

Re: 319 Card 289

STATE OF MONTANA } SS 621959  
COUNTY OF SILVER BOW }

After recording return to:  
AmeriMont Inc.  
PO Box 990  
Manhattan, MT 59741

I hereby certify that the within instrument was filed  
For record in my office on the 5th day of  
June A.D. 2008 at  
02 min. past 12 o'clock P m.,  
and recorded on Card 289 on Roll  
3A of microfilm records of Silver Bow  
County, Montana. Attest my hand and seal of  
said County.

*Maryell M. Ellington*  
Clerk & Recorder  
by *Don Walsh* Deputy  
Post 9100

Part 265-B

**FIRST AMENDED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FLINT CREEK RANCH CLUSTER**

THIS FIRST AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR FLINT CREEK RANCH CLUSTER is made this 20<sup>th</sup> day of May, 2008, after receiving the approval of more than a majority of the Parcel Owners within Flint Creek Ranch Cluster. Reference is made to the Declaration of Covenants, Conditions and Restrictions for Flint Creek Ranch Cluster, dated November 15, 2005, as Document No. 598682; First Amendment to the Declaration of Covenants, Conditions and Restrictions for Flint Creek Ranch Cluster, dated March 8, 2007, and recorded on March 12, 2007, as Document No. 610679; and Second Amendment to the Declaration of Covenants, Conditions, and Restrictions for Flint Creek Ranch Cluster, dated September 19, 2007, and recorded on September 24, 2007, as Document No. 615899, all of which are recorded at the office of the Clerk and Recorder of Butte Silver-Bow County, Montana.

**RECITALS**

1. Since the time the original Declaration of Covenants, Conditions and Restrictions for Flint Creek Ranch Cluster was created, changing conditions and the discovery of additional needs have prompted the Parcel Owners of Flint Creek Ranch Cluster to amend the original Declaration;
2. Section 6.2 of the original Declaration provides that the original Declaration may be amended by a majority vote of the Parcel Owners of Flint Creek Ranch Cluster;
3. A majority of the Parcel Owners of Flint Creek Ranch Cluster approve this First Amended Declaration of Covenants, Conditions and Restrictions, as evidenced by their execution of this First Amended Declaration of Covenants, Conditions and Restrictions for Flint Creek Ranch Cluster;
4. The undersigned are entitled to make amendments to the original Declaration;
5. For the sake of convenience, this First Amended Declaration of Covenants, Conditions and Restrictions for Flint Creek Ranch Cluster included not only the amendments, but also a restatement of those portions of the original Declaration and subsequent amendments that remain unchanged. It is the intention of the Parcel Owners that this document shall be substituted for the original Declaration, but that it shall be interpreted

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6. in such a way as to give effect to the original Declaration and that no previous transaction shall be invalidated, voided, or questioned, including any previous sale, mortgage, lien, easement, lease, assessment, or other instrument affecting the Parcels or property subject the original Declaration or any subsequent amendments thereto;

NOW, therefore, the original Declaration, pursuant to this First Amended Declaration of Covenants, Conditions and Restrictions for Flint Creek Ranch Cluster, shall be modified and amended as follows:

The Declarant owns property located in Butte-Silver Bow County, described as follows:

**Flint Creek Ranch Cluster Development  
SUBDIVISION**

Flint Creek Ranch Cluster Development, Phases I and II, all in Township 3, North, Range 9 West, P.M.M., Butte Silver-Bow County, Montana, according to the official plats thereof on file and of records in the office of  
Butte-Silver Bow County Clerk and Recorder. (Plat References: 265-B and 273-B)

These Covenants, Conditions, and Restrictions apply to the above described real property, including any Final Plats, Retracement Surveys, or Certificates of Survey, as approved by and filed in Butte-Silver Bow County and encompassing the real property described above. These Covenants, Conditions, and Restrictions shall also apply to real property annexed into Flint Creek Ranch Cluster pursuant to Section 7.2.

NOW THEREFORE, the Declarant hereby declares that the above described real property shall be held, sold, and conveyed subject to the following Covenants, Conditions, and Restrictions ("Declaration") and this Declaration will bind the Declarant and Owners, and any grantees, tenants, heirs, successors, and assigns of the Declarant or the Owners of the above described real property.

**DEFINITIONS**

1. **Accessory Building.** A building of any size (such as a garage, barn, tack shed, storage shed, etc.) detached from a dwelling and used for purposes which are incidental and subordinate to a residential or permitted agricultural or commercial use.

2. **Agricultural Use.** The practice of the science or art of cultivating the soil; growing fruits, vegetables, or crops; or raising or grazing domestic livestock or poultry for personal use. This term expressly excludes a feedlot or commercial poultry farm. Agricultural use is permitted only as set forth in Section 4.7.

3. **Association.** The term "Association" shall mean and refer to the FLINT CREEK RANCH CLUSTER OWNERS' ASSOCIATION and its successors or assigns. The Association may be incorporated as a nonprofit corporation under Montana Law. However, if the corporation shall dissolve for any reason, the Association shall continue to exist. Until the turn-over date, approval by the Association shall mean approval by the Declarant, unless approval of Owner members is specifically required. After the turn-over date, approval by the Association shall mean approval by the Association's Board of Directors, or a committee appointed by the Association Directors, unless approval of Owner members is specifically required.

4. **Commercial Use.** Any enterprise or enterprises of any kind located on or in any Parcel, dwelling, accessory building, or guest house in which the Parcel Owner or his or her tenant or agent engage in any

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type of business, such as, but not limited to, wood working, crafts, art work, sculpture, and small home businesses. Commercial use is permitted only as set forth in Section 4.6.

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

6. **Declarant and/or Developer.** The "Declarant" or "Developer" refers to AmeriMont, Inc. and its successors and assigns.

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

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

9. **Industrial Use.** The processing, manufacture, production, sale, or bulk storage of non-agricultural raw materials are industrial uses and are not permitted commercial uses. Wood working, crafts, art work, sculpture, and small home businesses enclosed in a single accessory building next to the dwelling are not considered industrial uses and such activities are intended to be permitted commercial uses. Any other Industrial Use, as determined by the Declarant, or the Board of Directors after the turn-over date, shall not be permitted.

10. **Junk Area.** The use of land for the wrecking, dismantling, and/or storage of junk, including, but not limited to, garbage, inoperable motor vehicles, and scrap materials of every sort. Junk areas, as determined by the Declarant, or the Board of Directors after the turn-over date, are not permitted.

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

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

13. **Owner or "Parcel Owner".** The term "Owner" or "Parcel Owner" shall mean the following persons or entities who have fee simple title to any Parcel or subdivided Parcel which is a part of the Ranch: The record owner or owners, the Declarant, and/or contract purchasers who have a possessory interest pursuant to the contract of purchase. All Owners are subject to this Declaration. "Owner" or "Parcel Owner" does not include contract sellers, mortgagees, or persons having such interest merely as security for the performance of an obligation. The Declarant shall be considered the Owner of any Parcel sold by the Declarant to a third party for financing purposes so long as the Declarant retains the right to repurchase the Parcel.

Subject to the Declarant as Owner for property conveyed for financing purposes, if the Declarant or any Owner sells a Parcel, the Seller will still be considered Owner of the Parcel until a deed, notice of purchaser's interest, or abstract of contract for deed containing the address of the new owner is recorded with the County Clerk and Recorder of Butte-Silver Bow County and a copy of the recorded document is delivered to the Association. A Contract Seller or Vendor is jointly and severally responsible along with the Vendee or Purchaser for performance of these Covenants, including the payment of assessments.

14. **The Ranch.** The term "Ranch" shall mean and refer to Plats, retracement surveys, and certificates of surveys proved and filed regarding the real property subject to these Covenants. "Ranch" shall also include property annexed pursuant to Section 7.2 once the property is annexed to the Ranch.

15. **Recreational Vehicle.** A vehicle with self-contained sanitary facilities designed for use as a temporary dwelling for travel, recreation, and recreation use.

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

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

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

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

20. **Parcel.** The term "Parcel" or "Lot" shall mean and refer to any part, plot, lot, or parcel of land of the Ranch which is or has been made subject to this Declaration and is shown as a separate Parcel or lot upon any recorded deed, final plat, or certificate of survey, or which can be lawfully transferred as a unit unto itself. "Parcel" or "Lot" also includes those Parcels or Lots annexed into the Ranch pursuant to Section 7.2 once the annexation occurs.

21. **Turn-over date.** The "turn-over date" is the date on which the Declarant elects, at its discretion, to turn over the Association to the Board of Directors. This date shall be no earlier than the date on which 80% of the Parcels within Phases I, II, and III are sold by the Declarant, and no later than when 100% of the Parcels within Phases I, II, and III are sold by the Declarant. However, for purposes of determining the "turn-over date," Phase III shall not be included unless the Declarant obtains a final plat for Phase III on or before July 31, 2013. The word "sold" shall not include Parcels that the Declarant sells to third parties for financing purposes so long as the Declarant retains a right to repurchase the Parcel.

22. **Sacrifice Area.** The "sacrifice area" is land that is designated by an Owner and approved by the Architectural Review Committee as an area of land on a Parcel wherein large animals, as defined in Section 4.7.1, shall be kept and fed in order to prevent the remaining land in a Parcel from being overgrazed. The sacrifice area shall not be more than one acre.

**SECTION 1: ASSOCIATION:** All Owners of a Parcel within the Ranch will be required to belong to the Association. Each Parcel shall be entitled to one vote regardless of the number of Owners of the Parcel. If there is more than one Owner of record for a Parcel, then at the time of purchase the Owners shall inform the Declarant, or the Secretary of the Board of Directors after the turn-over date, in writing of the name and address of the Owner entitled to vote. If the Owners fail to provide such written notification, then the first Owner who notifies the Declarant, or the Secretary of the Board of Directors after the turn-over date, in writing of his or her intention to vote shall be the Owner entitled to vote.

Regardless of anything stated to the contrary in this Declaration, the Declarant shall be entitled to 2 votes per Parcel owned by the Declarant until the turn-over date, after which time the Declarant will only be entitled to one vote per Parcel owned by the Declarant. For purposes of voting, the Declarant will be considered the Owner of a Parcel if the Declarant owns a fee simple interest in the Parcel; or, if a Parcel is purchased under a contract for deed, until the purchaser has paid more than 50% of the purchase price; or, if the Declarant sells a Parcel for financing purposes, then for so long as the Declarant retains the right to repurchase the Parcel. In order for a purchaser under a contract for deed to vote, the purchaser shall be responsible for providing written proof to the Declarant that the purchaser has paid more than 50% of the purchase price.

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Except as otherwise stated in this Declaration, on all matters that may be voted upon by the Parcel Owners, a majority of the Parcel Owners entitled to vote shall be sufficient to act for the Association.

**1.1 Rules and Regulations.** No Owner shall violate the rules and regulations for the use of the Parcels and the property as set forth in these Covenants or as adopted from time to time by the Association. No such rules or regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Parcel by the Parcel Owner.

**1.2 Assessments.** The Association shall levy and collect assessments from each Parcel Owner to meet the duties and obligations of the Association. Any such assessments are a personal obligation of the Parcel Owner and successive Owner. Such assessments constitute a continuing lien on the Parcel upon notice that the assessments are due. Each Parcel Owner must pay all assessments to the Association when due or the assessments will be considered delinquent. If assessments are delinquent, a \$25.00 fine shall be owed for each delinquent assessment, and 10% interest per annum shall be added to such delinquent assessments and fines until such assessments, fines, and interest are fully paid. All Parcel Owners and successive Owners are responsible for paying any delinquent assessments, fines, and interest. In addition, the Association may file a lien against a Parcel for any delinquent assessments, fines, or interest. However, even if no lien is filed, successive Owners of any Parcel are hereby put on notice to contact the Declarant, or the Secretary of the Board of Directors after the turn-over date, to determine if delinquent assessments, fines, or interest are owed. In addition, the Association may bring a lawsuit against any Owner or successive Owner to recover such delinquent assessments, fines, and interest. If at any time the Association must retain legal counsel to notify an Owner or successive Owner of delinquent assessments, to file a lien, or to bring a legal action, such Owner or successive Owner shall also be responsible for paying the Association's legal fees, including attorney fees, paralegal fees, and any other costs.

Regardless of anything stated to the contrary in this Declaration, until the "turn-over date," the Declarant is exempt from paying annual or special assessments on Parcels still owned by the Declarant. The sale of any parcel by Declarant that is made solely for the purpose of obtaining financing for development, and is promptly leased back to Declarant with the option to buy, shall not be considered a sale for purposes of levying assessments or determining the 'turn-over date,' unless and until the option to purchase expires without being exercised by Declarant. Following the "turn-over date" the Declarant will pay assessments on all Parcels owned by the Declarant.

**1.3 Annual Assessments.** Annual assessments for each Parcel shall be \$75.00 per quarter until changed by the Board of Directors of the Association. Until the turn-over date, such \$75.00 assessment shall be due on January 1, April 1, July 1, and October 1 of each year, without any further notice required and without having to present an annual budget. Following the turn-over date, the Board of Directors shall prepare a proposed annual budget setting forth the expected annual assessments for the upcoming year, which may include an amount for reserves. Said proposed budget shall be presented to the members for discussion and voting at the annual meeting of the members of the Association. The Board of Directors shall decide when such assessments are due.

Regardless of anything stated to the contrary in this Declaration, the Declarant shall be entitled to use any assessments collected before the turn-over date for any purpose related to the Ranch, or to reimburse the Declarant for expenses paid related to the Ranch, or for any other duty and obligation of the Association, as determined by the Declarant.

**1.4 Special Assessments.** The Declarant, or the Board of Directors after the turn-over date, may authorize Special Assessments to be paid for unanticipated or emergency expenses of the Association. However, such Special Assessments shall not be due until 60 days after the date the written notice is sent of such Special Assessment.

**1.5 Annual Meeting.** After the turn-over date, there shall be an annual meeting of the Association on the first Saturday of February each year, or on such other date properly announced by the Board of Directors. The Secretary of the Association shall provide all Parcel Owners with at least 10 days, but not more than 50 days, written notice of such meeting. Such notice shall be by regular mail to the last known

address on record with the Secretary of the Association. Such notice shall specify the date, time, and place of the meeting, and shall inform Parcel Owners of their right to vote by proxy. Before the turn-over date, the Declarant is not required to have an annual meeting.

**1.6 Special Meeting.** The Association may at any time hold a special meeting. A special meeting may be called by the Declarant; the President of the Association after the turn-over date; or a signed request of 25% of the Parcel Owners delivered via certified mail to the Declarant, or to the President of the Association after the turn-over date. A special meeting shall be held within 30 days after being properly called. The Declarant, or the Secretary after the turn-over date, shall provide all Parcel Owners with at least 5 days written notice of the special meeting. Such notice shall specify the date, time, place, and purpose of the special meeting, and shall inform Parcel Owners of their right to vote by proxy. Unless approved by 75% of those present in person or by proxy, no action may be taken on matters beyond the purpose of the Special Meeting.

**1.7 Quorum.** No meeting, annual or special, shall be convened to conduct Association business unless a quorum is present in person or by proxy. A quorum shall consist of at least 51% of the total votes of the Association. If at any time during meeting a quorum is not present, the meeting shall be adjourned. If a quorum is present, except as otherwise provided in this Declaration, a majority of those Owners present in person or by proxy and entitled to vote shall be sufficient to act on behalf of the Association.

**1.8 By-Laws.** The Declarant, or the Board of Directors after the turn-over date, may enact By-Laws to govern the Association. However, if any conflict exists between this Declaration and the By-laws, this Declaration will control.

**SECTION 2: SUBDIVISION OF PARCELS.** The subdivision of any existing Parcel is prohibited.

### **SECTION 3: ROAD AND UTILITY EASEMENTS.**

**3.1 Road Easements.** The Declarant reserves to itself and its successors and assigns, and grants to all Parcel Owners, a perpetual right of way for ingress and egress on the road system set forth on the official Plat Maps filed with the Butte-Silver Bow County Clerk and Recorder for Phases I and II and real property annexed into Flint Creek Ranch Cluster pursuant to Section 7.2. As part of the Declarant's road easement rights, the Declarant reserves the right, even after the turn-over date, to grant the same road easement rights to persons or entities who own or use property adjacent to, adjoining, and/or in close proximity to the Ranch.

The road right of ways for the road system shall be sixty (60) feet wide. The area for the road right of ways shall be established by measuring thirty (30) feet on either side of the center line of the roads shown on the official Plat Maps filed with the Butte-Silver Bow County Clerk and Recorder. Where switchbacks are built or required or the terrain is such that necessitates more than a sixty (60) foot wide right of way area to establish a safe and stable road, the right of way may be widened beyond sixty (60) feet. The roads shall have a road surface width of twenty (20) to twenty-four feet (24). The location of the right of ways may be adjusted, moved, modified or otherwise altered to circumvent physical topographical characteristics and limitations of the location of the existing road right of ways. In some cases the road system may divide a Parcel. The road rights of way will be surveyed showing the location. Until the Declarant completes the road system, any Parcel Owner may use existing roads and trails. Until the Declarant completes the road system, in the event there is not an existing road or trail to a Parcel, the Parcel Owner may use a reasonable route across a neighboring Parcel or Parcels from an existing road or trail to access the Parcel Owner's Parcel from the public road. Once the road system is completed, Parcel Owners must use the road system for accessing their Parcels and shall not use existing roads or trails or other routes that vary from the as-built road system.

**3.2 Maintenance of Roads.** Until the turn-over date, the Declarant will construct and maintain all roads (except public roads and driveways) in a manner the Declarant deems necessary. Maintenance will include spraying for noxious weeds as needed. Following the turn-over date, the Association is responsible for maintaining the roads and noxious weed containment. The Association shall have the sole discretion to determine what road maintenance will be performed by the Association within the terms of the Association's budget. Nothing herein shall prohibit an Owner, at the Owner's expense, from performing his or her own maintenance on the road(s) so long as such maintenance is consistent with proper road construction and maintenance standards.

**3.3 Utility Easements.** The Declarant reserves to itself and its successors and assigns, and grants to all Parcel Owners, utility easements to and across each Parcel as follows: Common utilities (including telephone, cables, and power) may be placed in any road right of way, in a strip of land approximately thirty (30) feet adjacent to a road right of way, along a thirty (30) foot wide strip adjacent to exterior Parcel boundaries on any utility easements located on the Certificate of Survey(s), and/or any combination of the above methods and easements. As part of the Declarant's utility easement rights, the Declarant reserves the right, even after the turn-over date, to grant the same utility easement rights to persons or entities who own or use property adjacent to, adjoining, and/or in close proximity to the Ranch. The Declarant also reserves to itself the right to put up communications equipment on the Ranch in any utility easement area and to maintain it. All owner-installed utility lines must be buried. All propane tanks and lines must be buried. Existing over-head or above-ground power lines are not subject to this covenant.

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

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

**3.6 Private Roads.** The Owner of each Parcel understands and agrees that private road construction, maintenance, and snow removal is not the obligation of the consolidated City and County of Butte-Silver Bow, State of Montana, until the roads are brought up to standards adopted by the Planning Board and Council of Commissioners and dedicated to public use. Maintenance of private roads is to include spraying for noxious weeds as needed.

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

**4.1 Residential Density.** Parcels shall be used primarily for single family residential purposes. There shall be no more than one dwelling on each Parcel. However each dwelling may also have an appurtenant, non-commercial guest house. Accessory buildings are also allowed.

**4.2 Architectural Review Committee.** The Declarant or his designee, or the Board of Directors after the turn-over date, shall establish an Architectural Review Committee ("Committee") which shall be responsible for reviewing and approving all building and landscaping plans for improvements constructed or placed on the Ranch property. Committee approval must be obtained in writing before beginning any construction or modification of any building or landscaping plan. Any Owner who causes or allows a building or landscaping to begin without the approval of the Committee shall be subject to fines, penalties, or lawsuit by the Committee, the Association, and/or the Declarant. Any Owner who causes or allows any building or landscaping to be completed or constructed in a manner that is not in conformance with the

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approved plans shall be subject to fines, penalties, or lawsuit by the Committee, the Association, and/or the Declarant. In addition to a lawsuit, the Association and/or Declarant may place a lien on the subject Parcel if the fine or penalty assessed by the Association is not paid in a timely manner to be determined by the Association and/or Declarant. Any successive Owner shall also be responsible for paying such fines and penalties and may be sued to recover such fines and penalties. If at any time the Association and/or Declarant must retain legal counsel to halt construction or modification of any building or landscaping or otherwise enforce this provision of the covenant, such Owner or successive Owner shall also be responsible for paying the Association's and/or the Declarant's legal fees, including attorneys fees, paralegal fees, and any other costs.

**4.3 Moveable Living Conveniences and Mobile Homes.** Except as provided in herein, no trailers, mobile homes, or other moveable living quarters shall be allowed as or considered a permanent dwelling. With the approval of the Architectural Review Committee, Parcel Owners may occupy a recreational vehicle on their parcel for up to 18 consecutive months while the permanent residence is under construction. This restriction does not prevent the Architectural Review Committee from approving pre-built homes on permanent foundations that meet United States Federal Housing specifications as non-mobile, permanent, residential homes. Pre-built homes shall be new or "like new in appearance" before being placed upon the Parcel. Nothing herein is intended to prohibit the Parcel Owners or Parcel Owner's guests from parking or using recreational vehicles on the Owner's Parcel next to a permanent dwelling on a temporary basis. This provision does not prevent the Owner of a Parcel from storing a recreational vehicle on the Parcel.

**4.4 Recreational Vehicles.** Each Parcel Owner may live in a recreational vehicle for up to 120 days in any calendar year so long as health and sanitary laws regulating sewage and waste disposal are followed by the Parcel Owner using the recreational vehicle. No recreational vehicle may be stored or left on a Parcel unless it is next to a permanent dwelling. No sewer waste may be dumped or deposited on any Parcel unless it is in an approved septic tank. Any Parcel Owner who wishes to live in a recreational vehicle on their Tract must get a permit from the Association.

#### 4.5 Building Guidelines

**4.5.1 Square Footage.** Any dwelling constructed on a Parcel must have at least one thousand (1,000) square feet of living space on the main floor, exclusive of patios, porches, or garages. Any questions or variances from this standard must be approved in writing by the Architectural Review Committee before construction on the dwelling begins.

**4.5.2 Foundation.** All accessory buildings, dwellings and guest houses must be on a permanent foundation.

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

**4.5.4 Roof.** All dwellings must have a peaked roof of 4/12 or greater. Roofing type must be approved in writing by the Architectural Review Committee before construction begins on the dwelling.

**4.5.5 Siding.** All dwellings must have approved exterior siding. Earth tones and/or log, cedar, or other rustic wood treatments will be favored.

**4.5.6 Appearance.** All accessory buildings, dwellings, and guest houses should blend harmoniously with the natural surroundings. Plain, boxy, unremarkable exteriors with little or no eye appeal will not be accepted. The Architectural Review Committee will take into consideration the building



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site, proposed landscaping, and the look and feel of the home. The intention is to be flexible, while retaining a rustic, country atmosphere.

**4.5.7 Set Backs.** All dwellings, accessory buildings, and guest homes, not including access roads, fences, and utilities, must be set back at least fifty (50) feet from any Parcel boundary line or road right of way boundary if the Parcel boundary line is within the road right of way.

**4.5.8 Fences.** Fences must approved by the Architectural Review Committee in writing before the construction or placement of such fences are permitted on any Parcel. Barbed wire fences may only be used on property lines that border other property lines, but not along road easements or proposed road easements. Jack fences or wooden pole fences will be allowed along road easements. All fencing plans, along with details about the materials proposed to be used must be submitted in writing to the Architectural Review Committee for approval before construction. All fences constructed or placed along a road or an easement for a road must be constructed or placed at least 30 feet from the centerline of the road.

**4.6 Commercial Uses.** No Parcels may be used for commercial purposes, except as follows:

**4.6.1 Commercial/Business.** Small commercial businesses conducted in the dwelling or in an accessory building next to the dwelling may be permitted. Permissible commercial businesses include activities such as woodworking, crafts, studios, office for professional or consulting businesses, and similar type family businesses with no more than two non-family employees, provided there are no signs anywhere on the Parcel or Parcel improvements relating to the commercial business or enterprise. No Parcel Owner may operate a hog farm, livestock feedlot, or commercial poultry farm, or conduct any other activities that cause an accumulation of manure on any Parcel. However, nothing in this Paragraph shall be deemed to prevent: (a) Declarant or its duly authorized agent from using any Parcel owned by Declarant as a sales office, sales model, property management office, or rental office; or (b) any Owner or his duly authorized agent from renting or leasing any permanent residence for residential uses from time to time, subject to all of the provisions of this Declaration. Renting of guest houses is construed as a commercial use and is prohibited.

**4.6.2 Approval.** Architectural Review Committee approval must be obtained in writing to add any structure to a Parcel or modify the exterior of any structure on a Parcel for any permissible commercial use.

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

**4.7.1 Owner's Livestock.** Up to 4 large animals per 20 acres will be allowed. A large animal means any animal exceeding twenty (20) pounds in weight, except dogs. Any animals kept by an Owner must be kept within the boundaries of the Owner's Parcel. No Parcel Owner may operate a swine farm, livestock feedlot, or commercial poultry farm or conduct any other activities that cause an accumulation of manure on any Parcel. No dog kenneling is allowed. No swine are allowed except for a child's 4-H project. A barn, corrals, and livestock facilities near the Owner's dwelling are allowed, so long as manure is not allowed to accumulate. No barn, corral, or livestock facilities or other animal enclosure shall be constructed, installed, or placed within 100 feet of a river, stream, spring, or other water source, or placed within 50 feet of any roadway or property line.

In addition, overgrazing is not permitted. To prevent overgrazing, any Owner who permits large animals on the Owner's Parcel shall establish a one-acre or less "sacrifice area" subject to the above paragraph, in which to feed the large animals. The sacrifice area shall be approved by the Architectural Review Committee in writing before large animals are permitted on a Parcel. The Declarant, or the Board of Directors after turn-over, retains the right to determine whether any other part of any Parcel is being overgrazed; and, if so, to take any action to prevent any other part of the Parcel from being overgrazed.

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This action includes, but is not limited to, to obtain an injunction to prevent the non-sacrifice area from being overgrazed and/or to fine the Parcel Owner.

In addition, each owner may have up to three dogs. No Owner may allow dogs or other household pets to run at large. Any violation can be fined by the Association.

Furthermore, the Declarant, or the Board after the turn-over date, may withdraw permission for large animals or any other animals to remain on a Parcel if the animals are in violation of this section; if the animals become a nuisance to livestock, wildlife, property, or other Owners; or if there is a violation of good husbandry.

**4.7.2 Open Range.** The Ranch has an open-range policy—Parcel Owners must fence animals and/or recreational users out. Walking and horseback riding shall be allowed on all "SOLD" Parcels and unsold Parcels unless property is fenced. No walking or riding is allowed within three hundred feet (300') of any dwelling whether fenced or not (unless on a road easement). If Parcel owner's land is not properly fenced, cattle or other livestock may gain access to that land. The Declarant, even after the turn-over date, and the Association reserve the right to graze all lots and common areas for fire control and other reasons the Declarant and/or Association deem reasonable. Any payments received by the Declarant for grazing will be made to the Association. The Declarant intends to continue using the property as an operating ranch. As a result, the Declarant shall retain the right to have its livestock graze on all parcels not fenced by respective Owners.

**4.8 Sanitation Requirements.** Except for self-contained toilets during periods of construction, no outside toilets or privies shall be permitted on any Parcel. All toilet facilities must be part of the residence or other structure and shall be of modern flush type and connected with a proper septic tank system approved by the Butte-Silver Bow County Sanitation.

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

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

**4.11 Mining:** No mining, quarry, or excavation is allowed on any Parcels at the Ranch.

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

## **SECTION 5: GENERAL RESTRICTIONS AND SPECIAL PERMISSIONS THAT APPLY TO ALL RANCH PROPERTY SUBJECT TO THESE COVENANTS.**

**5.1 Hunting and Shooting.** Owners of all Parcels agree to allow the hunting of elk and deer to all other Owners of the Flint Creek Ranch Cluster Phase I, II, and III (if Phase III is annexed pursuant to Section 7.2).

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5.1.1 **Parcel Owners** are allowed to hunt on all unfenced Ranch property with the following exception: Acreages on the Ranch that have not been developed for sale by the Declarant cannot be utilized by **Parcel Owners** for hunting purposes without the owner's written permission.

5.1.2 **Parcel Owners** are not allowed to shoot within three hundred feet (300') of any dwelling. **Parcel Owners** must make sure they clearly know the boundaries applying to this covenant.

5.1.3 **The ABSOLUTE ONLY** weapons allowed are flint lock rifles, exposed hammer percussion cap rifles, shotguns without scopes, and bows and arrows (long and compound only). No crossbows or in-line rifles of any type are allowed.

5.1.4 **The portion of the Ranch Property** in the Conservation Easement is for the non-exclusive use of the Flint Creek Ranch Cluster **Parcel Owners** and these hunting restrictions and rules apply.

5.1.5 **Any breach** of this covenant will result in a fine levied by the Association, loss of hunting and/or access privileges, and/or legal action taken by Association and/or the Declarant.

5.2 **Maintenance of Property.** Each Owner shall maintain his or her Parcel and improvements in good repair and appearance at all times. No Owner may overgraze their Parcel or allow manure to accumulate. Each Parcel Owner shall be responsible for control and removal of noxious weeds on their Parcel. In the event a Parcel Owner does not remove noxious weeds on their Parcel, the Declarant, prior to the turn-over date and Association, or its agents, after the turn-over date, or the applicable government authority (currently the County Weed Board) may enter the Parcel and take whatever steps necessary to remove noxious weeds at the expense of the Parcel Owner.

5.3 **Rental of Property.** Parcel Owners must notify the Association if they rent any interest in their Parcel, including but not limited to, their individual dwelling. Any Tenants of a Parcel, along with the Parcel Owner assume the responsibility to be compliant with the Declaration. A guest house may not be rented out separately from the main residence.

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

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

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

5.7 **Refuse/Garbage.** Parcel Owners shall not allow garbage and junk to accumulate on their individual Parcels. Regular accumulation of refuse should be kept out of sight and hauled away on a regular basis. Owners must maintain their Parcel, including their buildings in good repair. There shall be no external burning of refuse.

5.8 **Preservation.** All current and future Parcel Owners of property or Parcels within the Flint Creek Ranch Cluster must act to preserve the natural features of the property (vegetation, drainage areas, water quality, etc.) in an effort to reduce the potential negative impacts on wildlife and wildlife habitat.

**SECTION 6: ENFORCEMENT**

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

**6.2 Amendment of Declarations.** This Declaration may only be amended by a majority vote of the Parcel Owners. No amendment of this Declaration may change, decrease, or increase the obligations or rights of the Declarant without its express written consent, except that the Declarant shall not be required to pay the same amount in assessments as other Owners after the turn-over date. No amendment of this Declaration may diminish a Parcel Owner's right of ingress and egress.

**6.3 Enforcement.** The provisions of this Declaration, or any lawful amendments, may be enforced by the Association, by the Declarant, and/or by any Parcel Owner by using either an action for damages arising out of a violation, an action to abate a nuisance, an action to restrain a threatened or prospective violation or restrain a continuing violation, or any other remedy permitted by law or equity. Nothing stated in any previous provision is intended to limit in any way the scope of relief or damages that may be sought or recovered. In any action of the enforcement of the Declaration, if the relief prayed for is granted in whole or in part, the person or entity bringing the action shall be entitled to recover costs for the action, including reasonable attorney's fees and paralegal fees. A Parcel Owner may also, in addition to or as a preliminary action, bring the matter to the Association and ask for a remedy, a resolution, a fine, or all of the above. The Association has the right to levy a fine against a Parcel Owner and to affix a lien on a Parcel for non-compliance with the covenants contained in this Declaration. Once the Declarant, or the Board of Directors after turn-over, determines that a violation has occurred, the Association has the right to take away a Parcel's vote until the violation is cured in full.

**SECTION 7: MISCELLANEOUS**

**7.1 Severability.** Should any provision of this Declaration be void or become invalid or unenforceable in law or equity by judgment, or court order, the remaining provisions hereof shall be and remain in full force and effect.

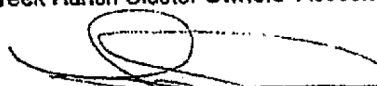
**7.2 Annexation.** Additional property and common area may be annexed to the Ranch by the Declarant subject to this Declaration at any time, provided only that all of such additional property be adjacent to or adjoining the existing Property and the additional property Owners are subject to these and other applicable Covenants. The Declarant reserves the right to grant road and utility easements, as set forth in Sections 3.1 and 3.3, to such annexed property.

**7.3 Notice.** Any documents or other information that needs to be provided to the Declarant may be sent to the following address: Amerimont, Inc.; P.O. Box 990; Manhattan, MT 59741; (406) 284-6546.

**SECTION 8: MORTGAGE PROTECTION.** A breach of any of these Covenants, Conditions and Restrictions contained herein shall not render invalid the lien, encumbrance of any mortgage, or security interest on any Parcel if such mortgage, lien, or security interest is made in good faith and for value. Further, any lien for unpaid assessments or any fine or penalty levied by the Association is junior and subject to any valid mortgage, encumbrance, or security interest in any Parcel.

Dated this 28<sup>th</sup> day of May, 2008. 259

Flint Creek Ranch Cluster Owners' Association

By:   
Thomas H. Langel, President of Amerimont, Inc.

I, Thomas Langel, President of Amerimont, Inc., hereby certify that Amerimont, Inc., owns over 50% of the Parcels within the Flint Creek Ranch Cluster's Owners' Association. Pursuant to Section 6.2 of the original Declaration of Covenants, Conditions and Restriction for Flint Creek Ranch Cluster, Amerimont, Inc. herein votes to amend the original Covenants, as set forth above in the First Amended Declaration of Covenants, Conditions and Restriction of Flint Creek Ranch Cluster.

STATE OF MONTANA }

County of Gallatin : ss

On the 28 day of May, 2008, before me, a Notary Public in and for the State of Montana, personally appeared Thomas Langel, known to me to be the President of Amerimont, Inc., and swore and affirmed his statements herein and who acknowledged to me that he executed this instrument on behalf of Amerimont, Inc., who acknowledged this instrument as the Declarant on behalf of Flint Creek Ranch Cluster Owners' Association.

Robin S. Wanner

Notary Public of the State of Montana  
Residing at Manhattan Montana  
My Commission Expires: December 8, 2010



Robin S. Wanner  
Notary Public for the State of Montana  
Residing at Manhattan, Montana  
My Commission Expires December 8, 2010