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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
BIG WATERS RANCH**

This Declaration of Covenants, Conditions, and Restrictions of Homeowners Association ("Declaration") is made this 29 day of January by Wildlands, LLC (the "Declarant") of P.O. Box 689, Seeley Lake, Montana 59868.

**WITNESSETH:**

WHEREAS, Declarant is the owners of the following real property, to wit:

As Described by Tract 1, Certificate of Survey No. 4792; a tract of land located in and being a portion of Section 8 and the North one-half (N½) of Section 17, Township 15 North, Range 14 West, Principal Meridian, Montana, Missoula County, Montana.

WHEREAS, the said Declarant desires to place building restrictions and protective covenants upon said property for the use and benefit as present owner and all future owners thereof.

WHEREAS, Declarant desires to provide for the continued care and maintenance and operation of the property, and for the orderly development in accordance with these covenants, of the real property for the Declarant as present Owners of said property and for future Owners of said property, and to provide for Homeowners Association guidelines.

NOW, THEREFORE, Declarant hereby declares all the real property described above shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions, and easements all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property as a highly desirable subdivision and for responsible stewardship of the associated lands. These restrictions, covenants, conditions, and easements shall run with the real property and shall be binding on all the parties having or acquiring any right, title, or interest in the described real property or any part thereof and shall inure to the benefit of and be binding upon each successor in interest of the Owners thereof.

**ARTICLE I DEFINITIONS**

"Declarant" shall mean Wildlands, LLC and their successors and assigns, provided that any such assignment must be contained in a separate document and must expressly refer to an assignment of the rights of Declarant under this Declaration in order for the assignee to become the Declarant hereunder.

"Association" means the Big Waters Ranch Homeowners Association, Inc., a Montana non-profit corporation, its successors and assigns.

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"Property" or "Properties" shall mean and refer to that certain real property described above, and such other property that may hereafter be brought within the jurisdiction of the association. Declarant reserves the right to add additional adjoining lands to the definition of properties or in the event Declarant or Assigns decides to subdivide adjoining properties and wishes to bring said properties within the coverage of these covenants. Specifically including but not limited to the property described as: Tract 2, Certificate of Survey No. 4792; A Tract of land located in and being a portion of Section 17, Township 15 North, Range 14 West, Principal Meridian Montana, Missoula County, Montana.

"Lot" shall mean any of the parcels shown on the Subdivision Plat of Big Water Ranch or any parcel created by a permitted subdivision of any of the original parcels.

"Owner" shall mean the record owner of fee simple title to any Lot, except that in the case of a sale of a Lot by contract for deed, the contract buyer shall be considered the "Owner" and the contract seller shall be considered a mortgagee.

## ARTICLE II DECLARATION

Section 1. Declaration. The real property described above, is hereby subjected to the covenants, conditions, and restrictions of this Declaration. The Declarant, being the owner of all of the Property and having established a general plan for the improvement and development of the Property, does hereby establish the covenants, conditions, and restrictions upon which and subject to which all Lots within the Property shall be improved or sold and conveyed, and does hereby declare that the Property is and shall be held, transferred, sold and conveyed subject to the covenants, conditions, and restrictions set forth herein, all of which shall run with the land and be binding upon and for the benefit of the Declarant and all successors in interest of the Declarant.

Section 2. Purpose. The purpose of this declaration is to insure the best use and the most appropriate development and improvement of each lot: to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Lot; to preserve so far as is practicable the natural environment and wildlife as important amenities and the continued proliferation thereof including protecting the habitat value as a core wintering area for white-tailed deer populations; to prevent the construction of inappropriate structures; to insure the highest and best development of the Property; to encourage and secure the erection of attractive homes thereon with appropriate locations; to secure and maintain adequate setbacks and adequate free space between structures; and in general to provide adequately for a high quality of improvements on the Property and thereby to enhance the values of improvements made by Owners.

## ARTICLE III PROTECTIVE COVENANTS

Section 1. Use. This subdivision is intended for single-family residential structures. An owner may place one additional structure on a lot for the purposes of a guesthouse or a "Bed and

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Breakfast" type facility. However, the guesthouse or "Bed and Breakfast" facility may not exceed a 16 guest capacity.

No mobile homes, trailers, recreational vehicles or structures of a temporary character, including basements, tents, shacks, garages, barn or other out buildings shall be used at any time as a residence. However, a barn, storage shed or other out buildings generally associated with residential or agricultural uses are permitted.

**Section 2. Location of Structures.** There shall be no structures constructed within 50 feet of any of the property boundary lines. There shall be no structures constructed within the riparian or riparian buffer area identified in the approved Riparian Management Plan. The setbacks from the Clearwater River or Black Lake for all buildings and structures of any kind shall be a minimum of 50 feet from the high water line or 20 feet from the 100 years flood plain, whichever is greater. Each lot shall have two building envelopes upon which structures can be placed. Once an owner determines where a structure will be located, the second envelope shall cease to exist, and the owner will be restricted to adding any additional structure to that same envelope.

**Section 3. Animals.** The use of the land in connection with a game farm, game bird farm, shooting preserve, fur farm, zoo, or menagerie, or the ownership, leasing, keeping, holding, capture, propagation, release, introduction or trade in any animal that may pose a threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited. This prohibition does not apply to common domestic livestock. Cows, sheep, goats, and pigs, are prohibited. All permitted stock shall be kept a minimum of 50 feet from lake and river shore. All permitted stock shall be kept within fenced areas outside the identified riparian and buffer zones in the approved Riparian Management Plan. Dogs shall be limited to 2 and shall not be permitted to chase, harass, kill, injure, molest or annoy wildlife. Artificial feeding of wildlife is prohibited.

**Section 4. Wildlife.** The aesthetic value of the proximity of the subdivision to wildlife and native flora and fauna should be protected. Each Owner acknowledges that fruit trees, flowers, ornamental shrubbery, and gardens are susceptible to damage from wildlife. Wildlife should not be discouraged from travel over the subdivision properties. Each Owner will receive a copy of "Living with Wildlife" a brochure from the Office of Planning and Grants, Missoula, Montana.

Potential perch/nesting trees, such as large ponderosa pine, larch and cottonwood should be preserved and protected to the maximum extent possible for use by bald eagles, osprey and other raptors.

Permanent barbecue pits are prohibited. Portable barbecue grills shall be stored indoors and cleaned regularly to prevent wildlife attraction.

**Section 5. Garbage.** All rubbish, trash and garbage shall be regularly removed from each parcel and shall not be allowed to accumulate. All rubbish, trash and garbage shall be kept in

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rodent proof containers. Garbage shall be stored either indoors, or in bear proof containers.

**Section 6. Dwelling Construction.** All dwellings shall be constructed on the Lot, and no trailer homes, mobile home, prefabricated homes of any kind or type shall be placed on a Lot.

Structures shall be designed to fit into a hillside, rather than altering the hillside to fit the structure. Alternatives to consider for incorporating structures into hillsides include: reduced footprints design, multiple "step-up" or "step-down" structures, and structures with open foundations, with landscaping screening the underside area of the building.

The maximum height of any building shall not exceed 30 feet of vertical distance, measured from the lowest finished grade within a building envelope, to the highest point of the structure. A 10% increase in building height shall be permitted when a roof pitch of 7/12 or steeper is proposed.

All buildings must be of a permanent type of new construction. There shall be no prefabricated homes (modular, mobile homes or similar structures) located in the subdivision.

To reduce potential particulate pollution, property owners are encouraged to install only pellet stoves or Class I EPA approved wood stoves (which burn hotter, cleaner and safer than other types of wood stoves).

**Section 7. Siding and Roof Material.** No galvanized metal siding or roof material shall be used on the exterior of structures, except that factory-painted metal roofing or siding is permitted if the color is dark and non-reflective and the color is maintained. Cedar and wood shake roofs are prohibited for fire protection. Exteriors of all dwellings shall be of natural materials. Every step shall be taken to preserve game cover between building sites.

Only Class A or B fire-rated roofing materials shall be used for any new construction according to the Uniform Fire Code Regulations.

**Section 8. Fences.** All fencing shall be wood rail or non barbed smooth wire. Garden space is permitted with the building envelope if it is fenced so as to not be an attractant to wildlife. All fencing will be limited to outside the identified riparian or buffer zones identified in the approved Riparian Management Plan.

**Section 9. Noxious Activity.** No noxious or offensive trade or activity shall be conducted on any Lot or any part of the Property, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood or which shall in any way interfere with the use or enjoyment of any other Lot, including but not limited to causing vibration, sound, electro-mechanical disturbance or radiation, air or water pollution, fumes, vapors, dust or odorous, toxic or offensive matter.

Commercial or construction equipment may be stored on a Lot only during periods of actual

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construction.

Each Owner shall limit excessive noise or vibration beyond property lines; excessive light glare; electrical interference that adversely affects other uses' solid waster storage in enclosed buildings or animal-proof containers; channeling storm or meltwater runoff that adversely impacts neighboring properties; or harboring noxious weeds.

**Section 10. Individual Sewage and Water Systems.** All individual sewage disposal systems or water systems will be constructed and equipped in accordance with the requirements of the Missoula City-County Health Department and the Montana Department of Health and Environmental Sciences. The systems are to be located entirely within the area of the drainfield as designated for each Lot.

Owners are responsible for inspection and maintenance of their sewage systems to insure proper operation. Any monitoring costs associated with any drainfield shall be the sole responsibility of the Owner, whether required by the Montana Department of Environmental Quality, the County, the Declarant or the Association.

**Section 11. Preservation of Natural Beauty.** The Association and individual tracts Owners shall make every effort to preserve the natural beauty of the Clearwater River, Salmon Lake, Blake Lake and their surroundings. A Lot shall not be denuded of trees, and vegetation shall be left on each Lot to screen the buildings and to preserve the natural setting of the area. No trees will be cut or vegetation removed within the 50 foot setback from the shoreline except as required as per Section 12. The shoreline shall be kept generally attractive and no structures shall be constructed thereon, except one dock per ranch shall be allowed.

**Section 12. Landscaping and Fire Protection.** Lot Owners shall create a defensible space for fire protection, according to the Missoula County Subdivision Regulation. Vegetation shall be removed and reduced around each building according to the slope. Single ornamental trees or shrubs need not be removed as long as all vegetation near them is reduced according to the guidelines as established by the fire jurisdiction. Ornamental trees and shrubs should not touch any buildings. When planting, the property Owner shall select trees, shrubs and vegetation from native vegetation stock, when possible, that limit or retard fire spread as suggested below:

1. Perennial: Chose hardy perennial flowers that are adapted to the climate of the area. These green leafy succulent plants are difficult to burn. Watering and regular weeding improved fire resistance.
2. Shrubs: Evergreen shrubs such as dwarf conifers or junipers tend to ignite easily: avoid them unless well spaced.
3. Tree: Deciduous trees can be clumped, scatters or planted in green belts or windbreak patterns. Evergreen trees tend to ignite easily and should be spaced accordingly.

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The planning of native vegetation is recommended for landscaping and revegetation. If fruit trees are used they shall be properly harvested so as not to allow an accumulation of rotting organic matter which is a prime wildlife attractant. Pest and weed management on the property shall be performed where possible through natural means.

SEE MISSOULA COUNTY SUBDIVISION REGULATIONS VEGETATION REDUCTION GUIDELINES AND USE APPLICABLE SLOPE FOR REQUIRED STANDARDS.

In order to reduce the risk of wildfire, each Owner shall remove buildup of downed woody fuels in accordance with guidelines provided in "Fire Protection guidelines for Wildlands Residential Interface Development" and appendices A-D, copies attached.

**Section 13. Utilities.** All utility lines shall be installed underground, except for such utility lines as exist on the Property on the date of this Declaration and any utility lines required to cross over any significant river or stream, provided however, that said utility lines shall only be overhead to the extent necessary to cross said river or stream and then shall again be installed underground. Each Owner shall be responsible for costs of utility connection to an Owner's Lot. All utility installation shall be in full compliance with applicable Federal, State, and County laws and regulations and shall be in accordance with utility specifications as may be contained in the Subdivision Plat.

**Section 14. Easements.** Easements for utilities, driveways and drainage are reserved as shown on the recorded plat. Within these easements, no structures or other improvements may be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or driveways. The easement area on each Lot will be maintained by the owner of the Lot. The utilities or driveways within the easements shall be maintained by the utility company or the Lot Owners who use the driveways.

**Section 15. Abandoned Vehicles.** No junk, junk vehicles, abandoned vehicle, or any vehicle inoperable for more than 14 days shall be permitted to remain on any Lot unless such vehicle is located within an enclosure which completely obstructs its view from any other Lot.

#### ARTICLE IV ROADS

**Section 1. Easement.** Each Owner shall have and is hereby granted an easement for ingress, egress, and utilities over and across the areas designated on the subdivision plat of Big Waters Ranch as road and utility easements (the "Roads").

**Section 2. Maintenance.** The Roads shall be controlled and maintained by the Association. The Association may grant further easements over and across the Roads and otherwise deal with the Roads in any manner deemed appropriate by the Association, including dust abatement of Big Waters Ranch Road. All or any part of the Roads may be dedicated or transferred to any public authority by the Associations.

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## ARTICLE V ASSESSMENTS

**Section 1. Assessments.** The Declarant, for each Lot owned within the Properties by the Declarant, hereby covenants and agrees, and each Owner of any Lot, by acceptance of the deed therefore whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay to the Association annual assessments and special assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lots against which each such assessment is made. The assessments shall also be the personal obligation of the Owner(s) of the Lot at the time the assessments were due. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents of the Properties and for the improvement and maintenance of the Road. Assessments shall be made on a lot by lot basis and the amount of assessment shall be equal for each Lot. The Board of Directors shall fix the amount of the annual assessment against each Lot. Written notice of the annual assessments shall be sent to every Owner. The assessment shall be due and payable within 30 days of the date of the notice. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Road or abandonment of his Lot.

**Section 2. Default.** In the event of a default by any Owner in paying any assessment, the Board shall have the right to assess a late charge not to exceed \$25.00. Furthermore, when an Owner is in default, such Owner shall be obligated to pay interest at the rate of twelve percent (12%) per annum on such delinquent assessments from the due date thereof, together with all expenses, including a reasonable attorneys' fee, incurred by the Board of Directors to collect such unpaid assessments. The Board of Directors shall have the right to make reasonable attempts to recover such expenses, together with interest thereon and the expenses of the proceeding, including attorneys fees, in an action brought against such Owner personally or by foreclosure of the lien of the assessment. The Board of Directors, acting on behalf of the Association, shall have the power to purchase the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Lot. A suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien securing the unpaid assessments.

**Section 3. Creation of Lien Assessments.** The Declarant and any other Owner of any lot within the jurisdiction of the Association, by acceptance of a deed or contract of purchase of any lot within the properties, whether or not it shall be so expressed in said deed or contract, are deemed to covenant and agree to pay to the Association, annual assessments, and any additional assessments to be fixed, established and collected by the Association from time to time as hereinabove provided. The annual assessments, together with such interest thereon and costs of collection thereon as hereinafter provided, shall be a charge and continuing lien upon each lot within the Properties, against with such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as in hereinabove provided shall be the obligation of the Owner of such lot from the date when such assessment becomes payable, and

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shall constitute a lien running with the real property as set forth herein.

**Section 4. Statement of Assessments.** The Board of Directors shall promptly provide any Owner who makes a request in writing with a written statement of his or her unpaid assessments.

**Section 5. Deposit of Funds.** The funds of the Association shall be deposited in such financial institutions as the Directors shall designate, and shall be withdrawn only upon the check or order of an officer of the Association duly authorized by the Board of Directors.

**Section 6. Borrowing.** The Board of Directors shall have the authority to borrow money to meet any deficiency in the payment of assessments or to meet any emergency that may arise in the management of the Property.

#### ARTICLE VI ENFORCEMENT

**Section 1. Enforcement.** The Board of Directors, acting for the Association, or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, covenants, conditions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained in any one or more instances shall in no event be deemed a waiver of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants, restrictions or provisions by judgment or court order shall in no way affect any of the other covenants, restrictions or provisions, all of which shall remain in full force and effect.

#### ARTICLE VII AMENDMENT

**Section 1. Approval.** No amendment of this Declaration shall be effective unless approved by the Owners of seventy-five percent (75%) of the Lots. The amendment and a certification of the President and Secretary that the amendment was approved by the requisite number of Owners shall be recorded in the records of the Clerk and Recorder of Missoula County, Montana.

All provisions in this Declaration relating to wildlife, driveway standards, road maintenance, and the Riparian Resource Management Plan shall not be amended or deleted without the approval of the governing body.

**Section 2. Procedure.** An amendment may be proposed by the Board of Directors or by written petition of the Owners of thirty percent (30%) or more of the Lots. A copy of the proposed amendment shall be voted upon by Owners at an election to be set by the Board of Directors. The election may be conducted by mail, at \_\_\_\_\_



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ATTORNEY VERIFICATION

STATE OF MONTANA )
) ss.
County of Missoula )

I, KIRBY S. CHRISTIAN, being first duly sworn upon oath, deposes and states:

- 1. That I am an attorney licensed to practice law in the State of Montana;
2. That I have reviewed the foregoing Declaration of Protective Covenants for Big Waters Ranch Subdivision; and
3. That it is my opinion that the foregoing Declaration of Protective Covenants for Big Waters Ranch Subdivision complies with the laws of the State of Montana and includes all of the requirements delineated by the City Council of Missoula, Montana in their preliminary approval of Big Waters Ranch Subdivision.

DATED this 31st day of January, 1999.

CHRISTIAN, SAMSON & JONES, P.C.

[Handwritten signature]

Kirby S. Christian

99 MAR 2 4:38:15

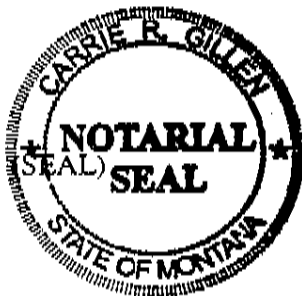
STATE OF MONTANA )
) ss.
County of Missoula )

On this 31st day of January, 1999, before me, the undersigned, a Notary Public for the State of Montana, personally appeared Kirby S. Christian, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me to that he executed the same.

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

[Handwritten signature of Carrie R. Giller]

Notary Public for the State of Montana
Residing at: Missoula, MT
My Commission Expires: 12-10-02



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I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 2 DAY OF Mar 1999 AT 8:16 O'CLOCK A M AND IT IS RECORDED IN VOL 574 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 193 FEE 60 PAID CK RETURN TO PCE ADDRESS PO Box 1750 Melva, MT 59806 BY Kelly H. Hall DEPUTY DOC CLERK