

- (a) **Exterior Lighting:** All exterior lighting, both on common property and residential Lots, shall minimize light pollution to the extent reasonably feasible, i.e. high-level unshielded halogen lamps will not be permitted and all outdoor lights shall be directed downward;
- (b) **Trail Use:** Trails on Indian Springs Ranch are for non-motorized use only, with the exception of golf carts on designated golf course trails
- (c) **No hunting:** No hunting is permitted anywhere on Indian Springs Ranch.
- (d) **Residential Signs:** No sign of any kind shall be displayed to public view on the Subdivision residential Lots except for:
  - i. Numbers on each residential Lot indicating its address or location. Each numeral shall be at least 4 inches high and one-half inch wide when viewed from 100 feet so as to assist emergency vehicles in identifying the residence. The sign may also include the name of the Owners of the Lot, and shall not be larger than six square feet.

- ii. One sign of not more than six square feet advertising a residential Lot for sale
  - iii. A builder's sign, not to exceed six square feet, during construction
- (e) Signs on Commercial Lots: Reasonably sized recreational and commercial signs may be constructed
- (f) Refuse, Ruins, and Remains:
  - i. No trash, garbage, ashes, refuse, ruins or other remains of any kind (including disabled vehicles) shall be thrown, dumped, placed, disposed of or permitted to remain on any parcel of land.
  - ii. The person or persons in control or possession of any residential Lot shall, irrespective of fault, be responsible for the prompt removal therefrom of all trash, garbage, ashes and other remains. All trash, garbage, ashes and other refuse shall be kept in containers which shall be bear proof certified and maintained in a clean and sanitary condition and shall be kept hidden from street view. No household garbage may be incinerated on the property.
- (g) Animals. No animal or fowl of any kind may be kept or quartered in the Subdivision, except for ordinary and usual household pets (excluding pigs) and horses for personal use. For parcels under 4 acres in size, horses shall be limited to corrals or grazing areas made available for the common use of such property Owners. For parcels between four and seven acres in size, one horse may be kept on the property. No commercial uses relating to the animals may be conducted on the property. Dogs shall be limited in number to three per residential parcel and shall be contained within a kennel or fenced yard.
- (h) No Temporary Structures: No structure of a temporary character, including mobile homes, camper trailers, tents, shacks, basements, or other outbuildings shall be used for residential purposes on a parcel not part of a community cluster, except during construction of a residence.
- (i) No outdoor storage: No outdoor storage of motorcycles, trailered boats, campers, travel trailers and RV's shall be permitted on residential Lots less than four acres in size. No large trucks or contractor equipment may be kept on residential property.
- (j) Parking: Except when required for short periods by visitors, no vehicles shall be parked or kept on the roads of any subdivided parcels less than two acres in size. For smaller Lots, motorcycles, trailered boats, campers, travel trailers and RV's shall be stored in an enclosed and reasonably out-of-sight storage area.
- (k) No activity shall be allowed or conducted on a Lot which disturbs the peace of surrounding property owners. This includes persistent barking of dogs.
- (l) Fire protection: Weeds, brush and other debris capable of rapidly transmitting fire shall be removed from within a 30 foot perimeter around structures. No

portion of a tree or any other vegetation may extend to within 25 feet of the outlet of a stovepipe or chimney.

- (m) Weed control: If noxious weeds are detected, appropriate steps shall be taken to prevent them from spreading to neighboring properties.
- (n) General Maintenance: The buildings and grounds of residential areas shall be kept in a safe and aesthetically pleasing state of repair, cleanliness and neatness.

**17.3 Bylaws Include Additional Use Restrictions:** The Bylaws of ISRA include additional Use Restrictions, which may be modified by ISRA or the Board according to procedures in the Bylaws.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 23 day of August, 2007.



EXHIBIT A

TO:

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
INDIAN SPRINGS RANCH**

**INDIAN SPRINGS SUBDIVISION, PHASE 1  
SE ¼ of the SW ¼, Section 25 and Section 36, T37N R27W, P.M.,M.  
Lincoln County, Montana**

Those portions of the Southeast ¼ of the Southwest ¼, Section 25 & Section 36. Township 37 North, Range 27 West, P.M., M., Lincoln County, Montana, described as follows:

Beginning at the North ¼ Corner, Section 36; Thence along the North and East lines of the Northwest ¼ of the Northeast ¼ Section 36, South 89°35' 23" East 1324.92 feet South 00°07'48" West 655.94 feet and South 00°08'27" West 656.32 feet to the Northwest corner of the Southeast ¼ of the Northeast ¼, Section 36; Thence along the North, East and South lines of the Southeast ¼ of the Northeast ¼, Section 36, South 89°53'11" East 1326.74 feet South 00°01'28" West 652.82 feet and South 00°01'43" West 652.08 feet and South 89°49' 28" West 1328.87 feet to the Northeast corner of the Northwest ¼ of the Southeast ¼; Thence along the East line of the West ½ of the Southeast ¼, South 00°23'22" West 1396.83 feet; Thence South 89°51'07" West 662.66 feet; Thence South 00°14'10" West 578.48 feet; Thence South 89°37'08" West 299.61 feet; Thence South 00°07'20" West 468.72 feet; Thence South 89°51'14" West 1181.38 feet; Thence North 02°13'56" East 63.45 feet; Thence North 87°20'34" West 240.10 feet; Thence South 02°35'48" West 236.03 feet to the North line of Lindsey Lane; Thence along the North line of the road, South 89°46'57" West 256.44 feet to the West line of the East ½ of the Southwest ¼, Section 36; Thence along the West line of the East ½ of the Southwest ¼, Section 36, North 00°11'29" East 2606.04 feet to the Southwest corner of the East ½ of the Northwest ¼, Section 36; Thence along the West line of the East ½ of the Northwest ¼, Section 36, North 00°11'31" East 1059.10 feet, North 00°10'15" East 659.12 feet and North 00°11'46" East 659.34 feet to the Southwest corner of the Southeast ¼ of the Southwest ¼, Section 25; Thence along the West, North and East line of the Southeast ¼ of the Southwest ¼, Section 25; North 00°02'24" West 1320.31 feet, North 89°52'01" East 1325.47 feet and South 00°00'11" East 1319.27 feet to the Point of Beginning, containing 370.36 acres of land all as shown hereon.

The above described tract of land is to be known and designated as INDIAN SPRINGS SUBDIVISION, PHASE I, Lincoln County, Montana.

**DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR  
ROGERS-LONG DEVELOPMENT**

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- V ARCHITECTURAL APPROVAL
- 5.1 Requirement for Prior Approval
  - 5.2 Construction to Commence within 24 Months of Purchase from Declarant
  - 5.3 Architectural/Design Review
    - (a) New Construction
    - (b) Fees; Assistance
  - 5.4 Guidelines and Procedures
    - (a) Design Guidelines
    - (b) Amendment of Design Guidelines
    - (c) Availability of Design Guidelines
    - (d) Construction in Compliance
    - (e) Procedures
    - (f) Review
    - (g) Advice of Approval/Non-Approval
    - (h) Construction Must Commence
  - 5.5 No Waiver of Future Approvals
  - 5.6 Variances
  - 5.7 Limitation of Liability
  - 5.8 Enforcement

## **COMMUNITY GOVERNANCE AND ADMINISTRATION**

- VI ISRA AND ITS MEMBERS
- 6.1 Functions of ISRA
  - 6.2 Membership
  - 6.3 Voting
    - (a) Class "A"
    - (b) Class "B"
    - (c) Termination of Class "B" Membership
    - (d) Exercise of Voting Rights

VII ASSOCIATION POWERS AND RESPONSIBILITIES

- 7.1 Acceptance and Control of Association Property
- 7.2 Mandatory Leasing of Golf Course
- 7.3 Maintenance of Common Area of Responsibility
- 7.4 Maintenance in Public Rights-of-Way
- 7.5 Insurance
- 7.6 Compliance and Enforcement
- 7.7 Implied Rights; Board Authority
- 7.8 Disclaimer of Liability
- 7.9 Security
- 7.10 Pedestrian Trail System Open to the Public
- 7.11 Property Management Company for First Five Years

VIII ASSOCIATION FINANCES

- 8.1 Budgeting and Allocating Common Expenses
- 8.2 Budgeting for Reserves
- 8.3 Authority to Assess Owners, Time of Payment
- 8.4 Declarant's Option to Fund Budget Deficits
- 8.5 Special Levies
- 8.6 Benefited Assessments
- 8.7 Personal Obligation
- 8.8 No Exemption for Non-Use
- 8.9 Lien for Assessments
- 8.10 Date of Commencement of Assessment Obligations
- 8.11 Failure to Assess
- 8.12 Exempt Property

**COMMUNITY DEVELOPMENT**

IX EXPANSION AND REDUCTION OF THE COMMUNITY

- 9.1 Expansion by the Declarant
- 9.2 Expansion by ISRA
- 9.3 Additional Covenants and Easements
- 9.4 Effect of Filing Supplemental Declaration
- 9.5 De-annexation of Property

- X RIGHTS RESERVED TO DECLARANT
- 10.1 Construction of Improvements
- 10.2 Rights to Use Common Property
- 10.3 Other Covenants Prohibited
- 10.4 Right to Approve Changes
- 10.5 Right to Transfer or Assign Declarant Rights
- 10.6 Amendment

### **PROPERTY RIGHTS WITHIN THE COMMUNITY**

- XI EASEMENTS
- 11.1 Easements in Common Property
- 11.2 Easements for Utilities, Etc
- 11.3 Easements to Serve Additional Property
- 11.4 Easements for Cross-Drainage
- 11.5 Right of Entry
- 11.6 Easements for Maintenance and Enforcement
- 11.7 Rights to Storm Water Runoff, Effluent and Water Reclamation
- 11.8 Easements for Lake and Pond Maintenance and Flood Water
- 11.9 Easement for Use of Private Streets
- 11.10 Easements for Tax Exempt Organizations
- XII PARTY WALLS AND OTHER SHARED STRUCTURES
- 12.1 General Rules of Law to Apply
- 12.2 Maintenance; Damage and Destruction
- 12.3 Right to Contribution Runs with Land
- 12.4 Disputes

### **RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

- XIII DISPUTE RESOLUTION AND LIMITATION ON LITIGATION
- 13.1 Agreement to Avoid Litigation
- 13.2 Claims
- 13.3 Mandatory Procedures
  - (a) Notice
  - (b) Negotiation and Mediation
- 13.4 Enforcement of Resolution

## **CHANGES IN THE COMMUNITY**

### **XIV CHANGES IN OWNERSHIP OF LOTS**

- 14.1 Notice of Change of Ownership:
- 14.2 Declarant May Appoint Real Estate Agency
- 14.3 Declarant shall have a Right of First Refusal on Lot Re-sales
- 14.4 Combining or Subdividing Lots

### **XV CHANGES IN COMMON PROPERTY**

- 15.1 Condemnation
- 15.2 No Partition
- 15.3 Dedication of Common Property

### **XVI AMENDMENT OF DECLARATION**

- 16.1 Amendment by Declarant
- 16.2 Amendment by Owners
- 16.3 Validity and Effective Date of Amendments

### **XVII USE RESTRICTIONS**

- 17.1 Covenanted Use Restrictions – Background
- 17.2 Covenanted Use Restrictions
- 17.3 Bylaws Include Additional Use Restrictions