

134250 RECORDS      Pages: 6  
STATE OF MONTANA MADISON COUNTY  
RECORDED: 12/24/2009 12:45 KOI: COVENANTS  
Peggy Kaatz CLERK AND RECORDER  
FEE: \$42.00      BY: [Signature] Deputy  
TO: CLEAR CREEK REALTY PO BOX 708, SHERIDAN MT 59749

pm  
pm

After Recording Return To:  
Passamari South Major Subdivision  
Road and Park Maintenance Association  
C/O PO Box 708  
Sheridan, MT 59749

**DECLARATION OF CONDITIONS, COVENANTS, AND RESTRICTIONS**

**for the**

**PASSAMARI SOUTH MAJOR SUBDIVISION**

This *Declaration* is made this 22 day of December, 2009, by the undersigned, Don Tolson, as Attorney-In-Fact for Declarant Mary C. Tolson (hereinafter the "Declarant").

WHEREAS, Declarant is the owner of Lots 1 through 5, inclusive, of Passamari South Major Subdivision, Records of Madison County, Montana, hereinafter referred to as the "Property," and more particularly described as follows, to-wit:

Lots 1, 2, 3, 4, and 5 Passamari South Major Subdivision, filed for record on the 22 day of December, 2009, in Plat Book 4, at Page 588, records of Madison County, Montana, all located in the S ½ of Section 26, Township 4 South, Range 5 West, Montana Principal Meridian; and

WHEREAS, Declarant desires to subject the Property to the provisions of this *Declaration* for the benefit of the Property and its present and future owners as hereinafter specified, and will convey the property subject thereto;

NOW, THEREFORE, Declarant hereby declares that all of the Property is and shall be held and conveyed upon and subject to the provisions of this *Declaration*. This *Declaration* shall constitute covenants running with the land and shall be binding upon all persons having any right, title, or interest in the Property or in any part thereof, their heirs, successors, and assigns, and shall apply to each present and future owner thereof.

**1. Passamari South Major Subdivision Road and Park Maintenance Association:** Owners of lots 1 through 5 of Passamari South Subdivision shall be members of the Passamari South Major Road and Park Maintenance Association. All owners of lots 1 -5 shall be responsible to the Association for the payment of any fees established by the Association for the operation and maintenance of any and all facilities and the control of the subdivision as authorized by the Bylaws of the Association.

**2. Land Use and Building Type:**

(a) In order to promote an orderly development of the property the following setbacks and side yard requirements shall be adhered to, to-wit:

1. Front/ Ray Lane Setback – no less than 20 feet nor more than 40 feet for Lots 1 thru 4 from Ray Lane boundary line. Lot 5 setbacks shall be approved by the Declarant prior to property development.

2. Side Yard Setback - minimum of 10 feet from lot line, road boundary line or by utility easement width, whichever is larger, for any structure not including fencing.

(b) Any primary residential dwelling shall have a minimum of 1,200 square feet of living space on the ground level, or 1,600 square feet of contiguous total living space when the structure is two stories. All dwellings and associated buildings on Lots 1 through 4 of the Property described herein shall have not less than a 5/12 roof pitch. Maximum height for any structure shall be thirty-two (32) feet. This paragraph does allow for the construction of a guest quarters, private office, studio or shop under a separate roof. Siding and roofing materials must have the same exterior qualities, including siding type and color, as any existing improvement. More than two residential structures, (townhouse, condominium, duplex, house with separate in-law quarters excluding guest house intended for occasional

occupancy), may be built on Lots 1 – 5 of the Property if approved by a variance (see Section 8). Any two residential structure(s) must comply with State of Montana approved sanitary restrictions.

(c) No lot may be further subdivided without approval from Madison County and a variance from these Covenants (see Section 8 herein).

(d) No lot owner may build, construct, cause to be constructed or set up any garage or garages for use other than for the storage of private automobiles or for the storage of personal property of the occupants of residences upon said lots. Any such garage or garages shall be used in a manner consistent with residential practices. Use of a garage or garages for personal hobbies shall be allowed so long as no commercial activity, excluding activities as described in 3.(c) herein, is conducted therein.

(e) No trailer house, mobile or manufactured home shall be set up or moved onto the premises as a permanent home or dwelling, nor shall the same constitute a part or portion of a permanent home or dwelling thereon, with no exceptions. The amendment and variance provisions of this *Declaration* shall be inapplicable to this sub-paragraph. All residential structures must conform to Uniform or International Building Codes. Modular homes are allowed as long as the structure complies with restrictions and conditions described herein. However, if the frame, or the chassis used to transport the unit, is an integral part of the floor system, then such structure shall be considered a trailer, mobile or manufactured home and shall not be allowed.

(f) No previously occupied dwelling structures may be moved onto the property from other locations without approval by variance (see Section 8).

(g) Garages and other detached buildings shall conform to the same architecture and building materials as the main dwelling structure. Stand alone garages constructed on a lot adjacent to the owner's residence shall conform to the architecture and color of the main dwelling. All garages shall have main doors facing access street or 90° from access street.

(h) Main residential dwellings on Lots 1 through 4 shall be built in such a manner that the same will face South unless otherwise approved by a variance (see Section 8).

(i) The temporary occupancy of a trailer home is permissible for a period not to exceed 6 months, while construction is in progress on a permanent home. Said structure shall not be placed on the property prior to issuance of necessary permits and construction of permanent structure shall commence within 30 days.

(j) Any fencing of property, whether perimeter or otherwise, shall be approved by Declarant or majority of lot owners described herein. This approval shall be in writing.

(k) All driveways for any structure constructed on the Property shall have a culvert or culverts to direct storm water flow along the roadway or otherwise to designated storm water areas as appear on the Plat of said subdivision.

### **3. NUISANCES:**

(a) No portion of the Property shall be used for any purpose prohibited by law.

(b) No portion of the Property shall be used as a storage place for automobiles or vehicles in a state of disrepair or dismantlement.

(c) Lots 1 through 4 of said subdivision shall be utilized only for residential purposes. No commercial business of any sort shall be allowed. However, in-home businesses may be allowed as long as such business is secondary to the residential function, does not increase vehicle traffic, and does not have any associated signage. A child daycare business with no more than six clients is permitted provided such business conforms to all local, state and federal regulations.

(d) No portion of said premises shall be used to breed, feed, corral, keep, or store hogs, sheep, goats, cows, horses, chickens, or any other kind of fowl or animal other than the usual and ordinary pets

kept for the private use of the occupants of said suburban-type premises unless approved in writing by four (4) of the lot owners of Lots 1 through 5. All pets must be kept upon and properly controlled on premises and shall not be allowed to create a nuisance to nearby landowners. An atypical barking dog shall be considered a nuisance. All lot owners must control pets while off premises in accordance with local, state and federal laws or ordinances.

(e) It shall be the responsibility of the owner of any lot to keep the premises free from noxious weeds and to keep mown any tall or dry vegetation to prevent any hazard of fire. Responsibility for noxious weed management rests with the owner any Property.

(f) No street storage of vehicles of any kind shall be allowed, including utility trailers, trailer houses, automobiles, trucks or any other object which might be considered an eyesore. Street storage includes such area as that which projects from the normal set backs.

**5. EASEMENT FOR INSTALLATION AND MAINTENANCE:** Utility facilities are reserved as shown on the recorded plat of said subdivision. Individual lot owners are directed to familiarize themselves with the location of such easements. No structure, planting, or other material shall be placed or permitted to remain in such a manner as to interfere with the construction, maintenance, or repair of any utility for which such easement was established. Free and unencumbered access to and along all utility easements shall be maintained by each lot owner in said subdivision. Utility easements are not to be used as alleys or roadway by the public or adjacent lot owners.

**6. BUILDING REGULATIONS:** Construction of any building or structure on the Property shall comply with the minimum property standards as required by the Federal Housing Authority of the United States Government and local, state and national building codes. Building codes shall be of the latest revision enforced by any governing agency or department with jurisdiction to enforce such codes.

**7. AMENDMENT TO CONDITIONS, COVENANTS & RESTRICTIONS:** This *Declaration* may be amended by any written instrument signed by not less than four (4) of the five (5)

owners of lots within the Passamari South Major Subdivision. Any approved amendment to this Declaration shall be recorded in the records of Madison County.

**8. VARIANCE PROCEDURE:** Any owner of any lot in said subdivision may seek a variance of any condition, covenant or restriction hereunder only by securing the prior written approval of owners of at least four (4) of the (5) lots within said subdivision. Any variance granted by such owners shall be in written form and shall be recorded in the records of Madison County, Montana, all at the expense of the applicant.

**9. USE OF LOT 6, PASSAMARI SOUTH MAJOR SUBDIVISION TO INCLUDE STORM WATER RUNOFF:** Declarant hereby reserves the right, opportunity and ability to utilize all or any portion of Lot 6, Passamari South Major Subdivision for storm water runoff or management purposes for the Property.

DATED THIS 22 DAY OF December, 2009.

*Mary C. Tolson* ~~AKA Mary Tolson~~ by *Don Tolson*, Attorney-In-Fact.

Mary C. Tolson  
By Don Tolson, Attorney-In-Fact

STATE OF MONTANA        )  
  :SS  
County of Madison        )

This instrument was acknowledged before me on the 22-day of December 2009, by Don Tolson as Attorney-In-Fact for Mary C. Tolson.



KAREN TALLEY  
NOTARY PUBLIC for the  
State of Montana  
Residing at Sheridan, Montana  
My Commission Expires  
July 8, 2012

*Karen Talley*  
Notary Name Printed: KAREN TALLEY  
Notary Public for the State of Montana  
Residing at: Sheridan, Montana  
My Commission expires: July 6, 2012