IN THE SUPREME COURT OF THE STATE OF MONTANA
CAUSE NO. DA 25-0677

KEN NAYLOR, RAE NAYLOR, WARREN HANSON, VALERIE HANSON, WESLEY SHUEY, JENNIFER MONTGOMERY, MICHAEL McCANDLESS, DEBORARAH McCANDLESS, BRYAN MANN, ASHLEY MANN, THOMAS HARSCH, TERESA HARSCH, BRETT BARTLETT, ANDREW BROWN, CARLTON CRIDER, WILLIAM BRADLEY, JENNIFER BRADLEY, GABRIEL FLANSCHA, SHERRI FLANSCHA, ROBERT VARNEY, TROY HOFFMAN, DAVID SHREEVE, WENDY SHREEVE, and CHRISTOPHER DIOS,

Plaintiffs and Appellees,

v.

ROUNDUP MESA LANDOWNERS ASSOCIATION,

Defendant and Appellant.

APPELLEES' ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF THE ISSUE

The issue is whether the District Court manifestly abused its discretion by enjoining a property association from threatening foreclosure proceedings, issuing liens, and demanding payments from homeowners who are neither members of, nor required to be members of, the property association.

STATEMENT OF THE CASE

Plaintiffs-Appellees (hereinafter "Homeowners") are the owners of lots in the Roundup Mesa Subdivision (the "Subdivision") in Musselshell County, Montana, which are governed by Restrictive Covenants ("Covenants"). The Covenants have never been amended and do not require any homeowner to become a member of the Roundup Mesa Landowners Association ("RMLA"). The decision to become a member of RMLA is voluntary. The Homeowners notified RMLA of their decision to withdraw from membership. RMLA accepted each withdrawal and stopped providing them with correspondence, annual meeting notices, association website access, and other so-called membership benefits.

Despite RMLA's acceptance of the withdrawals, RMLA filed liens against the Homeowners' properties seeking payment of membership dues and threatening foreclosure proceedings if the liens were not satisfied.

On July 31, 2025, the Homeowners filed their Complaint for Declaratory, Injunctive, and Other Relief in the Fourteenth Judicial District Court for Musselshell County. (*Complaint*, Doc. 1). The Homeowners simultaneously filed their Motion

for Preliminary Injunction and Supporting Brief. (*Motion for Preliminary Injunction*, Doc. 9; *Brief in Support of Motion for Preliminary Injunction*, Doc. 10).

The case was originally assigned to the Honorable Judge Adam M. Larsen, who recused and invited the Honorable Judge Heather Perry to assume jurisdiction. (*Order of Assumption*, Doc. 11). Judge Perry scheduled a hearing on the preliminary injunction for August 29, 2025. (*Order Setting Hearing*, Doc. 12).

RMLA was served with process on August 5, 2025. (*Notice of Service*, Doc. 13). RMLA filed its Answer to the Complaint on August 27, 2025 (*Answer to Complaint*, Doc. 15), and its Brief in Opposition to Preliminary Injunction on August 28, 2025 (*Brief in Opposition to Preliminary Injunction*, Doc. 16). The Court held a hearing on the Homeowners' Preliminary Injunction Motion on August 29, 2025. (*Order Granting Preliminary Injunction*, Doc. 17; RMLA's Appendix 1-8). At the conclusion of the hearing, Judge Perry granted preliminary injunction in favor of the Homeowners and required RMLA to withdraw the liens. (*Hearing Transcript Excerpts with Oral Rulings*, RMLA's Appendix 9-25).

The Homeowners' Complaint seeks declaratory relief, preliminary and permanent injunctive relief, and relief under Montana's Anti-Intimidation Act. (*Complaint*, Doc. 1). The Homeowners' claim is premised on this Court's precedent holding that mandatory membership in an association is a precondition to mandatory payment of association assessments. *Bordas v. Virginia City Ranches Ass'n*, 2004

MT 342, ¶ 22, 324 Mont. 263, 102 P.3d 1219. When the governing Covenants do "not make membership mandatory, the Association cannot compel the payment of assessments from those who exercise the right to decline membership." *Id*.

On September 1, 2025, the District Court issued an Order granting the preliminary injunction. (*Order Granting Preliminary Injunction*, Doc. 17; RMLA's Appendix 1-8). The District Court held the Homeowners "are likely to succeed on the merits in that the Covenants do not require membership in RMLA and the By-Laws and Articles of Incorporation do not reference or incorporate by reference any particular legal or property description." (*Order Granting Preliminary Injunction*, Doc. 17, p. 6-7; RMLA's Appendix 6-7). The District Court noted that money damages were not sufficient to "restore the harm" to the Homeowners' possessory interests in real property. *Id*. The District Court determined the "title problems and irreparable harm" faced by the Homeowners outweighed the hardship of precluding RMLA from imposing "property assessments for road maintenance and other amenities." *Id*. Lastly, the District Court determined that a preliminary injunction was aligned with the public interest in ensuring that property records are "accurate and clear." *Id*.

On September 3, 2025, RMLA filed a Motion for Substitution of Judge. (*Motion for Substitution of Judge*, Doc. 18). On September 10, 2025, the Honorable Judge Brenda Gilbert accepted an invitation to assume jurisdiction over the case.

(*Invitation to Assume Jurisdiction and Order*, Doc. 21). On September 26, 2025, RMLA filed its Notice of Appeal. (*Notice of Appeal*, Doc. 22). After two requests for extension, RMLA filed its Opening Brief on January 23, 2026. (RMLA's Opening Brief dated January 23, 2026).

STATEMENT OF FACTS

The Roundup Mesa Subdivision was established through a Declaration of Covenants dated October 27, 2000, and recorded in Musselshell County, Montana on November 27, 2000. (*Declaration of Covenants attached as Exhibit A to Complaint*, Doc. 1; RMLA's Supp. Appendix 107-113). The Covenants contain a property description and have not been amended. *Id*. The Covenants contain no requirement for homeowners in the Subdivision to become members of RMLA. *Id*.

RMLA was incorporated on November 22, 2000. (RMLA's *"Articles of Incorporation" attached as Exhibit B to Complaint*, Doc. 1). The By-laws governing RMLA describe the association as a "nonprofit eleemosynary[1] corporation." (RMLA's "*By-Laws" attached as Exhibit C to Complaint*, Doc. 1). RMLA's Articles of Incorporation ("Articles") identify the purpose of RMLA is "[t]o provide for the maintenance of common roads, including maintenance and replacement of road signs, snow removal and right of way weed control." (RMLA's *Articles of*

[1] "Eleemosynary" is defined by the Merriam-Webster dictionary as "of, relating to, or supported by charity."

Incorporation attached as Exhibit B to Complaint, Doc. 1). RMLA's Articles and By-laws do not contain property descriptions. (RMLA's *Articles of Incorporation* and *By-Laws attached as Exhibits B & C to Complaint*, Doc. 1).

Provision 3 of the Covenants states that "[RMLA] is totally responsible for providing and maintaining non-public roads. Owners association shall assess all landowners an annaul [sic] fee for said maintenance. Until 80% of these tracts are sold, said annual amount shall be $100 per tract." (*Declaration of Covenants attached as Exhibit A to Complaint*, Doc. 1; RMLA's Supp. Appendix 107-113). The Covenants provide that "Provisions 3, 11, 12, 13 and 14 may not be amended or revoked without written approval of the Musselshell County Commissioners." *Id*. RMLA purported to increase the annual membership assessments from $100 to $135 without a vote from voluntary association members or approval of the Musselshell County Commissioners. (RMLA's *Delinquency Notices* and *General Liens attached as Exhibits E & F to Complaint*, Doc. 1).

Beginning on March 7, 2025, each of the Homeowners individually notified RMLA of their decision to withdraw from membership with the association. (Homeowners' *Opt-Out Letters attached as Exhibit D to Complaint*, Doc. 1). RMLA acknowledged and accepted the Homeowners' withdrawal and discontinued the provision of correspondence, annual meeting notices, association budgets, meeting

agendas, website access, and other membership benefits to the Homeowners. (Hearing Transcript pp. 9:11 – 10:22; RMLA's Supp. Appendix 9-10).

On June 23, 2025, despite accepting the Homeowners' withdrawal from membership, RMLA imposed liens against the Homeowners' properties. (RMLA's *Delinquency Notices* and *General Liens attached as Exhibits E & F to Complaint*, Doc. 1). RMLA's communications with the Homeowners threatened that "[i]n 2025, the RMLA Board **will be seeking judicial relief which WILL include foreclosure**." (RMLA's *Delinquency Notices attached as Exhibit E to Complaint*, Doc. 1, p. 22) (emphasis in original). It is the policy of RMLA that unpaid liens will result in foreclosure proceedings against the Homeowners. (Hearing Transcript pp. 11:7 – 12:1; 14:18 – 14:25; 42:9 – 42:19; 48:16 – 48:22; 95:1 – 95:6; RMLA's Supp. Appendix 11, 12, 14, 42, 48, & 95).

STANDARD OF REVIEW

This Court reviews a grant or denial of a preliminary injunction for a manifest abuse of discretion. *Waddell v. Studer*, 2025 MT 269, ¶ 10, 425 Mont. 59, 580 P.3d 695. A manifest abuse of discretion is one "that is obvious, evident, or unmistakable." *Id*., citing *Flying T Ranch, LLC v. Catlin Ranch, LP*, 2020 MT 99, ¶ 7, 400 Mont. 1, 462 P.3d 218. When evaluating a preliminary injunction, this Court will not "determine the underlying merits of the case giving rise to the preliminary

injunction, as such an inquiry is reserved for a trial on the merits." *Bam Ventures, LLC v. Schifferman*, 2019 MT 67, ¶ 7, 395 Mont. 160, 437 P.3d 142.

"The purpose of a preliminary injunction is to prevent further injury or irreparable harm pending an adjudication on the merits." *Waddell* at ¶ 17, citing *Flora v. Clearman*, 2016 MT 290, ¶ 21, 385 Mont. 341, 384 P.3d 448. Irreparable harm is an injury or wrong: "(1) not fully or effectively remedied by compensatory damages; (2) in regard to which adequate, non-speculative compensation is difficult to determine; or (3) of a recurring or continuous nature such that full and effective redress would otherwise require a multiplicity of successive actions at law." *Davis v. Westphal*, 2017 MT 276, ¶ 26, 389 Mont. 251, 405 P.3d 73 (citations omitted). A preliminary injunction may issue "where the plaintiffs can establish that money damages will be an inadequate remedy due to impending insolvency of the defendant." *Van Loan v. Van Loan*, 271 Mont. 176, 179, 895 P.2d 614, 616 (1995).

A district court's interpretation of a restrictive covenant is a conclusion of law reviewed for correctness. *Waddell* at ¶ 20, citing *Lewis & Clark Cnty. v. Wirth*, 2022 MT 105, ¶ 14, 409 Mont. 1, 510 P.3d 1206. "Restrictive covenants are construed under the same rules of construction as other contracts: courts read declarations of covenants on their four corners as a whole, and the terms are construed in their ordinary or popular sense." *Bordas* at ¶ 24.

SUMMARY OF ARGUMENT

It was not a manifest abuse of discretion for the District Court to issue a preliminary injunction to prevent RMLA from imposing liens and threatening foreclosure proceedings against the Homeowners. The applicable Covenants do not require membership with RMLA and, as such, the Homeowners are not required to pay membership dues. *Bordas* at ¶ 22. While RMLA's By-laws and Articles purport to require membership, those documents do not comply with recording requirements and are ineffective to serve as an encumbrance against the Homeowners' properties. (RMLA's *Articles of Incorporation* and *By-Laws attached as Exhibits B & C to Complaint*, Doc. 1). Without the authority to levy assessments under the Covenants, RMLA lacks authority to issue liens subjecting the Homeowners to irreparable harm through acceleration of their mortgages or foreclosure proceedings. *Bordas* at ¶ 23. Moreover, given RMLA's admitted "precarious financial situation," a money judgment would be insufficient to remedy the irreparable damage to the Homeowners through foreclosure proceedings or the loss of their homes. *Van Loan*, 271 Mont. at 179, 895 P.2d at 616. The Homeowners are likely to succeed on the merits and would be irreparably damaged absent injunctive relief.

The District Court appropriately weighed the balance of equities and the public interests involved. The District Court's preliminary injunction permitted RMLA to levy membership fees from landowners who voluntarily chose to remain

members, but preserved the "last actual, peaceable noncontested condition which preceded the pending controversy." *Benefis Healthcare v. Great Falls Clinic*, 2006 MT 254, ¶ 14, 334 Mont. 86, 146 P.3d 714. The last peaceable condition of the parties prior to this action was RMLA's acceptance of the Homeowners' withdrawal from membership. RMLA's issuance of liens and threats of foreclosure violated the public interest in ensuring that encumbrances and restrictions on real property be properly recorded. *See Earl v. Pavex, Corp*., 2013 MT 343, ¶ 20, 372 Mont. 476, 313 P.3d 154 (holding proper recording of instruments is fundamental to the scheme of providing constructive notice). The threat of irreparable injury to the Homeowners tipped "the balance of hardships between the parties … sharply in favor of [the Homeowners]." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1137 (9th Cir. 2011).

ARGUMENT

The Montana Legislature has amended Section 27-19-201(1), MCA, to mirror the federal preliminary injunction standard set forth in United States Supreme Court precedent. The statute provides:

> (1) A preliminary injunction order or temporary restraining order may be granted when the applicant establishes that:
>
> (a) The applicant is likely to succeed on the merits;
>
> (b) The applicant is likely to suffer irreparable harm in the absence of preliminary relief;

(c) The balance of equities tips in the applicant's favor; and

(d) The order is in the public interest.

The Homeowners established each element under MCA § 27-19-201(1), and the District Court did not abuse its discretion by issuing a preliminary injunction.

a. The District Court correctly determined that the Homeowners demonstrated a likelihood of success on the merits.

It is a longstanding principle in Montana law that the covenants applicable to landowners are "those which were in place and of record" at the time the property was purchased. *Bordas*, ¶ 21; see also MCA § 70-17-901. Restrictive covenants are construed under the same rules as other contracts and "courts read declarations of covenants on their four corners as a whole." *Bordas*, ¶ 24; see also *Beebe v. Bd. of Directors of Bridger Creek Subdivision Cmty. Ass'n*, 2015 MT 183, ¶ 16, 379 Mont. 484, 352 P.3d 1094. When "[c]ovenants do not make membership mandatory, the Association cannot compel the payment of assessments from those who exercise the right to decline membership." *Bordas*, ¶ 22.

In *Bordas*, property owners objected to the assessment of membership dues by a homeowner's association on the grounds that the restrictive covenants did not require membership in the homeowner's association. *Id*., ¶¶ 4-10. The applicable covenants authorized the creation of the association, but importantly, there was "no language within the Original Covenants which *required* [the property owners] to become Association members." *Id*., ¶ 21 (emphasis in original). The property owners

refused to pay dues and challenged the liens and the Association's ability to levy dues in district court. *Id*., ¶ 10. The property owners won at the district court level and the decision was affirmed by this Court on appeal. *Id*., ¶ 24.

Central to the *Bordas* decision was the fact that the restrictive covenants did not make membership in the Association mandatory. *Id*. On this basis, the Association was precluded from compelling payment of membership assessments. *Id*. This Court held that when an association lacks authority to levy assessments, it is likewise "not entitled to place liens against [any landowner's] property." *Id*., ¶ 23. This Court empathized with the association that "without the power to assess, the Association cannot provide the benefits promised by the Covenants." *Id*., ¶ 22. However, the Court reasoned that the potential for "undermin[ing] the Association's ability to serve its members [was] unfortunate, but not determinative." *Id*.

Here, relying on the principle of *stare decisis*, the District Court found the *Bordas* decision relevant. There is no dispute that the Covenants govern the Homeowners' properties. As was the case in *Bordas*, there is no language in the Covenants which can be construed to require membership in RMLA. The Covenants control and do not require membership in RMLA, nor do they authorize RMLA to force non-members to pay assessments.

RMLA attempts to distinguish the *Bordas* case by arguing that the Covenants here authorize the "Association's assessment power." (RMLA's Opening Brief, p.

15). RMLA's argument puts the cart before the horse. The *Bordas* decision makes clear that "the precondition to mandatory payment of assessments is mandatory membership." *Bordas*, ¶ 22. RMLA cannot point to language within the Covenants requiring the Homeowners to become members—because no such language exists.

Further, RMLA's By-laws and Articles are ineffective to require membership in the association. While RMLA insists that these documents separately clarify that membership is mandatory, the District Court correctly determined that these documents fail to satisfy the requirements to be considered servitudes and burdens on the Homeowners' properties. (*Order Granting Preliminary Injunction*, Doc. 17, p. 6-7; RMLA's Appendix 6-7). To effectively serve as constructive notice, the By-laws and Articles must be "recorded as prescribed by law." MCA § 70-21-302. Neither document contains the legal description of the property it purports to encumber, and thus, both documents fail to satisfy the recording requirements prescribed by law. MCA §§ 70-20-103; 70-20-201; and 70-21-301.

Based on *Bordas* and Montana's statutory recording requirements, the District Court correctly determined that the Homeowners are likely to succeed on the merits. RMLA lacks authority to levy dues, fees, or assessments from the Homeowners who have all withdrawn from membership with RMLA. Only the Covenants have been properly recorded, but the Covenants do not require membership in RMLA.

Therefore, RMLA is not entitled to demand membership assessments, impose liens, or threaten foreclosure against the Homeowners' properties.

b. The District Court correctly determined that the Homeowners would suffer irreparable injury absent injunctive relief.

RMLA misconstrues the nature of the Homeowners' injury to argue that injunctive relief is inappropriate to protect them from the *harm* of paying the $100 or $135 membership assessment. (RMLA's Opening Brief, pp. 17-18). On these grounds, RMLA claims that the harm is purely economic. *Id*. Yet, absent injunctive relief, the Homeowners face far more than $100 or $135 assessments. RMLA ignores the very real threat they levied against the Homeowners: the irreparable loss of their homes and properties through foreclosure proceedings.

A preliminary injunction is appropriate "when it appears that the commission or continuance of an act will produce 'irreparable injury' to the party seeking such relief." *Ducham v. Tuma*, 265 Mont. 436, 442, 877 P.2d 1002, 1006 (1994) (holding an injunction is appropriate when it appears the commission or continuance of an act will produce irreparable injury to interests in real property). This Court has recognized that a threatened loss of an interest in real property constitutes irreparable harm. *Engel v. Gampp*, 2000 MT 17, ¶ 56, 298 Mont. 116, 993 P.2d 701 (acknowledging injunctive relief is appropriate to prevent irreparable injury through continuing invasion of property).

Applying the federal preliminary injunction standard, from which Montana's preliminary injunction standard is derived, the Ninth Circuit has consistently held that the threat of foreclosure constitutes irreparable injury. *Sundance Land Corp. v. Cmty. First Fed. Sav. & Loan Ass'n*, 840 F.2d 653, 661 (9th Cir. 1988) (holding that threatened foreclosure of real property gives rise to "immediate, irreparable injury"); *Park Vill. Apartment Tenants Ass'n v. Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) (recognizing "[i]t is well-established that the loss of an interest in real property constitutes an irreparable injury"); *Nationstar Mortg. LLC v. Saticoy Bay LLC*, 996 F.3d 950, 958-59 (9th Cir. 2021) (holding monetary damages are not an adequate remedy for loss of real property).

Here, after the Homeowners' withdrawal from the association, RMLA treated them as non-members. RMLA did not send them annual meeting notices, budgets, meeting agendas, and withdrew the Homeowners' access to RMLA's website. (Hearing Transcript pp. 9:11 – 10:22; RMLA's Supp. Appendix 9-10). As far as the Homeowners were concerned, their relationship with RMLA was over. After the Homeowners withdrew, RMLA disturbed the status quo by filing liens against their properties and threatening foreclosure if the liens were not paid.

RMLA's liens and threats of foreclosure are not the generalized fears or suppositions of the Homeowners, but the very real consequences of RMLA's actions. In fact, RMLA's treasurer testified that unpaid liens would result in

foreclosure proceedings against the Homeowners. (Hearing Transcript p. 95:1 – 95:6; RMLA's Supp. Appendix 95). The harm the Homeowners are seeking to avoid is not purely economic. Testimony during the hearing established that these homes are an asset that the Homeowners "can't afford to lose." (Hearing Transcript p. 48:16 – 48:22; RMLA's Supp. Appendix 48). RMLA's liens put the Homeowners at risk of immediate acceleration of their outstanding mortgage amount which, for most, if not all the Homeowners, would result in the loss of their homes and displacement of their families. (*See Hearing Transcript Excerpts with Oral Rulings*, RMLA's Appendix 9-25) ("[t]he liens are really awful … If anybody's property is not paid for in full and there are any mortgage documents out there … [t]hey could accelerate and demand payment … on whatever the outstanding amount of your mortgage is")).

The acceleration of the Homeowners' mortgage loans and prospective loss of their homes is a damage that RMLA, due to its admitted precarious financial position, cannot afford to remedy. (RMLA's Opening Brief, p. 4). A preliminary injunction is appropriate where "the plaintiffs can establish that money damages will be an inadequate remedy due to impending insolvency of the defendant." *Van Loan*, 271 Mont. at 179, 895 P.2d at 616. In *Van Loan*, this Court adopted a four-element test for preliminary injunctions issued in cases where a "monetary judgment may be made ineffectual" due to the defendant's potential insolvency or inability to pay. *Van*

Loan, 271 Mont. at 182, 895 P.2d at 617-18. The test requires the movant to demonstrate:

(1) The likelihood that the movant will succeed on the merits of the action;
(2) The likelihood of irreparable injury absent the issuance of the preliminary injunction;
(3) That the threatened injury to the movant outweighs the damage the preliminary injunction may cause the opposing party; and
(4) That the injunction would not be adverse to public policy.

Van Loan, 271 Mont. at 182, 895 P.2d at 617.

Here, each element of the *Van Loan* test is satisfied. As above, the Homeowners are likely to succeed on the merits because the Covenants do not require membership in RMLA, and the By-laws and Articles have not been properly recorded. As the District Court correctly determined, the Homeowners are likely to suffer the irreparable loss of their homes through foreclosure or mortgage loan acceleration absent injunctive relief. (*Hearing Transcript Excerpts with Oral Rulings*, RMLA's Appendix 9-25). The threatened loss of the Homeowners' homes and properties far outweighs the loss of the $100 or $135 membership assessments sought by RMLA. Lastly, the injunction is consistent with Montana's established public policy holding individual property rights sacred and fundamental. MONT. CONST. Art. II, § 3.

The District Court correctly determined that the Homeowners faced irreparable harm due to RMLA's liens and threats of foreclosure. It was also appropriate for the District Court to determine that a money judgment against RMLA

would not be sufficient to "restore the harm." (*Order Granting Preliminary Injunction*, Doc. 17; RMLA's Appendix 1-8).

c. The District Court correctly determined that the balance of equities tips in favor of the Homeowners.

The third preliminary injunction factor asks whether "the balance of the equities tips in the applicant's favor." MCA § 27-19-201(1)(c). This factor requires the Court to "balance the competing claims of injury" and "consider the effect on each party of the granting or withholding of the requested relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376 (2008).

Here, in contrast to the irreparable harm threatened against the Homeowners through mortgage loan acceleration and foreclosure proceedings, RMLA has suffered no harm. RMLA can (and has continued to) levy membership fees and special assessments from landowners who have chosen to remain members. Due to the threat of irreparable loss to the Homeowners, the balance of hardships tips sharply their favor.

The District Court appropriately weighed the impact of injunctive relief as applied to both parties. It was not a manifest abuse of discretion to determine that the irreparable harm to the Homeowners outweighed RMLA's ability to levy "property assessments for road maintenance and other amenities." (*Order Granting Preliminary Injunction*, Doc. 17; RMLA's Appendix 1-8).

d. The District Court correctly determined that an injunction would be in the public interest.

This Court has acknowledged that accurate and clear "recording of an instrument in its proper book is fundamental to the scheme of providing constructive notice." *Earl*, ¶ 20. "[A]n otherwise valid instrument which is … improperly recorded … does not operate as constructive notice." *Id*. Extrinsic evidence may not be used to "provide the property description in the first instance or add terms to an insufficient description." *Blazer v. Wall*, 2008 MT 145, ¶ 71, 343 Mont. 173, 183 P.3d 84. This is because "good-faith purchasers of real property are entitled to rely on publicly recorded deeds, plats, and certificates of survey pertaining to the subject property to disclose accurately all encumbrances, easements, and impediments thereon." *Broadwater Development, L.L.C. v. Nelson*, 2009 MT 317, ¶ 21, 352 Mont. 401, 219 P.3d 492. To be properly recorded, "a land description is necessary." *Blazer* at ¶ 51.

Here, the District Court correctly determined that the public interest factor weighs in favor of injunctive relief. Montana's recording statutes require encumbrances, like restrictive covenants or other restrictions on property use, to be properly recorded. MCA §§ 70-20-103; 70-20-201; 70-21-301; and 70-21-302. RMLA's Articles and By-Laws do not contain the necessary property descriptions to encumber or restrict the use of the Homeowners' properties. While the Covenants contain the necessary property description, this document does not require

membership in the association. Mandatory membership is a precondition to RMLA's purported authority to levy membership assessments.

Contrary to RMLA's argument, the omission of this membership requirement from the Covenants does not create an ambiguity. (RMLA's Opening Brief, p. 16). An ambiguity exists "only when the language of the covenant can reasonably have two meanings." *Brandt v. R&R Mountain Escapes, LLC*, 2025 MT 155, ¶ 13, 572 P.3d 809. There is simply no language in the Covenants—and RMLA has yet to identify any language in the Covenants—which requires the Homeowners to become members. Yet, RMLA urges this Court to examine the By-Laws and Articles as "persuasive and explanatory extrinsic evidence as to how the Covenants should be interpreted." (RMLA's Opening Brief, p. 16). In this circumstance, however, such reliance on extrinsic evidence from improperly recorded instruments would have the effect of adding "the property description" to these instruments in the first instance, which is prohibited by this Court's precedent. *Blazer* at ¶ 71. RMLA should not be permitted to cure the omission of a membership requirement in the Covenants by reference to improperly recorded instruments.

The public interest is served by the District Court's preliminary injunction to ensure that the Homeowners' property rights are not restricted by improperly recorded instruments. Further, the public has no interest in property owners being

threatened with foreclosure or the loss of their homes for refusing to pay assessments to an association with which they are not required to join.

CONCLUSION

The District Court did not manifestly abuse its discretion by issuing a preliminary injunction in this case. The Homeowners are likely to succeed on the merits that there is no properly recorded encumbrance on their properties requiring membership with RMLA. As such, RMLA is without authority to compel payment of membership assessments, impose liens, or initiate foreclosure proceedings against the Homeowners. The Homeowners are likely to suffer irreparable harm through acceleration of their mortgage loans or loss of their homes and property absent injunctive relief. The District Court's injunction appropriately determined that the balance of hardships tipped sharply in favor of the Homeowners. Lastly, the District Court's injunction is aligned with Montana's strong public interest in protecting and preserving property rights as set forth in Montana's Constitution.

The District Court's Preliminary Injunction should be affirmed.

RESPECTFULLY SUBMITTED this 23rd day of February 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that the foregoing Answer Brief is proportionately spaced, printed with the typeface Times New Roman, 14 point font, is double-spaced, is not longer than 14 pages, and contains 4,463 words excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature, and any appendices.

RESPECTFULLY SUBMITTED this 23rd day of February 2026.

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