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BOOK 407 PAGE 426

1997 AMMENDMENTS TO  
**DECLARATION OF PROTECTIVE COVENANTS**  
**TOBACCO ROOT MOUNTAIN RANCH**

These Protective Covenants are designed to provide for each owner and the community the benefits derived from preserving the integrity and pristine environment of the Tobacco Root Mountain Ranch and surrounding area.

Tobacco Root Mountain Ranch consists of five lots of twenty or more acres each as set forth and shown as tracts A, and one through four on Certificate of Survey filed for record in Book 4 of Surveys, page 237, records of Madison County, Montana. It is the intent of each of the owners to protect and conserve the environment, the natural beauty, and view of the Ranch while at the same time protecting the interests and investments of the individual owners. The following covenants and restrictions are designed to accomplish this goal.

**I. ARCHITECTURAL CONTROL**

**1. Design Committee**

A Design Committee will be set up by the five parcel owners to review and approve all building improvements. John King will be appointed as Chairman of the Design Committee, as well as President and Treasurer of the Homeowners Association until voted otherwise by the owners. Section VII of these covenants provides for the operation of the Design Review Committee.

**2. General Design**

All owners are encouraged to design buildings that reflect a western ranch style. Materials, compositions, colors and shapes are most important in the design of all structures. All improvements shall be of new construction. Pre-built, component or modular construction shall be permitted only when it cannot be distinguished from conventional construction, and only upon the prior approval of the Design Committee. Approval of pre-built or modular construction may be withheld completely.

**3. Exterior Materials**

Exterior materials shall be of planed natural wood, peeled log, stone or similar natural materials. If a metal roof is considered, there must be prior approval by the Design Committee. Paint or stain must be of earth tones.

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**4. Roofs, TV Antennas, Satellite Dishes, Propane Tanks**

Roof top equipment such as TV and radio antennas are not allowed, unless totally concealed from view of all parcel owners and road easements. Satellite dishes and other transmitting devices must be screened from view of all parcel owners and road easements. Satellite dishes must also be of dark green, brown or black in color to blend in with the surrounding vegetation. Propane tanks must be buried or hidden from view.

**5. Exposed Foundations**

Exposed foundations of concrete or masonry construction shall not have an exposed surface which exceeds a height of eight inches above finished grade, unless suitably faced with rock, brick or other suitable veneers or unless approved by the Design Committee.

**6. Solar Collectors**

Solar collectors may be of any construction or materials required for efficient operation, but they shall not be placed on any structure in a manner which causes glare to any neighboring residence or from any road easement. Solar collectors shall be integrated into the structure of a residence, garage, carport or accessory building and shall not be free-standing. Solar collectors shall be permitted only upon specific prior approval of the Design Committee.

**Roofs**

Roofs shall have a minimum pitch of five feet in twelve feet. All primary roofs shall have a minimum overhang of twenty (20) inches. Roofs shall be of class A design and construction for fire protection.

**7. Size and Height: Primary and guest residences**

The primary residence shall contain a minimum of 1500 square feet of living space. Any auxiliary structure shall contain 500 square feet of enclosed living space, excluding garages. No building shall exceed 25 feet in height. Building height shall be measured from the average grade of the foundation to the highest part of the roof peak.

A guest house may be constructed as temporary quarters (minimum 500 square feet), as long as the primary residence is completed no later than seven years after the completion of the guest quarters. The guest quarters must be of similar architectural design and materials, and must meet the same criteria as the primary residence.

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Guest quarters may not be located more than one hundred (100) feet from the primary residence. The only exception to this would be parcel A, as explained under Section 3, Number 3.

#### 9. Exterior Lighting

Exterior lighting shall not cause glare to any adjacent parcel. Mercury vapor lamps will not be permitted. Entry lighting shall be subdued and shall not exceed sixty watts and the bulb shall be shrouded so as to project light down and not horizontally.

### II. SITE DESIGN, PREPARATION AND LOCATION

1. Grading for all improvements shall be contoured to existing ground lines to avoid unnatural sharp edges. Existing natural features including trees, shrubs, rocks and outcroppings should be incorporated into the plan and preserved whenever possible. Home site development shall accommodate proper drainage using natural channels. Drainage and topographical transitions should blend with the natural topography of the homesite.

2. Revegetation shall be required for all disturbed areas. Revegetation, to the greatest extent possible, shall restore the parcel to the conditions which existed prior to any construction so that the parcel and environment shall be in harmony with the surrounding unimproved property. The owner must complete the restoration within a reasonable time as dictated by weather conditions following the construction period.

3. Temporary structures are forbidden. Mobile homes or trailers may be used only during the construction of a permanent dwelling. All temporary structures must be removed within thirty (30) days after the building of the homesite. Completion of the homesite should be accomplished within one year of groundbreaking.

4. During any construction, the site shall be cleaned up daily and shall be maintained free of trash. The owner shall be responsible for cleaning up windblown debris, both on and off the premises.

5. Homesites shall be located and constructed at a minimum distance of fifty (50) feet from the boundary of any adjacent parcel.



## III. RESIDENTIAL USE

1. The five individual parcels which make up Tobacco Root Mountain Ranch are designed to accommodate private, single family structures only. Guest or servant homes may be permitted with discretion so long as such homes conform to the same standards and guidelines provided for by these covenants for the primary structure as well as all codes and building guidelines of the county.

2. No parcel shall be further divided or split.

3. No parcel shall ever be occupied or used for any commercial or business purpose, except for an office, studio or shop fully contained within the single family residence and shall not be used for meeting the public, customers or clients except as authorized by all five parcel owners.

The only exception is that parcel A owners, Larry and Sharon Zabel, may place a separate studio and/or shop/barn from the primary residence, and in locations that may be further than one hundred (100) feet from the primary residence. The construction of these buildings must occur while the Zabel's still own the property. The total number of buildings the Zabel's may build including the primary residence, shall be three. When the Zabel's transfer or sell parcel A, all exceptions from that date forward will be null and void. The then previous grandfathered exceptions will still hold valid (i.e. any previous construction done by the Zabel's may remain).

4. Home occupations are permitted on the premises so long as such use complies with provisions of this paragraph and does not otherwise conflict with these covenants. A home occupation is an occupation use, customarily conducted entirely within a dwelling by the inhabitants thereof which is clearly incidental and secondary to the use of that dwelling as living quarters, and in connection with which there are no on-premises sales of products, no on-site employment of persons other than the residents of the dwelling, no generation of pedestrian or vehicular traffic beyond that customary or incidental to residential use of the dwelling, no employees who do not reside on the premises, no signs or structures advertising the occupation, and no excessive or unsightly storage of materials or supplies. For guidance, the following uses are examples of home occupations that are permitted on the premises, given the above stipulations and restrictions: The making of clothing, the giving of music lessons, a sole

practitioner-professional practice who maintains a telephone and office within the residence, but the services and products are provided and sold off of the premises, the pursuit of artistic endeavors such as the making of pottery, ceramics, paintings or bronzes and the like, provided that the products are marketed and sold off of the premises

#### IV. GENERAL PROVISIONS

##### 1. Mining, etc.

No prospecting, mining, quarrying, tunneling, excavating, or drilling for any substance on or within the earth, including oil, gas, minerals, gravel, sand, rock, hydrocarbons or earth shall be permitted. The owners of the parcels may, however, drill water wells on their homesites for domestic and landscape use.

##### 2. Utilities

A general utility easement for electricity, gas, telephone, water, television cable, sewer, communications, and other utility equipment shall exist over a tract thirty feet wide from the center line of each road and either side of boundary lines. All owners shall have the right to enter upon and excavate in such easements for the purpose of installing, repairing, removing, and otherwise servicing the facilities installed in such easements. Each owner shall be responsible for utility installation and maintenance in accord with local and state regulations. Each residential building shall be connected to a private water supply system, at the sole expense of the owner, and such systems must conform to the State of Montana, Madison County or other regulatory agencies. Each residential building shall be connected to a private sewage system at the owner's sole expense. This system must also conform to all aforementioned agencies.

##### 3. Road Easements

A road easement for ingress and egress shall exist and shall be graded to all parcels and constructed in such a manner as to minimize harmful affects to the surrounding environment. The road shall contour the existing landscape preventing earth and vegetation disturbance as much as possible. All parcel owners will be responsible for constructing their own road from the easement road, to their building site, at the owner's sole expense.

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#### 4. Electricity and Phone

All power and phone lines on the Tobacco Root Mountain Ranch shall be installed underground. The costs of installing power and phone from the road easement to the building sites will be done at the parcel owner's sole expense.

#### 5. Maintenance

No garbage, trash or unsightly debris, organic or inorganic waste shall be collected and/or permitted by any owner to accumulate on any tract or in any road adjacent thereto, and shall be disposed of promptly and efficiently. No vacant lands or other parcels shall be used as a dumping ground or burial pit by any owner. The only outside trash or refuse cans or containers shall be those which are kept and maintained in effective animal (including bears) proof condition. There shall be no incineration of garbage or trash, and no garbage or trash shall be disposed on, in or near any watercourse or springs. Nothing stated herein shall preclude a central trash collecting area, as determined by the parcel owners.

Owners shall maintain home sites and improvements in good repair and appearance at all times. All landscaping improvements and property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and lighty condition and in good repair at all times. Fire hazards must be controlled. If damage occurs through a negligent act of a parcel owner, members of his/her family, guest or employees, then such owner shall be responsible and liable for all such damages.

Non-maintenance, lack of weed control, accumulation of garbage, refuse, debris or unsightly materials or possessions by a parcel owner, may cause the other owners to clean-up such materials and parcel owners shall not prohibit such clean-up which is done in the best interest of all owners of the Tobacco Root Mountain Ranch. The cost of any removal or clean-up shall be at the sole expense of the negligent owner. Failure to pay said costs shall result in an additional assessment that if remains unpaid for sixty (60) days shall become a lien against the parcel owned by said owner.

No lumber, grass, shrub or tree clippings or trimmings or plant waste, metals, bulk materials, scraps, refuse

or trash shall be kept, stored or allowed to accumulate on any parcel. Parcel owners shall take the necessary steps to control noxious weeds.

#### 6. Wood Stoves

Installations shall comply with all Underwriter Laboratory (U.L.) criteria. Specifically, all wood stoves shall include a spark arrestor. Proximity of fireplaces, wood stoves and related chimney and flue installations to combustible materials, including roofing and wooden environs, shall be addressed and/or restricted by the Design Committee.

#### 7. Noxious or Offensive Activities

No noxious, offensive or hazardous activities shall be permitted upon any portion of the property, nor shall anything be done or be placed upon any portion of the property which is or may become a nuisance to others. No light shall be produced upon any homesite or any other portion of the property which shall be unreasonably bright or cause unreasonable glare. Exterior loud speakers are not permitted. No sound shall be produced upon any homesite or other portion of a property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles or bells.

#### 8. Signs

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted except as agreed to by the parcel owners.

#### 9. Fences

Only wood fencing is permitted. Any fence construction must have prior approval by the Design Committee. Wire, metal or barbed-wire fencing, other than that already present, is not permitted. Perimeter fencing of a post-and-pole, or buck-and-rail nature is encouraged to maintain a western style and appeal. Fencing between parcels is discouraged.

#### 10. Clothes Lines

Outside clothes lines or other outside clothes drying or airing facilities shall be maintained exclusively within



a fenced service yard and shall not be visible from any other parcels or road easements within the Tobacco Root Mountain Ranch.

#### 11. Fires and Burning

There shall not be exterior fires whatsoever except barbecue fires, contained within receptacles thereof, and such fires as may from time to time be permitted by mutual agreement of the owners and then only with necessary burning permits from the appropriate governmental agency or authority. Given proximity to wooded and grass lands and prevailing winds, fire spreading danger is significant, especially during the dry season. The burning of trash, organic matter or miscellaneous debris shall be prohibited, whether in the open or in trash burning receptacles.

#### 12. Recreational Vehicles

Boats, trailers, snowmobiles, motorcycles, ATV's and other recreational equipment or vehicles other than automobiles and pickups shall not be stored in the open on any homesite, driveway or road, viewable to other parcel owners or from any road easement on the Tobacco Root Mountain Ranch.

#### 13. Animals

Only companion family pets shall be permitted. No swine, sheep, cattle, goats, llamas, or similar livestock except horses shall be allowed. All pets shall be controlled and restrained. Only house pets which are normally kept and maintained indoors shall be permitted on any parcel. All animals shall be strictly controlled to prohibit interference with livestock or wildlife. Outside, kenneled dogs, shall be limited to two or less unless otherwise approved by all parcel owners.

Horses shall be allowed upon any parcel only upon the approved construction of an enclosed barn, hay shed or similar facility, which is suitable for the containment of supplemental summer or winter feed and is consistent with the western building style. The number of stock shall be limited to four head per parcel (parcel A, under the Zabel's ownership, will be allowed six head of stock if they so choose). All stock facilities, hay shed and related improvements shall be approved prior to construction, by the Design Committee. Stock may be housed, fed and maintained within a barn or facility, when kept on the parcel. A corral, acceptable to the Design Committee, may

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be required by the Design Committee, and if so, shall be constructed contiguous to the barn facility to aid in the handling and maintenance of stock.

All such facilities shall be constructed not more than one hundred (100) feet from the main house or guest house, specifically subject to the Design Committee's approval and/or unless approved otherwise by the Design Committee. The only exception is that stated for Parcel A, under Section 3, Number 3. All feed shall be stored within the enclosed facility and not stacked outside or within the corral. The facility shall not exceed 2,500 square feet on the grade level and its height shall not exceed 25 feet from grade level. The corral shall not exceed 2,500 square feet and shall not extend more than 70 feet from the facility structure. No wood stoves shall be installed within the facilities and wiring shall be placed in metal conduit, for fire protection.

All facilities and corrals shall be maintained free of accumulated manure, urine, bedding and feed. Drainage of and around the facilities shall be provided in a manner suitable to the Design Committee to avoid urine and snow run-off accumulation which contributes to unsanitary conditions. The drainage shall be designed to run away from existing structures, access roads or down existing grades and the run-off shall not in any way impact neighboring parcel owners or their vistas. The burning of hay bedding, stock excrement or other related stock material shall be prohibited, unless otherwise approved by the other parcel owners.

Horses may not be kept in corrals if the primary or guest house is not occupied. The Tobacco Root Mountain Ranch parcel owners may also agree to limit the number of domestic animals on any parcel and may withdraw permission for any domestic animal to remain on the premises of any owner who, after due notice, violates the restrictions of these Covenants, or whose animal is, or has become, a nuisance to livestock, wildlife, property, other owners, or invitees of the Tobacco Root Mountain Ranch personnel.

#### 14. Fire Protection

In addition to the aforementioned fire hazard controls, a fifty (50) foot clear zone around the housed premises will be maintained (weeds or grass mowed) if and when there are not existing lawns.

**15. Recreational Use**

Each parcel may be used by the owner recreationally until the permanent resident dwelling is constructed. Recreational use is tent camping or placing of a trailer temporarily upon the parcel. Temporarily shall mean the placement and use of such items on the parcel for no longer than two consecutive weeks at any time or for no longer than six weeks during any given calendar year.

**16. Trees and Shrubbery**

No cutting of any trees or shrubbery shall be allowed on any parcel except that which is necessary for the clearing for buildings and utilities and other site development.

**17. Agriculture Use of Adjoining Properties**

Nothing contained in these Covenants and restrictions shall be construed to limit or otherwise restrict adjoining property owners (i.e. owners of parcels other than parcels A, and 1-4) from engaging in farming or other agricultural uses of their property.

**V. ENFORCEMENT**

1. The provisions of these Protective Covenants may be enforced by individual parcel owners or the Design Committee of the Tobacco Root Mountain Ranch.

2. In the event of violation or threatened violation of any of these covenants, or additional covenants and regulations adopted pursuant to the terms of these covenants, legal proceedings may be brought in a court of law or equity for injunction, relief and damages. In addition, any parcel owner or owners may serve notice in writing on the persons or entity violating these covenants specifying the offense, identifying the location, and demanding compliance with the terms and conditions of these covenants. Such notice shall be personally served. In the event that personal service cannot be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the property in question and a copy of the notice shall be mailed by Certified Mail, Return Receipt Requested to the last known address of the party or entity.

No owner shall be liable to any person or entity for any entry, self-help or abatement of a violation or

threatened violation of these covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss or injury resulting from such action, except for intentionally wrongful acts.

3. These covenants shall continue in full force and effect and shall run with the land as legal and equitable servitude in perpetuity unless amended.

4. These covenants shall remain in effect until amended or terminated. The covenants, or any portion thereof, may be amended, terminated or supplemented at any time, by the execution of a written document containing the terms of the amendment, supplement or termination of the covenants, duly acknowledged by a Notary Public, and recorded with the office of the Madison County Clerk and Recorder, executed by at least 80% (4 of 5 parcel votes) of the owners, based on one vote per parcel. If there is more than one owner for a parcel, each owner must execute the amendment, supplement, or termination document to count for one vote towards the 80% total. In the event of a tie, the deciding vote will be cast by the President of the Homeowner's Association. Parcel A shall have the option of membership (paying dues) in the Homeowner's Association. If they choose not to be a member, then 75% (3 of 4) parcel votes will be considered sufficient for amendments to the covenants.

Enforcement of these covenants shall be by proceeding either at law or in equity against any person or persons violating or attempting to violate these covenants and the legal proceeding may be either to enjoin or restrain the violation of these covenants, or to recover damages, or both. In the event of action to enforce these covenants, the prevailing party shall be entitled to costs and a reasonable attorney's fee to be set by the court. Any parcel owner or its assigns may enforce these covenants.

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

A breach of any of the foregoing restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value upon any parcel or portion of the real property, or any improvements thereon. However, the said covenants and restrictions shall be binding upon and inure to the benefit of any subsequent owner whose title thereon was acquired by foreclosure, trustee sale, or otherwise.

a. Covenants

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# 1. Membership

Every owner of Parcel A, for as membership in the Homeowner's Association will be for the purpose of improvement b scenario, agree (4 of 5) parcel

# 2. Voting

The Association shall have one vote for each parcel owned. The vote for each parcel shall be cast by the owner or owners registered with the Association in writing by any independent person in the discretion of the Association. The vote for each parcel shall be

5. Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these covenants shall not in any manner affect the other portions or provisions.

## VL TOBACCO ROOT MOUNTAIN HOMEOWNERS ASSOCIATION

### 1. Membership

Every owner of a parcel which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any parcel which is subject to assessment. Parcel A, for as long as the current owners, Larry and Sharon Zabel, own the property, will be exempt from membership in the Association, and thus assessments, if they so choose. In so choosing, however, voting privileges will be forfeited. If the Zabel's choose not to be members, they will also be exempt from any Ranch maintenance or improvement benefits which may occur because of disbursements of Ranch funds from contributions. With this scenario, agreement of 75% (3 of 4) of the parcel owners will be required rather than the previously stated 80% (4 of 5) parcel owners.

### 2. Voting

The Association shall have one class of voting membership. Each member shall be entitled to one vote for each parcel owned. When more than one person holds an interest in any parcel, all such persons shall be members. The vote for such parcel shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any parcel. In the event, however, that there is a dispute among two or more owners regarding the vote of parcel in which such owners hold an interest, the Association, being duly notified in writing by any such interested owner that the dispute exists, may appoint an officer of the Association or an independent party to cast such vote on behalf of the owners of the parcel in a manner as such officer, in this sole discretion and business judgment, may decide as being in the best interest of the Association and all owners of such parcel shall be deemed to have provided the Association and such officer their proxy in such occasion.



**3. Assessments**

**3.1 Creation of the Lien and Personal Obligation of Assessments.** Each parcel owner within the premises, hereby covenants, and each owner of any parcel by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree: a) to pay to the Association; (1) annual assessments or charges, and (2) special assessments for capital improvements or otherwise as hereinafter provided, and b) that the annual and special assessments, together with interest, costs, and reasonable attorney's fees, if any, shall be a charge on the land and shall be continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal (joint and severable) obligation of the person or persons who was or were the owner(s) of such parcel at the time when the assessment fell due. Although such charges shall be a continuing lien upon the property until paid, the personal obligation for delinquent assessments shall not pass to the owner(s)'s successors in title unless expressly assumed by them with the consent of the Association.

**3.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the owners of Tobacco Root Mountain Ranch and the Association and for the establishment, improvement, maintenance and protection of the premises and the interest of the owners therein, and/or for the property or facilities enhancing their use and enjoyment and/or the conservation of the natural amenities of the premises. As such, these purposes may also include, but shall not be limit to, funding for: the payment of taxes; the purchase of insurance for risks involving the Association; maintenance (including snow removal) of roads, parking areas, utilities, bridges and or other improvements or easements owned by the Association or used by the owners in common; the construction, maintenance and repair of all improvements for the benefit of the Association; and the cost of labor equipment services, materials, management, protection and supervision of the assets and interests of the Association.

A monthly, quarterly or yearly assessment will be established by the owners for the purpose of repairing and maintaining road easements, snow plowing if necessary, and any other maintenance or repairs needed to improve or

maintain the Tobacco Root Mountain Ranch. It is the intent of the parcel owners that such fees shall remain reasonable and all projects to be paid for by the assessment will be approved by a majority vote of the Homeowners.

**3.3 Annual Assessments:** Annual assessments shall be determined by the Association in an amount estimated to cover the normal operating expenses of the Association for each year as determined in conformity with standard accounting practices, together with such additional amounts as may, in their reasonable judgment, be necessary to cover any past deficits from operation or to create reasonable reserves for the future cost of operation of the Association.

Unless otherwise stated in these covenants, agreement of the owners will constitute 80% (4 of the 5) parcel owners, or 75% (3 of 4) parcel owners if Parcel A chooses non-membership in the Association. Each parcel will constitute one vote. If any of the five parcels are jointly owned, only one vote may be cast for each parcel. In the event of a tie, the deciding vote will be cast by the President of the Homeowner's Association.

**3.4 Special Assessments:** In addition to an annual assessment to cover the Association's operating expenses, the Association may levy, in any assessment year, special assessment(s) for the purpose of reserving or paying for, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Association, and for such other purposes or projects benefiting the Association and its interests provided that any such assessment shall have the assent of the majority of the members voting in person or by proxy at a meeting duly called for this purpose. Nothing stated herein shall restrict the right of the Association to provide for the repayment of the special assessment, and upon terms and conditions it deems appropriate, including the collection of interest on the deferred balance.

**3.5 Notice and Quorum for Homeowners Association Meeting:** Written notice of any meeting called for the purpose of taking any action authorized under Section VI shall be sent to all members not less than fifteen (15) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or their proxies entitled to cast seventy five (75) percent of all votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the

required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held sooner than thirty (30) days following the preceding meeting.

**3.6 Uniform Rate of Assessment:** Both annual and special assessments must be fixed in equal amounts for all parcels and may be collected on a monthly or quarterly basis; provided, however, when in the judgment of the Association, a capital improvement is of a nature that uniquely restores damages or provides value only to certain individual parcels then, to the extent determined by the Association that such improvements are not beneficial to the Association as a whole or to the members of parcels in general, such portion of costs which solely contribute to those certain individual parcels may be pro-rated, scheduled and assessed among only those owners or parcels affected.

**3.7 Date of Commencement of Annual Assessments; Due Dates:** The annual assessment shall be assessed on a calendar year basis. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Association shall fix the amount of the annual assessment against each parcel at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every owner subject thereto. Credits and reimbursements to owners shall be determined and arranged so that the burden of taxes and governmental assessments and, if possible, payments, shall be shared pro-rata by owners for taxes assessed against any improvements (or usage) of the Association and the owners. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Treasurer of the Association setting forth whether the assessments on a specified parcel have been paid.

**3.8 Effect of Nonpayment of Assessments; Remedies of the Association:** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate which shall be the greater of fifteen (15) percent annum or six (6) percentage points above the Prime Rate for major New York banks as published in the Wall Street Journal but in no event to exceed the maximum rate permitted under Montana law or such lower rate as may be set from time to time by the Association. The Association may record a notice of lien against the property

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and bring an action at law against the owner personally obligate to pay the same, or foreclose the lien against the property in the same manner as a mortgage on real property, and the Association shall be entitled in any such actions or foreclosure proceeding to recover its costs, expenses and reasonable attorneys' fees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his/her parcel.

**3.9 Non-Subordination of the Lien to Mortgages:** The lien of the assessments provided for herein shall be superior and not subordinate to the lien of any first mortgage or other recorded liens which are recorded after the date of the recording of this Declaration. Sale or transfer of any parcel shall not affect the assessment lien, whether such lien arises prior to such sale or transfer, or thereafter becomes due.

**3.10 Declarants Assessments:** For the purpose of assessments, any parcel owned by the Declarants shall be subject to the same assessments and provision of these Articles as parcels of any other owner.

## VII. TOBACCO ROOT MOUNTAIN RANCH DESIGN REVIEW COMMITTEE

### 1. Requirement of Review by Design Review Committee

The Design Review Committee shall review and approve or disapprove all plans and specifications.

### 2. Membership of the Design Review Committee

The Design Review Committee shall consist of three members appointed by the Association. John King is chairman until voted otherwise. At least two of the three members of the Design Review Committee shall be members of the Association or persons representing the Declarant.

### 3. Guidelines

The Design Review Committee may establish and publish a Design Guide which will set forth the procedures and criteria for review of residences, improvements or other structures to be constructed or installed on the premises.

### 4. Approval or Disapproval by Design Review Committee

In the event the Design Review Committee fails to approve or disapprove such design, location, construction, and materials within forty-five (45) days after the detailed site plan and specifications have been



submitted to it, approval shall be deemed granted. Any plans, specifications and proposals so approved, either expressly in writing or by the expiration of the forty-five (45) day period hereinabove provided, shall then permit the owner to commence construction in accordance with said plan, but any deviation from said plan which, in the judgment of said Design Review Committee, is also a) a deviation of substance from either the Design Guide. b) the requirement of this Declaration; or c) is a detriment to the appearance of the structure or to the surrounding area shall be promptly corrected to conform with the submitted plan by the owner or after reasonable notice is provided in accordance with Section V. to such owner by the Association at the owner's expense. Any structure to be erected in accordance with approval so given shall be diligently prosecuted to completion and must be commenced and completed within eighteen (18) months of approval, or new approval must be obtained unless specific written extension is granted by the Design Review Committee. If any structure is begun but is not completed within twelve (12) months of the commencement of construction, and in the reasonable judgment of the Design Review Committee is of offensive or unsightly appearance, then the Design Review Committee or the President of the Association, at the option of either, may, after reasonable notice to the owner, take such action as may be necessary in its judgment to improve the appearance so as to make the property harmonious with other properties, including completion of the exterior of the structure, installation of screening or covering of the structure or any combination thereof, or similar operations; and the amount of any expenditures made in so doing shall be a lien on the property and may be enforceable by an action at law. The Design Review Committee may act by a majority of its members and any authorization or approval made by the committee must be signed by a majority of the members thereof.

#### 5. Inspection of Work

Upon the completion of any improvement for which approved plans and specifications are required under this Declaration, the owner shall give written notice of completion to the Design Review Committee. The Design Review Committee or its duly authorized representative, may inspect such improvement. If the Design Review Committee finds that such work was not done in strict compliance with all approved plans and specifications

submitted or required to be submitted for its prior approval, it shall notify the owner in writing of such noncompliance, and shall require the owner to remedy the same. If, upon the expiration of thirty (30) days from the date of such notification, the owner shall fail to remedy such noncompliance, the Design Review Committee shall notify the Association in writing of such failure. Upon notice and hearing, the Association shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correction or removing the same. If noncompliance exists, the owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Association's ruling. If the owner does not comply with the Association's ruling within such period, the Association, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the owner to the Association, the Association shall levy an assessment against such owner and the improvement in question and the land on which the same is situated for reimbursement and the same shall constitute a lien upon such land and improvement and be enforced as in this Declaration provided. The Design Review Committee may inspect all work in progress and give notice of noncompliance as provided above. If the owner denies that such noncompliance exists, the procedures set out above shall be followed, except that no further work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Association shall find that such noncompliance exists.

#### 6. Review Fee

At the time of submission of site plans and specifications for construction of an improvement, the owner may be required to submit a design review fee to the Design Review Committee. It shall be the duty of the Association to establish the amount of the design review fee. The purpose of the design review fee shall be to defray the Association's cost to review all proposed site plans and specifications submitted to the Design Review Committee.

#### 7. Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect

any other provisions which shall remain in full force and effect.

#### 8. Amendment

Except those provisions requiring greater consent, any provision herein may be amended or revoked and additional provisions added at any time by a written instrument recorded in the office of the Clerk and Recorder of Madison County, Montana, duly signed and acknowledged by the owners of record of not less than 75% of the parcels subject to this Declaration.

#### 9. Term

The provisions of this Declaration shall be binding for a term of twenty-five (25) years from the date of this Declaration, after which time the Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument agreeing to revoke or terminate this Declaration has been signed by the owners of at least 75% of the parcels and has been recorded.

#### 10. Non-Liability of Association and Committee Members

Neither the President nor any Committee Member shall be liable to the Association or any owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the Association duties under this Declaration unless such loss, damage or injury is due to the willful misconduct of the member(s).

#### 11. Non-Dedication to Public uses

Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied of any part of the premises or road to or for any public use or purpose whatsoever.

IN WITNESS

Parcel A:

IN WITNESS

Parcel 1:

TOBACCO ROOT MOUNTAIN RANCH OWNERS

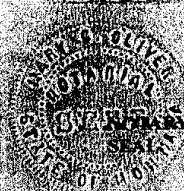
IN WITNESS WHEREOF, this instrument has been executed this 2 day of December, 1996

Parcel A: On this day, before me, the owner(s) personally appeared, Larry Zabel, Sharon Zabel, known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposed therein contained.

X Larry Zabel  
Larry Zabel

X Sharon L. Zabel  
Sharon Zabel

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



X Mary W. Owens  
Notary Signature  
Notary Public for the State of Montana  
County of Madison  
Residing at Ennis, MT  
My Commission Expires 12/03/97

IN WITNESS WHEREOF, this instrument has been executed this 8 day of October, 1996

Parcel 1: On this day, before me, the owner(s) personally appeared, John Fielding, Elizabeth Fielding known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposed therein contained.

X John Fielding  
John Fielding

X Elizabeth Fielding  
Elizabeth Fielding

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



NOTARY  
SEAL:

X Theresa Marie Schultz  
Notary Signature  
Notary Public for the State of Colorado  
County of El Paso  
Residing at 4 Elm Ave., Co Springs, CO  
My Commission Expires 7/24/98



IN WITNESS WHEREOF, this instrument has been executed this 22<sup>nd</sup> day of September, 1996

Parcel 2: On this day, before me, the owner(s) personally appeared, John King, Tom Engel, Joe Rehmer, known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposed therein contained.

X [Signature] X [Signature] X [Signature]  
John King Tom Engel Joe Rehmer

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

X [Signature]  
Notary Signature

Notary Public for the State of Wyoming  
County of Teton

Residing at Moran  
My Commission Expires 8/25/98

NOTARY  
SEAL:



IN WITNESS WHEREOF, this instrument has been executed this 30<sup>th</sup> day of September, 1996

Parcel 3: On this day, before me, the owner(s) personally appeared, Tony Rehmer, ~~Paula Rehmer~~, Joe Rehmer, known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposed therein contained.

X [Signature] X [Signature] X [Signature]  
Tony Rehmer Polly Rehmer Joe Rehmer

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

X [Signature]  
Notary Signature

Notary Public for the State of Wyoming  
County of Teton

Residing at Moran  
My Commission Expires 8/25/98

NOTARY  
SEAL:



IN WITNESS HEREOF, this instrument has been executed this 20<sup>th</sup> day of September, 1996

Parcel 2: On this day, before me, the owner(s) personally appeared, John King, Tom Engel, Joe Rehmer, Tammy King, Lucinda Engel known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposed therein contained.

X \_\_\_\_\_ X \_\_\_\_\_ X \_\_\_\_\_  
John King Tom Engel Joe Rehmer  
X Tammy King X Lucinda Engel  
Tammy King Lucinda Engel

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

X Carol A. Graham  
Notary Signature  
Notary Public for the State of Wyoming  
County of Teton  
Residing at Moran  
My Commission Expires 8/25/98



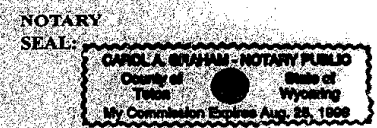
IN WITNESS HEREOF, this instrument has been executed this 20<sup>th</sup> day of September, 1996

Parcel 3: On this day, before me, the owner(s) personally appeared, Tony Rehmer, Polly Rehmer, Joe Rehmer, known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposed therein contained.

X \_\_\_\_\_ X Polly Rehmer X \_\_\_\_\_  
Tony Rehmer Polly Rehmer Joe Rehmer

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

X Carol A. Graham  
Notary Signature  
Notary Public for the State of Wyoming  
County of Teton  
Residing at Moran  
My Commission Expires 8/25/98



BOOK 407 PAGE 448

IN WITNESS WHEREOF, this instrument has been executed this 20<sup>th</sup> day of September, 1996

Parcel 4: On this day, before me, the owner(s) personally appeared, John King, Tammy King known to me to be the persons whose name is subscribed to within instrument and acknowledged to me that he executed the same for the purposes therein contained.

X

John King

X

Tammy King

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

X Carol A. Graham  
Notary Signature

Notary Public for the State of Wyoming  
County of Teton

Residing at Moran  
My Commission Expires 8/25/98

NOTARY  
SEAL:



Filed for record on the 14th day of APRIL, A.D. 19 97  
At 2:21 o'clock P.M. and recorded in Book 407 RECORDS of  
Page 426 of 448 Records of Teton County, Montana.  
By PEGGY KNATZ Deputy  
County Recorder  
Fee 138.00 Return to LARRY ZABEL  
P.O. BOX 115  
MCALLISTER, MT 59740

RECORDER'S NOTE: SEE BOOK 4 OF PLATS, PAGE 237-A