

Please return original to:
William E. Kiely
Kiely Construction Company, LLC
PO Box 1056
Red Lodge, MT 59068

319575

State of Montana }
County of Carbon }

This instrument file 319575 was filed in my
office this 20th day of Sept. 20 05
at 3:51 o'clock P.m.

Linda M. Ladvala
County Clerk / Recorder
by Marcus Henneman Apt
Fee \$ 83.00 pd

**ISLAND AT ROCK CREEK SUBDIVISION
DECLARATION OF RESTRICTIONS,
COVENANTS AND CONDITIONS
RED LODGE, MT**

Whereas, the undersigned, are the owners of the Island at Rock Creek Subdivision (the "subdivision") more particularly described as Plat No. 1552AM; and

Whereas, the City of Red Lodge has approved this preliminary plat as set forth in their March 2003 approval with 18 conditions. The plat will be developed in phases. These 18 conditions are attached and made a part hereof by reference, The owners of this land, in each phase, shall abide by these 18 conditions.

Whereas, the owners desire to impose upon the subdivision owned by them the restrictions, covenants and conditions hereinafter set forth for the benefit of themselves and any other subsequent owners of all or a portion of the subdivision; and

Whereas, the purpose of the following restrictions, covenants and conditions is to insure the use of the real property comprising the subdivision as an attractive and comfortable single and multi-family residential community.

All of the property described on Exhibit A and any additional property subjected to this Declaration shall be held, sold, used, and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of and which shall run with the title to the real property subject to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Now Therefore, the owners hereby declare and agree with each and every person, his, her, their or its heirs, executors, administrators, personal representatives, successors and assigns, and all persons who shall become an owner of any part of the real property comprising the subdivision, that said real property, in addition to the ordinances of the City of Red Lodge, Montana, shall be and hereby are bound to the restrictions, covenants and conditions set forth in this Declaration, and that Island at Rock Creek Subdivision and all real property therein shall be held and enjoyed subject to and with the benefit and advantages of the following restrictions, limitations, conditions, covenants and agreements, as follows:

ARCHITECTURAL COMMITTEE

(a) **Membership.** There shall be an Architectural Committee (the Committee), the original membership of which shall be Bill Kiely, Sue Kiely and Hank Martin, or their designated heirs and assigns. Each original member shall serve until such time as he or she no longer has an ownership interest in the subdivision. Upon the transfer of all lots within the subdivision, the owners of all lots therein shall be entitled to place, by election, two members (new members) on the Committee. The Committee shall then total five members. One new member shall serve a three year term and one shall serve a two year term. New members may not assign their membership without the express approval of the original members. Upon expiration of the above terms, new members may be placed on the committee only in a fashion that does not allow for such placement of two members in the same year. The Committee shall not consist of more than five members so long as the original members, or their heirs or assigns, are serving.

(b) **Authority:**

No structure, including walls, fences, and utility lines, shall be erected, converted, placed, added to or altered on any estate/lot until the exterior construction plans and specifications, exterior materials to be used, exterior color, and location have been approved by the Architectural Committee. The Committee shall not approve the project unless the materials, colors, location, plans and specifications of the exterior result in a structure that harmonizes with the existing structures in the area and/or blends with the surroundings and the structure is located in such a manner as to suit the topography of the estate as well as being located in an aesthetically pleasing place. Disapproval of a structure may be based on purely aesthetic values as seen by the Architectural Committee.

(c) **Procedure:**

All applications for approval shall be in writing and either hand-delivered to a member of the Architectural Committee or mailed to the Architectural Committee, Island at Rock Creek Subdivision, P. O. Box 1056, Red Lodge, Montana, 59068. The Architectural Committee shall act upon all such applications within thirty days after delivery to them of the application. The Architectural Committee may express approval passively by not giving written notice of approval within the thirty day period. The Architectural Committee shall only disapprove an application by a vote against the application by at least three of the members. Such disapproval shall always be in writing stating the reason for disapproval. All applications, written approvals, and disapprovals shall either be hand-delivered and a written receipt obtained from the recipient or be mailed in such a way that a receipt of delivery is obtained from the property recipient.

BUILDING CONSTRUCTION:

All lots in said Properties shall be used solely for single-family and multi-family residential dwelling purposes. No building shall be erected, altered, placed, or be permitted to remain in said Properties, except single family, multi-family dwellings, community club house and private garages. Any building under construction shall be completed within a twelve (12) month period. All new buildings shall be of construction to fit the natural area, i.e., logs, planks, rock, glass, etc., and will have a first floor area greater than eight hundred (800) square feet.

BUILDING LOCATION:

No building shall be located in Island at Rock Creek without having first been approved for that location by the Architectural Committee. No building shall be located within the identified 100 year flood plain. If not already provided by the developer/seller, buyer or grantee will obtain at its own expense a geotechnical study defining foundations suitable for each building site which requires a building permit before commencing any construction of an improvement on the site.

TEMPORARY STRUCTURES AND TEMPORARY HOUSING:

No structure of a temporary or a mobile nature, trailer, tent, mobile home or motor home shall be placed on an estate except that the Architectural Committee may grant a permit for any of the above on an estate during the construction phase of a permanent structure. An application for such a permit shall be handled in the same manner as other applications under the (c) procedure clause of the Architectural Committee as previously set forth herein. In no event shall such a permit be granted for a period in excess of one year.

UTILITIES, EASEMENTS AND RIGHTS-OF-WAY:

Each lot shall be subject to all easements and rights-of-way of record, and those which the owner may grant for the installation and maintenance of water, sewage, power, telephone and other utility lines. No shrubbery, trees, plantings or buildings shall be placed or built upon any such right-of-way or easement.

"Owners waive their rights to protest the creation of the one or more concurrent or sequential Special Improvement Districts for street light construction, street light energy and maintenance, and other improvements which are incidental to street light construction."

Installation of all new utility lines, including but not limited to water, sewer, power, cable television, and telephone shall be buried underground and shall be confined to the easements depicted on the plat.

Public access will be delineated for access to the buffer park east of Kainu at 13th street. The owners agree that this public access delineation may be extended to

provide access from the buffer park to the "around the city trail system" when and if such an area is defined to the mutual satisfaction of the city and the owners.

The owners agree that they will vote on expanding the natural trail easement currently set aside as common area/open space/ parkland for the benefit of future inhabitants between the 9th and 13th street bridges to include public access delineation. This natural path common area for the benefit of future inhabitants is inside the 100 year flood plane as defined on the plat. In order to offer public access to this natural trail, the owners would have to expand the delineated area to include on area outside of the current location of this 4 foot natural trail.

The owners would review and vote on any mutually agreeable alternative presented by the City and the owners which did not interfere with the owners building plans.

FENCES:

The design of all fences and the method of construction is subject to mandatory approval of the Architectural Committee as previously set forth under the (b & c) procedure clauses of the Architectural Committee.

SIGNS:

Any sign displayed within the Island at Rock Creek Subdivision shall not exceed four square feet in area and there shall not be more than one sign displayed on an individual lot. Real estate for sale signs are exempt.

SERVICE GUARANTEE:

The property developer guarantees that street, water, sewer, storm drainage, water runoff and sidewalks will be provided as shown on the final approved and filed plat. All connection fees to any service are the responsibility of the lot or unit owner.

SUBDIVISION OF INDIVIDUAL ESTATES:

Each lot must remain as it is in the defined subdivision plat of the Island at Rock Creek Subdivision as filed in the public records of Carbon County, Montana. This does not preclude the merger of any lot into another lot. Any deviation must be approved by the Architectural Committee.

VEHICLE PARKING:

All vehicles, boats, or trailers of any kind, whether self-propelled or not, shall be parked in such a manner that they are not a nuisance, aesthetically or otherwise, to the other estate owners. No vehicles (trailers, boats, trucks, motor homes) exceeding an overall length of twenty-two feet shall be kept on any Island at Rock Creek Subdivision lot unless that vehicle is kept inside an enclosed garage or an Architectural Committee approved fenced area. No inoperable vehicles will be stored on any lot other than inside a garage. No parking on any private street within the subdivision is allowed.

SALE OF SURFACE AND SUBSURFACE MATERIAL:

KCC, LLC is the majority owner of all mineral and water rights in the subdivision. Island at Rock Creek Subdivision owners are prohibited from selling or removing any material from the surface or subsurface of Island at Rock Creek Subdivision that would result in a change of the appearance and/or level of the subdivision, other than as a normal incident to residential construction, or development at the site, without the prior written approval of the Architectural Committee. No mineral or water rights shall be transferred with title.

ANIMALS:

The keeping or maintaining of cattle, swine, goats, sheep, fowl or other barnyard animals, livestock or poultry is prohibited in said Subdivision. No animals will be allowed to run loose except when accompanied by someone capable of keeping the animal under control. This paragraph shall in no way refer to the indigenous wild animals and fowl inhabiting the Island at Rock Creek Subdivision area. Supplemental feeding of such wild fowl and animals shall not constitute keeping an animal or fowl.

REFUSE, RUBBISH, TRASH AND JUNK:

All waste, refuse, rubbish, trash and junk shall be kept and disposed of in a sanitary manner in accordance with the City of Red Lodge Development Codes and/ or specifications set forth by BFI. All household waste refuse, rubbish, and trash shall be kept in closed containers inside a residence, garage and shall be deposited for removal at appropriate solid waste collection points. No automobiles, trucks, tractors, or other vehicles, whether self-propelled or not, shall be permitted to remain on an estate in a non-operable condition. All refuse, rubbish and trash of every kind (except leaves and dead limbs) and junk shall be removed by the estate owner.

CLEARING OF TREES:

Approval shall be obtained from the Architectural Committee to clear, cut down, or kill any trees on any estate.

LANDSCAPING:

Any area on any Island at Rock Creek Subdivision land barren as a result of any construction or improvement shall be replanted by the owner of the said estate within six months of construction completion. Any and all landscaping shall have approval of the Architectural Committee.

ISLAND AT ROCK CREEK ASSOCIATION, INC.

There has been formed a mutual benefit non profit corporation under the laws of the State of Montana, known as the Island at Rock Creek Association, Inc. (the Association). All persons and entities claiming by, through or under the Declarant shall

be deemed to have agreed to become, and shall be, a member of the Association, which membership shall be limited to every beneficial owner, as distinguished from a security owner, of a lot or unit in the Subdivision, and which membership shall be appurtenant to and may not be separated from ownership of any such lot or unit.

The terms member and owner shall be further defined in the bylaws of the Association. The terms single family, multi family, unit and lot owner shall be further defined in the bylaws of the Association.

The bylaws shall provide, among other things, for the payment of fees, dues, maintenance for common areas, insurance, maintenance for private roads, special lighting district assessments, snow removal and all other maintenance requirements and assessments by all of the members of the Association for the purposes stated in the bylaws. All members shall be responsible for payment of such fees, dues and assessments as are provided for in the bylaws in such amounts as may be specified in the bylaws and determined by the Board of Directors of the Association from time to time.

Voting rights of members shall be as specified in the bylaws as they exist and as they may be amended from time to time.

The powers and duties of the Association shall be as stated in the Articles of Incorporation of the Association and as stated in the bylaws as they exist and as they may be amended from time to time.

By acceptance of a deed or other instrument of conveyance for a lot and/or lots or a unit or units in the Subdivision, each lot or unit owner shall be deemed to covenant and agree to pay to the Association such fees, dues and assessments as may be determined in accordance with the bylaws of the Association, and to abide by the Associations bylaws as they exist and as they may be amended from time to time.

NUISANCES:

Nothing shall be done or permitted on any Island at Rock Creek Subdivision property which is or may become an annoyance or nuisance to the other estate owners.

Specifically labeled, but not all inclusive, as nuisances are the following:

- (a) Noxious Weeds - Noxious weeds as defined by State statute, and specifically including "knap weed", must be constantly controlled by the land owner in accordance with State law.
- (b) Erection and use of any light that is attached to and higher than the building to which it is attached.
- (c) Erection and use of any light attached to a pole or structure other than a building that exceeds six feet in height above the surrounding terrain.
- (d) Television antennas more than ten feet higher than the roofline of the main residence.
- (e) Any chimney that does not have a spark arrestor permanently attached over it through which all smoke must pass.
- (f) Propane or other bottled gas tanks that are not shielded from view by either an

approved fence or by planting of trees or shrubbery.

(g) All burning of trash and waste except for the burning of leaves, wood and coal under the direct supervision and control of a responsible person with the appropriate permits.

(h) Any discharge of any kind of fireworks.

(l) Operation of chain saws and other noisy equipment other than between 7:00 AM and 7:00 PM.

(j) Operation of trail bikes, motorcycles, all terrain vehicles, snowmobiles, and/or any other noisy vehicles of any kind.

(k) Barking dogs, howling dogs, yowling cats, crowing fowl and baaing animals.

(l) And all other noisy, smelly, unsightly things, activities, animals and fowl.

(m) Neither hunting nor the discharge of any rifle, shotgun, pistol or other firearms shall be permitted at any time on any lot.

(n) No noxious or offensive trade or activity shall be carried on upon any lot of said subdivision, nor shall anything be done thereon, which shall constitute an annoyance or nuisance to the residential neighborhood.

Homeowner Association fees will be assessed as determined by the Architectural Committee and set forth in each purchase contract.

ENFORCEMENT:

These Restrictions, Covenants and Conditions are to run with the land and are to be binding upon all parties and all persons claiming ownership under them. Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate them either to restrain violation or to recover damages. The failure to enforce any right, reservation, restriction, covenant, or condition contained herein, however long continued, shall not be deemed a waiver or the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent there to, and shall not bar or affect its enforcement. The invalidation by any court of any restriction, covenant or condition herein contained shall not in any way affect any of the other restrictions, covenants, and conditions.

The City of Red Lodge may take action to enforce the restriction against locating any building within the flood plain and may enforce the guarantee that streets, water, sewer and storm drainage shall be provided as shown on the final plat.

ALTERATION OF THE RESTRICTIONS, COVENANTS, AND CONDITIONS:

All of the property described on Exhibit A and any additional property subjected to this Declaration shall be held, sold, used, and conveyed subject to the following covenants, conditions and restrictions, which are for the purpose of protecting the value and desirability of and which shall run with the title to the real property subject to this Declaration. This Declaration shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

RESTRICTED CONDITIONS THAT RUN WITH THE LAND:

These restricted conditions below and all of the 18 conditions of the preliminary plat approval for this subdivision MAY NOT BE changed without both a majority approval of the owners and the written approval of the Red Lodge city council.

No structure may be built within the designated 100 year floodplain.

Unless provided by the developer/seller, each individual lot owner will, at his own expense, obtain a geotechnical study defining foundations suitable for each building site which requires a building permit before commencing any construction of an improvement on the site.

Mining operations were historically performed on these lands. Materials such as buried foundations, timbers, coal slack, etc. may be present.

No alteration, construction within, or filling in of any of wetlands or drainage areas is allowed without the proper permits.

Each year groundwater levels may be within 4 to 8 feet of the ground surface in some areas, during certain times of the year, at creek side lots and lots at street level along Kainu Ave., may possibly be higher during periods of 30 to 100 year flood flows in Rock Creek.

Overhead High Voltage power lines exist nearby and structures must be placed outside the utility easement.

Steep slopes can be found along certain areas of the slope of the east bench. No building is allowed in areas with slopes greater than 25% unless an evaluation and plan are prepared by a licensed geotechnical engineer in the State of Montana.

A report prepared by Northern Testing of Billings, Montana notes portions of the slope along the southeast bench above and possibly encroaching lot 4 Block III Phase II of the preliminary plat dated 4-15-1999 may contain areas of high risk of subsidence potential due to the past mining activity. Before siting a structure along the slope of the southeast bench, a geotechnical engineer must evaluate the area.

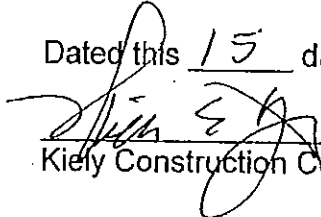
Excavation activities at the site should be observed and appropriate measures be taken if evidence of potential contamination is observed. In addition, the design architect and engineer for any construction should use all of the available data to design buildings that will limit infiltration of vapors such as methane, radon, hydrogen sulfide, etc. Best practices must be employed in all construction of all buildings to protect against the possibility of mold, moisture and mildew infestation.

The Declaration of Restrictions, Covenants and Conditions may be amended or altered in whole or in part by a simple majority vote of the owner or owners of the total lots or units. Except those items set forth in the section titled "**RESTRICTED CONDITIONS THAT RUN WITH THE LAND**" *may not be repealed or amended* without the written

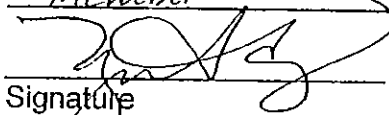
consent of the City of Red Lodge City Council. No amendment may remove, revoke, or modify any article, clause or statement as set forth in the Section titled "RESTRICTED CONDITIONS THAT RUN WITH THE LAND", or items that were included or required as a condition of subdivision approval by the owners without a majority vote by the owners and written approval by the City.

Any amendment or alteration shall be effective upon the recording date in the office of the County Clerk and Recorder.

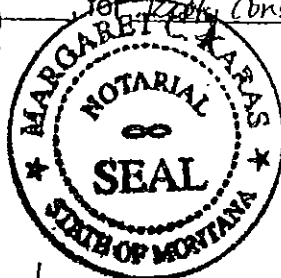
Dated this 15 day of September, 2005.


Kiely Construction Company, LLC

This instrument was acknowledged before me this 15 day of September, 2005, by William E. Kiely, for Kiely Constructi Co, as its Member.


Signature

Margaret C. Karas
Printed Name



Notary Public for the State of Montana, residing at Red Lodge.
My Commission expires 12/16/2006.