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Paulette DeHart Clerk & Recorder, Lewis & Clark MT



**SUBDIVISION RESTRICTIONS FOR THE  
AMENDED PLAT OF LOT A-1A OF THE H.W. SMITH MINOR SUBDIVISION,  
DOCUMENT NUMBER 3049709, RECORDS OF LEWIS AND CLARK COUNTY,  
MONTANA TO BE KNOWN AS HERON CREEK SUBDIVISION PHASES 1, 2, AND 3**

WHEREAS, the undersigned, Sussex Development, Inc., of Helena, Montana, is filing a plat of certain lands in Lewis and Clark County, Montana, titled the Amended Plat of Lot A-1A of the H.W. Smith Minor Subdivision, Document Number 3049709, Records of Lewis and Clark County, Montana to be known as Heron Creek Subdivision Phases 1, 2, and 3 with the Lewis and Clark County Clerk and Recorder for recordation, and

WHEREAS, the undersigned is the owner of all the lots in said tract and desires to place restrictions upon said lots for the use and benefit of Sussex Development, Inc. as present owner and for the future owners thereof, and for the benefit of the general public interest.

NOW, THEREFORE, these covenants and conditions are made to apply to a tract of land situated in northwest  $\frac{1}{4}$  of Section 12, T10N, R2W, Lewis and Clark County, Montana.

All persons or corporations who now or shall hereafter acquire any interest in and to any of the above described property, shall be taken and held to agree and covenant with the owners of the lots in said tract with their heirs, successors and assigns, to conform to and observe the following restrictive covenants as to the use thereof.

These restrictive covenants and conditions are designed to provide a uniform plan for the development of the whole of said tract, protect the natural environment and promote public health and safety.

The following restrictive covenants are revocable or alterable only with the consent of the Board of County Commissioners of Lewis and Clark County.

1. Notice is hereby given that all property owners are required to receive an approach permit from the County Road Department prior to construction of a driveway approach.

2. Notice is hereby given of the potential health risk from radon concentrations and that such risk can be evaluated through soil tests and mitigated through radon abatement techniques incorporated into structures.
3. Notice is hereby given that all dwelling units within the subdivision should be constructed to specifications which meet or exceed equivalent provisions in the applicable state building code for this seismic zone (Zone 3).
4. Notice is hereby given of a road maintenance agreement and a waiver of right to protest joining a road maintenance district, in accordance with the County Subdivision Regulations.
5. Notice is hereby given of a waiver of the right to protest joining a special district for the purpose of providing community water and/or wastewater treatment system improvements and/or maintenance.
6. Notice is hereby given of a waiver of the right to protest joining a rural improvement district for the purpose of equitably funding parks and the maintenance of parks, in accordance with the County Subdivision Regulations.
7. Notice is hereby given of a prohibition of any development, alteration, or encroachment within the drainage setbacks or buffers.
8. Notice is hereby given that any additional, replacement, or relocated utility lines shall be installed underground, in accordance with the County Subdivision Regulations, unless otherwise determined by utility providers.
9. Notice is hereby given of a "no access" restriction along the northern property lines of Lots 20 and 21, restricting direct access to Keir Lane except at the easement for the internal access road.
10. Notice is hereby given of a "no access" restriction along the western property lines of Lots 1 and 5 restricting direct access to Eames Lane except at the easement for the internal access road.
11. Notice is hereby given that any exterior lighting shall be directed downward to minimize visibility beyond the property lines.
12. Notice is hereby given of the presence of agricultural operations in the vicinity and that such operations may occur at varying times and seasons and include, but are not limited to, the noises and odors due to the operation of machinery, the pasturing and feeding of livestock, irrigation, and the application of fertilizers, herbicides, and pesticides to fields.
13. Notice is hereby given of a restrictive covenant, binding the landowner, any heirs, successors and assigns, and all future owners of property within the subdivision, agreeing therein to hold Lewis and Clark County harmless and indemnify Lewis and Clark County from all claims, demands, obligations, suits, causes of action, damages, and liability, including the County's costs and attorney's fees, arising in any manner whatsoever out of, or relating to, the existence, use, operation, repair, and/or maintenance of the following:
  - a. Irrigation facilities;



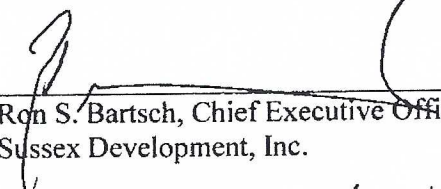
- b. Manmade streams/ponds/stormwater detention or retention;
  - c. Earthquake fault zone and any seismic activity;
  - d. Drainages;
  - e. Damages caused by wildlife;
  - f. Water availability;
  - g. Encroachments into the Public Access and Utility Easement;
  - h. Variances granted for double fronted lots (Section XI.F.9, County Subdivision Regulations);
  - i. Variances granted for utility easements (Section XI.Q., County Subdivision Regulations); and
  - j. Variances granted for road construction (Section XI.H.1., County Subdivision Regulations).
14. Notice is hereby given of a prohibition of the storage of foods, garbage or feeding domestic pets outdoors or other activities which may create an attractive nuisance for wildlife species.
15. Notice is hereby given that property owners shall contact Montana Fish, Wildlife, and Parks for fencing standards and learning about living with wildlife in general.
16. Notice is hereby given that gardens, fruit trees, and compost piles should be fenced with deer-proof fences.
17. Notice is hereby given that all dogs shall be restrained or penned at all times.
18. Notice is hereby given that non-native plants are particularly prone to wildlife use and losses should be expected if they are used in landscaping.
19. Notice is hereby given of a prohibition of the raising, keeping, or confinement of livestock on any residential lot.
20. Notice is hereby given that each lot shall be maintained in a clean, attractive, and weed-free manner; noxious weeds must be pulled, sprayed, or cut.
21. Notice is hereby given of 50-foot building setbacks, which includes a 30-foot non-disturbance buffer, on both sides of the ordinary high water mark of all type IV ephemeral drainage on the area of Lots 4P and 23T.
22. Notice is hereby given that property owners may be assessed for irrigation rights, even though there may be no means to deliver irrigated water to their property.
23. Notice is hereby given of a "no access" restriction along the eastern property lines of Lots 8 and 4.
24. Notice is hereby given that Lots 1-21 are approved for one (1) single-family dwelling each.
25. Notice is hereby given that Lot 22T is approved for parkland.
26. Notice is hereby given that Lot 24T is approved for a wastewater treatment facility.

- 27. Notice is hereby given that lot 23T is approved for a drainfield, replacement drainfield, stormwater detention and parkland and is to be owned partially by all lot owners in the subdivision.
- 28. Notice is hereby given that Lots 25-59 are each approved for one (1) single-family residential use only.
- 29. Notice is hereby given that Lots 60-64 are each approved for one (1) single-family residential use only.

Enforcement of these covenants shall be 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.


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

Dated at Helena, Montana, this 18<sup>th</sup> day of January, 2018.

  
Ron S. Bartsch, Chief Executive Officer  
Sussex Development, Inc.

State of Montana, County of Lewis & Clark

This instrument was acknowledged before me on January 18, 2018 by Ron S. Bartsch as Chief Executive Officer of Sussex Development, Inc.

  
(Signature of notarial officer)

