

DECLARATION OF RESTRICTIVE COVENANTS

RUSSELL H. THORSON and CATHERINE L. THORSON, husband and wife, of Gallatin Gateway, Montana,

TO

THE PUBLIC.

ALTA 1-42581-08

WHEREAS, the undersigned RUSSELL H. THORSON and CATHERINE L. THORSON, husband and wife, are the owners of the following described real property situate in Section Thirty-three (33), Township Four (4) South, Range Four (4) East, M.P.M., to-wit:

TRACT 1:

A tract of land being a portion of Tract 19, of the CASTLE ROCK TRACTS, a subdivision of Gallatin County, State of Montana, situated in the SE 1/4 of Section 33, T4S, R4E, P.M.M., and being more particularly described as follows:

Beginning at a point on the Southeasterly line of Tract 19, which point bears North 75°51' East, a distance of 330.0 feet from the Southwest corner of said Tract 19, thence from said point of beginning, bearing North 13°06' West, a distance of 200.0 feet to a point on the Northwesterly line of said Tract 19, thence North 75°51' East, a distance of 206.9 feet to the approximate mean Flow line of the West Gallatin River as established in September, 1955, thence South 75°51' west, a distance of 262.94 feet, thence South 13°06' East, a distance of 30.0 feet, thence South 75°51' West, a distance of 40.0 feet to the point of beginning, containing 1.022 acres, more or less. According to Certificate of Survey No. 971.

Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TRACT 2:

A tract of land being a portion of Tract 19, of CASTLE ROCK TRACTS, a subdivision of Gallatin County, State of Montana, situated in the SE 1/4 of Section 33, T4S, R4E, P.M.M., and being described as follows:

Beginning at a point on the Easterly right of way of U. S. Highway No. 191, also being the Southwest corner of said Tract 19, thence from said point of beginning North 75°51' East, a distance of 330.0 feet, thence North 13°06' West, a distance of 200.0 feet to the point on the Northwesterly line of Tract 19, thence South 75°51' West, a distance of 330 feet to the Easterly right of way line of U.S. Highway No. 191, thence South 13°06' East on and along said right of

thence South 13°06' East on and along said right of way, a distance of 200.0 feet to the point of beginning, containing 1.515 acres, more or less, being the remainder Tract 19 as Designated on Certificate of Survey No. 971. Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TRACT 3:

The Westerly 400 feet of Tract Eighteen (18) of Castle Rock Tracts, a Subdivision in Gallatin County, Montana, being a portion of the Southeast Quarter (SE 1/4) of Section Thirty-three (33), Township Four (4) South, Range Four (4) East, M.P.M., subject to an existing 40 foot easement for road purposes over and across the Northerly 16 feet thereof, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Gallatin County, Montana;

Together with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

That said owners desire to place restrictions as to the use of said land.

NOW, THEREFORE, this Declaration of Restrictive Covenants and conditions is made to apply to the above-described real property.

All persons or corporations who now or shall thereafter acquire any interest in the above-described real property shall be taken and held to agree and covenant with the owners of said described property and with their heirs, devisees, successors and assigns to conform to and observe the following covenants, restrictions and conditions as to the use thereof and as to the construction of single family dwelling and improvements thereon. These covenants and restrictions are designed to provide a uniform plan for the development of said land. The covenants and restrictions are as follows:

1. Said land shall be used strictly for residential purposes, and no business, trade, manufacture or advertising of any kind or nature shall be permitted or conducted thereon. No swine, horses, cows or livestock of any kind shall be kept or pastured on said premises, nor shall any dogs or other pets be raised or cared for on said premises on a commercial basis. Only one adult dog as a pet shall be kept on said premises and in compliance with the Gallatin County Dog Ordinance.
2. Said land shall be improved only by the erection of a one-family dwelling house constructed of new materials, together with the usual outbuildings, including a private garage designed for not more than two (2) automobiles. No old buildings whether intended for use in whole or in part shall be moved onto said

property. No buildings shall be constructed on the Northerly fifty (50) feet of the land designated as Tract 3 and no building shall be constructed on the Southerly fifty (50) feet of the land designated as Tract 1.

3. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuildings shall be used on said land at any time as a residence either temporarily or permanently, nor shall any residential structure be occupied for residential purposes until completed on the exterior.
4. All improvements shall be painted a color so as to maintain a rustic appearance and design.
5. No fence or hedge shall be constructed or maintained on said land which unduly restricts the view of adjoining land owners.
6. All fuel tanks shall be installed to the rear of the dwelling unit in which the same is used and screened from view of adjacent property owners.
7. Trash, old machinery or equipment, or unlicensed or inoperable automobiles shall not be stored or permitted to accumulate on said land.
8. No trailers or mobile homes shall be placed on said land for use as permanent living quarters, but this shall not exclude the temporary parking for short periods of time of self-powered motor homes or small trailers towed by passenger cars.
9. No garbage dumps, trash piles, accumulation of building materials or any undesirable or unsanitary matter shall be permitted on said land.
10. No noxious or offensive activity shall be carried on upon said land, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

These covenants, conditions and restrictions shall be perpetual and shall apply and be binding upon these owners, their grantees, their heirs, personal representatives and assigns, and are imposed upon said land as an obligation or charge against the same for the benefit of these owners, their grantees, successors and assigns, and as a general plan for the benefit of said aforesaid land.

These covenants and restrictions may be enforced by the owners herein by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. It is expressly understood by all persons purchasing this property that if any action is successfully brought against them for a violation of these covenants that a reasonable attorney's fee

shall be assessed against them in addition to any other damages.

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have hereunto caused their names to be signed this 21st day of July, 1992.

Russell H. Thorson
Russell H. Thorson

Catherine L. Thorson
Catherine L. Thorson

STATE OF MONTANA)
County of Gallatin) ss.

On this 21st day of July, 1992, before me, a notary public in and for the State of Montana, personally appeared **RUSSELL H. THORSON** and **CATHERINE L. THORSON**, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my Notarial Seal the day and year first above written.

W.A. Bolinger
Notary Public for the State of Montana
Residing at Bozeman, Montana
My Commission expires January 1993



250951



State of Montana)
County of Gallatin) ss.
Filed SEPTEMBER 14, 1992
at 10:39 A.M.
Recorded in book 126 of
MISCELLANEOUS Page 344

Shelley M. Cheney
County Clerk & Recorder
[Signature]
Fee \$24.00

RT: AMERICAN LAND TITLE



After Recording Please Return to:
Rodney W. Schwasinger, P.C.
517 South 22nd, Suite 2
Bozeman, Montana 59718



AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS

RECITALS

A. Reference is made to that certain DECLARATION OF RESTRICTIVE COVENANTS dated July 21, 1992 and recorded at Film 126, page 344, Document No. 250951 at the office of the County Clerk and Recorder, Gallatin County, Montana on September 14, 1992 and as subsequently amended (the "Declaration").

B. All the real property to which said Declaration applies is owned by the undersigned, ROBERT T. KYLE and PAMELA H. KYLE, located within Gallatin County, Montana and more particularly described as follows:

Tracts 1, 2, and 3 of the Amended Subdivision Plat of a portion of Tracts 18 and 19 of Castle Rock Tracts, as shown on Certificate of Survey No. E-45-A, located in the SE $\frac{1}{4}$ of Section 33, Township 4 South, Range 4 East, P.M.M., Gallatin County, Montana.

(hereinafter, the "Property.")

B. The Declaration imposes certain obligations, and provides certain rights, which benefit and burden the Property.

C. As the owners of all of the Property, the undersigned caused to be recorded an AMENDMENT TO RESTRICTIVE COVENANTS dated November 28, 2005 and recorded at Document No. 2211013 at the office of the County Clerk and Recorder, Gallatin County, Montana on November 29, 2005. Due to stenographic errors and in order to provide further clarification of the language in said AMENDMENT TO RESTRICTIVE COVENANTS filed on November 29, 2005, the undersigned execute this Amendment, and cause the same to be filed of record, in order to accurately reflect all amendments to the Declaration as more particularly set forth below.

D. The terms and conditions set forth in this Amendment shall be in addition to the existing covenants and restrictions set forth in the Declaration except to the extent the terms of this Amendment expressly replace or modify the existing terms of the Declaration by reference. In the event of any inconsistency or conflict between the terms of this Amendment and the terms of the

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Page: 2 of 3
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Declaration, the terms of this Amendment shall control.

NOW THEREFORE, the undersigned as 100% of the owners of the Property referenced in said Declaration do hereby incorporate the Recitals set forth above and amend said Declaration as follows:

I. ADDITION OF NEW PARAGRAPHS 11-13.

There is added to the Declaration new paragraphs 11, 12 and 13, inserted immediately after existing paragraph 10, to read, in full, as follows:

11. Notwithstanding any other provision of the Declaration, the following uses may be made of the Property:

A. **Tract 1.** Tract 1 currently has upon it a single family residence and a cabin. Another detached cabin may be constructed upon Tract 1. The house and cabin(s) on Tract 1 may be used for rentals, including vacation rentals.

B. **Tract 2.** Tract 2 currently contains no dwelling structures. No more than two (2) detached single family dwellings may be constructed upon Tract 2. Alternatively, a single structure, constructed to look like a single family dwelling, may be constructed on Tract 2 and used as a Bed and Breakfast, including all incidental uses for which such facilities are commonly used, including receptions, parties, a restaurant, etc. If more than one dwelling is constructed upon the land which is now Tract 2, neither of them may be used for a Bed and Breakfast (or for the incidental uses) as allowed herein.

C. **Tract 3.** Tract 3 currently contains no dwelling structures. No more than three (3) single family dwellings may be constructed on Tract 3. Alternatively, a single structure, constructed to look like a single family dwelling, may be constructed on Tract 3 and used as a Bed and Breakfast, including all incidental uses for which such facilities are commonly used, including receptions, parties, a restaurant, etc. If more than one dwelling is constructed upon the land which is now Tract 3, none of said dwellings may be used for a Bed and Breakfast (or for the incidental uses) as allowed herein. If a Bed and Breakfast is constructed upon land which is now Tract 3, as defined above, then no single family dwellings may be constructed on Tract 3.

12. Tract 1 may not be further subdivided. Tract 2 may be subdivided into two (2) but not more than 2, tracts, with a single family dwelling on each one, as set forth above in paragraph 11. If, however, a Bed & Breakfast is constructed on Tract 2 - then Tract 2 may not be subdivided into two tracts, but is to remain as one tract. Tract 3 may be subdivided into no more than three (3) tracts, with a single family dwelling on each one, as set forth above in paragraph 11. If, however, a Bed & Breakfast is constructed on Tract 3 - then Tract 3 may not be subdivided into three tracts, but is to remain as one tract.

After Recording Please Return to:
Robert K. Baldwin
Goetz, Gallik & Baldwin, P.C.
35 North Grand
Bozeman, Montana, 59715



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Page: 1 of 3
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Shelley Vance-Gallatin Co MT MISC 33.00

AMENDMENT TO RESTRICTIVE COVENANTS

RECITALS

A. Robert T. Kyle and Pamela H. Kyle are the owners of certain real property located within Gallatin County, Montana, more particularly described as follows:

Tracts 1, 2, and 3 of COS E-45-A, on file and of record in the office of the Clerk and Recorder, Gallatin County, Montana.

(hereinafter, the "Property.")

B. The Property was previously owned by Russell H. Thorson and Catherine L. Thorson (hereafter, "Thorson").

C. On September 14, 1992, Thorson caused to be recorded in the office of the Gallatin County Clerk and Recorder an instrument entitled "Declaration of Restrictive Covenants," recorded at Film 126, page 344 of the records of the Gallatin County, document number 250951.

D. The Declaration of Restrictive Covenants imposes certain obligation, and provides certain rights, which benefit and burden the Property.

E. As the owner of all of the Property, Kyles desire to amend the Declaration of Restrictive Covenants.

F. For the foregoing reasons, the Kyles execute this instrument, and cause it to be filed of record, in order to amend the Declaration of Restrictive Covenants as more particularly set forth below.



AMENDMENT TO COVENANTS

I. ADDITION OF NEW PARAGRAPHS 11-13.

There is added to the Declaration of Restrictive Covenants new paragraphs 11, 12 and 13, inserted immediately after existing paragraph 10, to read, in full, as follows:

- 11. Notwithstanding any other provision of the Declaration of Restrictive Covenants, the following uses may be made of the Property:
 - A. **Tract 1.** Tract 1 currently has upon it a single family residence and a cabin. Another detached cabin may be constructed upon Tract 1. The house and cabin(s) on Tract 1 may be used for rentals, including vacation rentals.
 - B. **Tract 2.** Tract 2 currently contains no dwelling structures. No more than two (2) detached single family dwellings may be constructed upon Tract 2. Alternatively, a single structure, constructed to look like a single family dwelling, may be constructed on Tract 2 and used as a Bed and Breakfast, including all incidental uses for which such facilities are commonly used, including receptions, parties, a restaurant, etc. If more than one such single family dwelling is constructed upon the land which is now Tract 2, neither of them may be used for a Bed and Breakfast (or for the incidental uses) as allowed herein.
 - C. **Tract 3.** Tract 3 currently contains no dwelling structures. No more than three (3) single family dwelling may be constructed on Tract 3. Alternatively, a single structure, constructed to look like a single family dwelling, may be constructed on Tract 3 and used as a Bed and Breakfast, including all incidental uses for which such facilities are commonly used, including receptions, parties, a restaurant, etc. If more than one such single family dwelling is constructed upon the land which is now Tract 2, none of them may be used for a Bed and Breakfast (or for the incidental uses) as allowed herein.
- 12. Tract 1 may not be further subdivided. Tract 2 may be subdivided to two (2) but no more than 2, tracts, with a single family dwelling on each one, as set forth above in paragraph 11. Tract 3 may be subdivided into no more than three (3) parcels, with a single family dwelling on each one, as set forth above in paragraph 11.
- 13. Certificate of Survey No. E-45-A depicts a "40' roadway easement to be abandoned" along the northerly edge of Tract 3 ("the 40' Easement"). It also depicts a "20' ingress and egress easement" along the southerly edge of Tract 3 ("the 20' Easement"). In addition, although not depicted on Certificate of Survey No. E-45-A, another roadway exists along the northerly boundary of Tract 2, providing access

