

**DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS  
FOR  
ELK RIVER RANCH**

The undersigned owner of all the land included within the boundaries of the Elk River Ranch described by that Certificate of Survey on file and of record with the Clerk and Recorder of Park County at Book 510161 of Surveys, Page \_\_\_\_\_, hereby declares and adopts the following Declaration of Protective Covenants and Restrictions ("Covenants") for the Elk River Ranch as follows:

**1. PURPOSE.**

It is the purpose of these Covenants to preserve and protect the environment, the natural beauty, the view and surroundings of the Elk River Ranch and to preserve and protect the interests and investment of its individual owners.

These Covenants are designed to enhance the natural habitat and growth of plant life, animal life and surface and underground water.

These Covenants shall attach to and run with the land and shall constitute and equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved.

These Covenants are declared for the benefit of the entire property and every part of it and for the benefit of each owner or occupant. They shall constitute benefits and burdens to Declarant and all persons or entities hereafter acquiring any interest in the property.

**2. TERM.**

These Covenants shall begin as of the date of recordation and shall run for a sixty (60) year period, with an automatic extension for another sixty (60) years, at the end of the first sixty (60) years.

3. USE OF THE PROPERTY.

Elk River Ranch and each and every part of it shall be used solely for private, single family residential uses, although certain agricultural activities utilizing the land, such as grazing and hay production, are allowed. Overgrazing, however, will not be permitted.

No tract within the Elk River Ranch shall ever be occupied or used for any commercial or business purpose except for a small office or studio fully contained within the single family residence and shall not be used for meeting the public, customers or clients.

No prospecting, mining, quarrying, tunneling, excavating or drilling for substances on or within the earth, including oil, gas, hydrocarbons, minerals, gravels, sand, rock or earth shall be permitted; however, the owners may drill water wells on their property for domestic and landscape use.

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted.

4. ACTIVITIES.

No noxious, offensive or hazardous activities shall be permitted upon any portion of the property nor shall anything be done on or placed upon any portion of the property which is or may become a nuisance to others.

No light shall be produced upon any home site or other portion of the property which shall be unreasonably bright or cause unreasonable glare.

Exterior loud speakers shall be prohibited. No sound shall be produced on any designated home site or other portion of the property which is unreasonably loud or annoying, including, but not limited to, speakers, horns, whistles or bells.

Fishing shall be allowed in season in accord with the rules and regulations of the State of Montana.

No big game hunting shall be permitted on any portion of any property; nor shall the discharge of any firearms be allowed, with the exception of pattern shotguns, unless an emergency exists.

All of the laws and regulations of the United States, State of Montana and Park County shall be observed at and within the boundaries of the Elk River Ranch.

5. RURAL CHARACTER.

Purchasers of land within the Elk River Ranch recognize the continued value of agricultural production to the Paradise Valley and Montana in general. Purchasers also recognize the rural character of the Paradise Valley and will strive to retain these values. Existing agricultural operations and practices will continue in the Paradise Valley and the purchaser recognizes the need for these operations and practices to continue as they have historically.

6. ANIMALS.

A reasonable amount of livestock, such as horses, cattle, etc., are permitted on the property. No swine, chickens, goats or exotic birds and animals will be allowed. No feedlots or similar activities will be permitted.

All pets shall be controlled and restrained. They shall not be allowed to run at large beyond designated home sites. No animals shall be permitted which shall constitute a nuisance. All animals shall be strictly controlled by their owners to prevent any interference with livestock or surrounding properties.

7. SUBDIVISION PROHIBITED.

The Elk River Ranch shall not be subdivided into more, further or different parcels from those which exist on the Certificate of Survey on file and of record with the Park County Clerk and Recorder at Book <sup>510</sup> 161 of Surveys, Page \_\_\_\_\_, at any time, with the exception of the 124 acre Tract 4, which may be subdivided one time into no more than two parcels, neither of which can be less than 20.1 acres. Whether or not Tract 4 is

subdivided further, it shall be subject to the same two acre building site restrictions as the other Elk River Ranch parcels.

8. IMPROVEMENTS.

All improvements except fences shall be within the approximate two acre designated building site as set forth on the Final Plat. The primary residence may be situated no closer than 100 feet from the high water mark of the Yellowstone River; all other structures must be set back 150 feet from the high water mark of the Yellowstone River.

Only a single primary residence, garage, barn, storage building and guest house may be erected on any tract of the Elk River Ranch. No outbuildings shall be erected or maintained prior to the start of construction of the primary residence.

All owners are urged to design buildings that reflect the mountain community and ranch style architecture in keeping with the spirit of Montana.

Material, composition and quality, color and shape are important in the construction of improvements. All improvements shall be constructed of first quality materials. Natural and earth color materials are required. No steel, aluminum or metal buildings will be allowed for any residence or outbuilding. All exterior surfaces shall have minimum reflection values. Flat roofs and A-frames are not permitted. All roofs shall be constructed of Class A fire retardant materials. Metal roofs are prohibited unless in earth or wood tones.

Above grade construction of pools, spas or hot tubs shall be permitted only when not visible from adjacent designated home sites. TV and radio reception devices shall not be permitted where visible from adjacent property.

The source of exterior light shall not be visible from adjacent designated home sites. Mercury vapor lamps shall not be permitted.

Additions, enclosures, fences, walls and all other changes to the natural topography shall have materials, details, colors, scale, architectural theme and general quality consistent with the residence. The aesthetically pleasing side of materials for any improvement must be placed opposite the side from the residence and shall face toward adjacent designated

home sites and common property. The side of lesser quality or aesthetic value must face the residence.

Mobile homes, motor homes, house trailers, tents, prefabricated homes and modular homes shall not be permitted, nor shall any houses or buildings be moved onto the property.

No underground storage tanks shall be allowed with the exception of propane tanks.

Owners shall be responsible for fencing designated home sites against the incursion of livestock. Each fence must have one gate in the east-west length to allow for emergency use by fire vehicles.

**9. SIZE AND HEIGHT.**

A primary residence shall contain a minimum of 1600 square feet and a maximum 8000 square feet of interior above grade enclosed living space; similarly a guest house shall be limited to 3000 square feet, a barn 8000 square feet, a storage building 8000 square feet and a garage 2500 square feet. All structures are limited to two stories. No primary residence or barn shall exceed 35' in height; no other structures shall exceed 24' in height. Height measurements shall exclude reasonable chimney height.

**10. SERVICE YARD.**

An enclosed service yard shall be provided for trash receptacles, above ground tanks, outside clothes drying and all other maintenance and service facilities. Service functions shall not be visible from neighboring designated home sites. There shall be no disposal or incineration of garbage or trash on any portion of the Elk River Ranch or adjacent water courses.

**11. PARKING SPACE.**

Home site plans shall provide sufficient unobtrusive parking for the use of the owner and guests. Recreational vehicles, boats, trailers, snowmobiles, motorcycles and other rolling equipment, other than operating automobiles and pickups, shall not be stored

in the open on any designated home site, driveway, road or on any other part of the property. Enclosed covered facilities for such storage shall be required. Such storage shall be required for each item which is used less than twice in each month of the calendar year.

12. SITE PREPARATION, GRADING, ROADS AND LAND.

Grading for building or other improvements shall be confined to a minimum so that improvements shall be tailored to the designated home site rather than conforming the site to the improvements. All grading shall be contoured into existing ground lines to avoid unnatural sharp edges. Existing natural features including, but not limited to, trees, shrubs and rock outcroppings, shall be incorporated into the plan and shall be preserved rather than removed or altered wherever possible. Areas disturbed during road construction must be re-seeded to a ground cover with vegetation type approved by the Soil Conservation Service. Revegetation shall be required for all disturbed areas.

No trees or vegetation shall be cut except as required for residence construction and in no case may live trees lining the river bank be cut. River bank trees which have died as a result of natural causes may be cut. Riparian vegetation shall be left intact, and no sod may be installed in riparian areas.

Home site development shall accommodate proper drainage using natural channels. Drainage and other topography transitions shall blend with the natural topography of the home site.

13. UTILITY EASEMENTS.

A general utility easement for electricity, gas, sewer, communications, telephone, water, television, cable communications and other utility equipment shall exist over a tract ten feet wide as shown on the plat (or by a route determined by a utility company, but this route may not cross other landowners' designated building site without written permission of the landowner whose building site is being crossed), immediately adjacent to each road and on either side of boundary lines. All owners shall have the right to enter upon and

excavate in such easements for the purpose of installing, replacing, removing and otherwise servicing facilities installed in such easements.

14. INSTALLATION AND MAINTENANCE OF UTILITIES.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accord with State and local regulations. Sewer improvements shall be constructed by the owner in accord with such State and local regulations. Outhouses are not allowed on any portion of the Elk River Ranch, excepting chemical toilets during construction periods.

15. LANDSCAPING AND TRACT MAINTENANCE.

Landscaping shall be done using primarily natural and native species. All landscaping in the vicinity of the improvements shall be cut and maintained to minimize fire danger. The height of planted vegetation and trees on a property shall not substantially interfere with the views of other owners.

On each property the owner shall control all noxious weeds and plants and shall destroy them according to State or County Standards.

16. CONSTRUCTION SCHEDULES.

Improvements shall be diligently prosecuted to completion and shall be completed within twelve (12) months following commencement. No materials shall be placed or stored upon a property more than thirty (30) days before commencement of construction or more than thirty (30) days following completion of construction.

Each construction site shall have a chemical toilet placed in a location as inconspicuous as possible. During any construction, the site shall be cleaned up daily and shall be maintained free of trash. Each owner shall be responsible for cleaning up his wind blown debris both on and off the property.

17. TEMPORARY STRUCTURES.

During construction one temporary structure will be permitted on the property for a period not to exceed twelve (12) months. In any event, however, such structure shall be removed within thirty (30) days of completion of construction.

18. MAINTENANCE AND LAWS.

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.

All fences must be maintained by landowners in accordance with state law.

19. WATER RIGHTS.

Water rights shall be allocated to parcels as agreed between the Declarant and purchasers with approval of the Montana Department of Natural Resources and Conservation.

20. ENFORCEMENT OF COVENANTS.

The provisions of these Covenants may be enforced by individual owners.

21. ACTION.

In the event of violation or threatened violation of any of these Covenants, legal proceedings may be brought in a court of law or equity for injunctive relief and damages. In addition, an owner may serve notice, in writing, on the person 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 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.

22. COSTS AND EXPENSES.

Should any party employ an attorney or incur costs to enforce any of the terms or conditions of these Covenants against the other, the prevailing party shall recover all such costs, including reasonable attorney fees, costs of suit and costs of discovery.

Failure to enforce any provision, Covenant or condition does not waive any such provision, covenant or restriction during the course of existing or subsequent violation.

23. AMENDMENT.

The specific provisions of the foregoing Covenants and restrictions may be changed or terminated, only by the written consent of one hundred percent (100%) of the recorded parcel owners of Elk River Ranch as described in that Certificate of Survey on file and of record at Book 5/2161 and Page \_\_\_\_\_ of the records of the park County Clerk and Recorder (the owner of each parcel having one vote).

However, additional covenants or restrictions may be added with the written consent of eighty percent (80%) of the recorded parcel owners of Elk River Ranch.

24. SEVERABILITY.

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.

25. ADMINISTRATION AND MANAGEMENT.

The Elk River Ranch Home Owners Association shall be constituted, shall conduct its business, and shall have authority and responsibility as provided herein and in Exhibit One attached hereto and incorporated herein by reference.

DATED this 5<sup>TH</sup> day of OCTOBER, 1994.

  
JOHN P. SHELTON, JR. - Declarant

