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## 2007 Amendment to the: Declaration of Protective Covenants of Tobacco Root Mountain Ranch

The 2001 Amendments to the Declaration of Protective Covenants of Tobacco Root Mountain Ranch recorded October 1, 2001 are intended to fully replace all prior versions of Covenants on record with the Clerk and Recorder of Madison County, Montana.

Prior Covenants: 364/130, 361/034, 407/426, 458/139

In addition, the members of the homeowners association amend the following:

### Article III: Residential Use Section 3 to read:

On parcel 3, the building of any residence or other structure must not be in the view shed of parcel 4, and of which the structure location must be approved in advance by both the owners of parcel 2 and 4, and the design committee. In addition, this approval requirement cannot be changed or amended without 100% agreement among all voting members of the association, regardless of the number of voting members.

### Article VI: Tobacco Root Mountain Homeowners Association Section 1: Membership to read:

Each parcel, which is subject to assessment, shall be represented by one membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any parcel that is subject to assessment. Parcel A, for as long as the current owner, Larry Zabel, owns the property, will be exempt from membership in the Association, and thus assessments. In so choosing, however, voting privileges will be forfeited. If Zabel chooses not be a member, he will also be exempt from any Ranch maintenance or improvement benefits which may occur because of disbursements of Ranch funds from contributions.

If more than one parcel is owned by the same individual or entity, that individual or entity shall maintain only one voting right and shall be required to pay annual assessments as if they owned a single parcel in the Association. If the owners of parcels 2 and 3, sell or transfer either parcel, so that they are no longer owned by one individual or entity, for the new owner of parcel 3 to become a member in the Association, then all back dues dating back to when dues were merged with parcel 2, must be paid by the new owner before voting privileges will be granted and re-instated for that parcel.



### TOBACCO ROOT MOUNTAIN RANCH OWNERS

IN WITNESS HEREOF, this instrument has been executed this \_\_\_ day of March, 2007

Parcel 1

\_\_\_\_\_  
Todd R. Schrock

\_\_\_\_\_  
Elizabeth W. Schrock

State of California  
County of Placer

On March \_\_\_, 2007, Todd R. Schrock and Elizabeth W. Schrock personally came before me and, being duly sworn, did state that they are the persons described in the above document and that they signed the above document in my presence.

\_\_\_\_\_  
Signature of Notary Public

State of California  
My commission expires: \_\_\_\_\_

Notary Seal

Parcel 2 & 3:

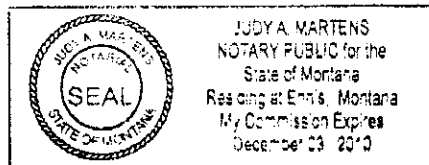
\_\_\_\_\_  
Theodore R. Schrock

\_\_\_\_\_  
Barbara J. Schrock

State of Montana  
County of Madison

On March 30<sup>th</sup>, 2007, Theodore R. Schrock and Barbara J. Schrock personally came before me and, being duly sworn, did state that they are the persons described in the above document and that they signed the above document in my presence.

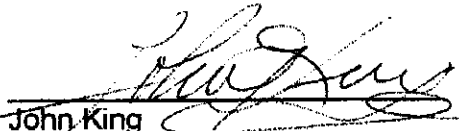
\_\_\_\_\_  
Signature of Notary Public

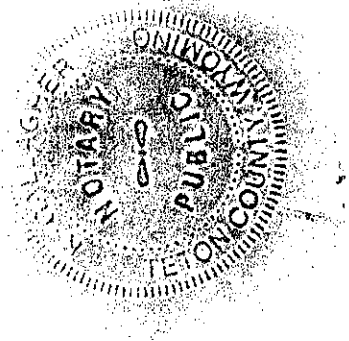


State of Montana  
My commission expires: \_\_\_\_\_

Notary Seal

Parcel 4:

  
\_\_\_\_\_  
John King



State of Wyoming  
County of TETON

On March 20, 2007, John King, personally came before me and, being duly sworn, did state that they are the persons described in the above document and that they signed the above document in my presence.

  
\_\_\_\_\_  
Signature of Notary Public

State of Wyoming  
My commission expires: 10/5/2010

Notary Seal

STATE OF MONTANA MADISON COUNTY

RECORDED: 10/01/2001 4:26 BOOK: 458 RECORDS PAGE: 139

Peggy Kaatz CLERK AND RECORDER BY: *Peggy Kaatz*  
MADISON COUNTY TITLE CO WALLACE STREET, VIRGINIA CITY

DOC #: 83205

FEE: \$114.00

Indexed *J.R.*  
Plotted *J.R.*

BOOK 458 PAGE 139

## 2001 AMENDMENTS 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.

The Tobacco Root Mountain Ranch consists of four lots plus tract A, 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 interest and investments of the individual owners. The following covenants and restrictions are designed to accomplish this goal.

COURTESY RECORDING  
NO RECORD SEARCH

### I. ARCHITECTURAL CONTROL

#### 1. Design Committee

A Design Committee consisting of the two primary lot owners and participants in the Homeowners Association, owners of parcel 2 and 4, will jointly review and approve all building improvements. At the present time, these owners are John King and Theodore R. and Barbara J. Schrock (joint owners). John King and Theodore Schrock will jointly serve as co-Presidents of the Association. John King will serve as Treasurer. In the event of the incapacity or death of both Theodore Schrock and Barbara Schrock, or John King, then one of their heirs will serve as co-President of the Association. In the event that either John King or the Schrocks would sell their ownership interest in the Tobacco Root Mountain Ranch, the remaining co-President will then reside as sole President, regardless of any other parcel owners.

#### 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 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.

### **4. Roofs, TV Antennas, 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. 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 suitable 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.

### **7. Roofs**

Roofs shall have a minimum pitch of four 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.

### **8. 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.

### **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 (60) 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 home site.
- 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.** Mobile homes or trailers may be used during the construction of a permanent dwelling but must be removed within thirty (30) days after the building of the home site. Completion of the home site 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. Home sites shall be located and constructed at a minimum distance of fifty (50) feet from the boundary of any adjacent parcel.

### III. RESIDENTIAL USE

1. All parcels which make up Tobacco Root Mountain Ranch are designed to accommodate private, single family structures only.
2. No parcel shall be further divided or split. However, with the approval of the Association, there may be lot line adjustments between lots 1, 2 and 3, as long as all parcels remain 20 acres or more
3. On parcel 3, the building of any residence or other structure must not be in the view shed of either the owners of parcel 2 or 4, and of which the structure location must be approved in advance by both the owners of parcel 2 and 4, and the design committee.
4. 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 parcel owners. The only exception is that parcel A owners, Larry and Sharon Zabel, have previously placed a separate studio and barn from the primary residence. The total number of buildings the Zabel's may build (and have built) including the primary residence, shall be (and are) three.
5. 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.

#### 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 other than that drilling for water wells on their home sites 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 parcel 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 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.

#### **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 sightly condition and in good repair at all times. Fire hazards must be controlled. If damage occurs through a negligent act of a parcel owners, 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 spark arrestors.

**7. Signs**

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

**8. 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.

**9. 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.

**10. Fires and Burning**

There shall not be exterior fires whatsoever except barbecue fires, contained within receptacles or pits 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.

**11. 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 home site, driveway or road, viewable to other parcel owners or from any road easement on the Tobacco Root Mountain Ranch.

**12. 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 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 subject to the design committee's approval. 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.

### **13. 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.

**14. 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 a time or for no longer than six weeks during any given calendar year.

**15. 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.

**16. 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 know 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 and 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 both parties of parcels 2 and 4 (or 100% of all parcel owners). Each parcel shall have an equal say in all Ranch Homeowner Association matters and covenant changes. As such, both parties (or 100% of all parcel owners) must agree on all matters and covenant changes for the actions to occur or changes to take place. If more than two parcel owners become members of the Association, then a 75% vote will be needed to amend, terminate or supplement these covenants. In the event of a tie, the deciding vote will be cast by the President of the Homeowner's Association. Parcel A has chosen not to be a member of the Homeowner's Association, and thus has been exempt from paying Homeowner Association dues. In the event that the owner of parcel A would like to become a voting member in the association, the owner must compensate the Homeowner's Association for all back dues before voting privileges will be granted.

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.

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.

## **VI. TOBACCO ROOT MOUNTAIN HOMEOWNERS ASSOCIATION**

### **1. Membership**

Each parcel which is subject to assessment (at present parcels 2 and 4) shall be represented by one membership in 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/or 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.

If Ted and/or Barbara Schrock, owners of parcels 1, 2 and 3, sell or transfer either parcel 1 or 3, for the new owner(s) of these parcels to become a member in the Association, then all back dues dating back to when dues were stopped for that parcel, must be paid by the new owner before voting privileges will be granted and re-instated for that parcel. In addition, if parcel 1 and/or 3 is sold, parcel 4 will retain a 50% voting membership in the association.

### **2. Voting**

Each member shall have one vote (except as stated above under Section 6, Number 1). 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 (except as stated above under Section 6, Number 1).

### 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 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) 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 the 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 limited to, funding for: maintenance of roads, snow removal, parking areas, utilities 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 the parcel owners.

- 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 100% of the parcel owners. Unless otherwise stated in these covenants, each parcel will constitute one vote. If any of the four parcels are jointly owned, only one vote may be cast for each parcel.

- 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 members.
- 3.5 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.
- 3.6 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 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 attorney's fees. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his/her parcel.

- 3.7 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.

## **VII. TOBACCO ROOT MOUNTAIN RANCH DESIGN REVIEW COMMITTEE**

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

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

### **2. Membership of the Design Committee**

The Design Committee shall consist of two members of the Association. John King and Barbara Schrock are currently the members until voted otherwise.

### **3. Approval or Disapproval by the Design Review Committee**

In the event the Design 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 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 Committee, is also a) a deviation of substance b) the requirement of this Declaration; or c) is 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 Committee. If any structure is begun but is not completed within twelve months of the commencement of construction, and in the reasonable judgment of the Design Committee is of offensive or unsightly appearance, then at the Committee's option, 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 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 of law.

#### **4. 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 Committee. The Design Committee or its duly authorized representative, may inspect such improvement. If the Design 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 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 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.

**5. Severability**

Invalidation of any 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.

**6. Amendment**

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 100% (or as otherwise stated in these covenants) of the parcels subject to this Declaration.

**7. 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 a successive periods of ten (10) years unless an instrument agreeing to revoke or terminate this Declaration has been signed by 100% (or as otherwise stated in these covenants) of the owners of the parcels and has been recorded.

**8. Non-Liability of Association and Committee Members**

No Committee Member or Association 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).

**9. Non-Dedication to Public Uses**

Nothing contained in this Declaration shall be construed or 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.

**TOBACCO ROOT MOUNTAIN RANCH OWNERS**

IN WITNESS HEREOF, this instrument has been executed this \_\_\_\_\_ day of \_\_\_\_\_, 2001

Parcel 1, 2, 3: On this day, before me, the owners personally appeared, Ted Schrock, Barbara Schrock, 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 \_\_\_\_\_  
Theodore R. Schrock Barbara J. Schrock

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

X \_\_\_\_\_  
Notary Signature  
Notary Public for the State of \_\_\_\_\_  
County of \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

IN WITNESS HEREOF, this instrument has been executed this 5 day of September, 2001

Parcel 4: On this day, before me, the owner personally appeared, John 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 purposed therein contained.

  
John King

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



x Kerry Litwinovich  
Notary Signature  
Notary Public for the State of Wyoming  
County of Teton  
Residing at Moran, WY  
My Commission Expires 9/11/04

**TOBACCO ROOT MOUNTAIN RANCH OWNERS**

**IN WITNESS HEREOF, this instrument has been executed this 04 day of SEPTEMBER, 2001**

**Parcel 1, 2, 3:** On this day, before me, the owners personally appeared, Ted Schrock, Barbara Schrock, 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 Theodore R. Schrock  
Theodore R. Schrock      X Barbara J. Schrock  
Barbara J. Schrock

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



X Jackie Ann Kirtley  
Notary Signature  
Notary Public for the State of MT

County of MADISON

Residing at ELWIS

My Commission Expires 10-22-02

**IN WITNESS HEREOF, this instrument has been executed this \_\_\_ day of \_\_\_\_\_, 2001**

**Parcel 4:** On this day, before me, the owner personally appeared, John 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 purposed therein contained.

X \_\_\_\_\_  
John King

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

X \_\_\_\_\_  
Notary Signature  
Notary Public for the State of \_\_\_\_\_

County of \_\_\_\_\_

Residing at \_\_\_\_\_

My Commission Expires \_\_\_\_\_