

AMENDED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration made this 15 day of May, 1996, by BUD KING CONSTRUCTION CO., a Montana corporation of Frenchtown, Montana, hereinafter "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Missoula, Missoula County, Montana, which is more particularly described as Lots 1 through 8, King Ranch, Phase I and all of King Ranch, Phases II and III.

WHEREAS, Declarant has previously declared that all of the properties described as Lots 1 through 8, King Ranch, Phase I and all of King Ranch, Phases II and III are to be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner hereof;

WHEREAS, Declarant desires to amend said Covenants;

NOW, THEREFORE, Declarant hereby declares that all of the properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner hereof.

ARTICLE I
DEFINITIONS

1. "Association" shall mean and refer to King Ranch Homeowners Association, its successors and assigns. Declarant reserves the right to incorporate the association as King Ranch Homeowners Association, Inc. or such other name as may be acceptable to the Secretary of State of the State of Montana. In the event of incorporation, the corporation shall have all rights of the Association hereunder.

2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association. Declarant represents that the Properties as shown on the plat of the property shall be developed in three (3) phases. The phases shown as First Phase, Second Phase and Third Phase are set forth in the plat of King Ranch.

4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association is designated as "Common Area" on the plat of King Ranch and shall be owned by the Association prior to the time of the conveyance of the first lot, and shall also include a multi-family water system constructed on each of the three (3) phases of the property, including any wells, pump houses, storage areas, mains and other parts of said water systems.

5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision maps of the Properties with the exception of the Common Area.

6. "Declarant" shall mean and refer to Bud King Construction Co., its successors and assigns.

ARTICLE II

PROPERTY RIGHTS

1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable fees for the use of the water system for each of the three (3) phases as approved by the board of Directors from time to time as hereinafter provided;
- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (c) The right of the Association to suspend the voting rights and the right to the use of the water system or recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days with regard to the use of any recreational facilities for any infraction of any published rules and regulations of the Association; and
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

3. Access. Several of the Lots, subject to this Declaration, adjoin the golf course being constructed by Declarant. Declarant for the parties utilizing the golf course reserves the right of reasonable ingress and egress to the said lots adjoining the golf course for the purpose of retrieving errant golf balls. The owner of each of the tracts adjoining the golf course shall take the same subject to the right of ingress and egress, and shall also agree that the Owner shall assume the risk of any damage caused by golf balls from errant shots on the golf course. Additionally, all domestic animals shall be controlled as they are not allowed on any areas of the golf course.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

1. Every Owner of a Lot 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 Lot which is subject to assessment.

2. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership when the total votes outstanding on the Class A membership equals the total votes outstanding on the Class B membership.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any

Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (a) A charge upon the sale of the Lot by Declarant;
- (b) Annual assessments or charges for use of the water system located within the phase in which the Lot is located;
- (c) Annual assessments or charges for the maintenance of any roadways, including snow removal, cleaning, repairs and replacement of the roadways located within the phase in which the Lot is located;
- (d) Annual assessments or charges for the maintenance, repair and replacement of the storm drainage sumps located within the phase in which the Lot is located; and
- (e) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The original charge upon the sale of each Lot by Declarant shall be in the amount of ~~Six Hundred Dollars (\$600.00)~~^{\$300}. One Hundred Dollars (\$100.00) shall be deposited in a reserve account for the replacement of the water system. ~~Five Hundred Dollars (\$500.00)~~^{\$200.00} shall be deposited in a separate reserve account to be used exclusively for the purpose of enforcing the Architectural Control Standards and Guidelines, such incurring as attorney fees, architectural fees, etc. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a 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 obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

2. Purpose of Assessments. The assessments for each phase of King Ranch shall be segregated into separate accounts. The assessments for each phase levied by the

Association shall be used exclusively to maintain and operate multi-family water systems within the phase and owned by the Association, to maintain, repair and replace the private roadways, if any within the phase, to provide for a reserve for replacement of the water system and roadways to maintain, repair and replace the storm drainage sumps located within the phase, and to promote the recreation, health, safety, and welfare of the residents in the Properties and to improve and maintain the Common Area. The initial charge for placement in a reserve account for the replacement of the water system shall not be utilized for purposes other than the replacement of the water system without prior approval of two-thirds (2/3) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. The parties understand that the purpose of the funds is to assure an adequate supply of safe and potable water for the benefit of present and future owners of the Properties connected thereto. In the event the reserve fund for the replacement of the water system is utilized to any extent, the same shall be immediately restored by the Owners of the Property affected by such replacement.

3. Maximum Annual Assessment. Prior to the sale of the first Lot in each phase, the Declarant shall establish the maximum annual assessment per Lot.

- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5 percent above the maximum assessment for the previous year without a vote of the membership;
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 5 percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose;
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum; and

- (d) In the event that costs for the operation and maintenance of the water system within a phase increases or decreases, the Board of Directors may increase or decrease the annual assessments for the use of the water system as may be necessary for the payment of the costs of operation and maintenance of the same, and for the establishment of any necessary reserves for the replacement of portions of the water system within that phase.

4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, and who are Owners of Lots within the phase affected by the special assessment.

5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast 60 percent of all the votes of each class of membership, and being Owners of the phase affected by the action at the meeting, 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots within the phase affected and may be collected on an annual basis.

7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots within the phase on the date of the first day of a sale of a Lot within that phase. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be established by the Board of Directors and may be on an annual, quarterly or monthly basis. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

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 the rate of 10 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. In the event of litigation, the Owner shall pay a reasonable attorney's fee incurred by the Association in connection with the litigation. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant

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9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant

to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

10. Approval of Department of Health and Environmental Sciences. In the event of any change of the provisions relating to the community water system or systems, the same shall require the prior written approval of the State of Montana Department of Health and Environmental Sciences. No change shall be effective until such approval has been secured.

ARTICLE V

ARCHITECTURAL CONTROL

The architectural control committee and landowners shall be bound by the terms of the Architectural Control Design Standards and Guidelines attached as Exhibit "A". Such Design Standards and Guidelines are hereby adopted and approved. The standards are minimum standards and may not be waived.

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made unless (i) the work is done by a general contractor licensed in the State of Montana and (ii) the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event that such plans and specifications are consistent with the Architectural Control Design Standards and Guidelines

*SEE TWO LINE ADDITION

(30) days after said plans and specifications have been submitted to it, approval will not be required.

ARTICLE VI

USE RESTRICTIONS

1. Land Use.

- (a) The premises may be used only for single family residences. One Lot, as shown on the plat of King Ranch, shall be the minimum building area upon which a single family residence may be constructed. One (1) or more Lots may be utilized as a single building plot; and
- (b) The premises shall not be used or occupied by other than a single family and family servants, and shall not be used for other than residential uses.

2. Buildings. No Lot shall have more than one (1) dwelling house located

upon it, and no Lot shall be divided. No building shall be erected, altered, placed upon, or permitted to remain on any Lot other than one (1) single family dwelling placed on a permanent foundation, plus one (1) private attached garage. It is the intention and purpose of this provision to assure that all dwelling houses shall be of a quality of workmanship and materials substantially similar or better than that which can be produced as of the date of these covenants for the minimum permitted dwelling size. The dwelling house shall have a minimum of the following, unless otherwise approved by the Architecture Control Committee:

- a) ~~One Thousand Five Hundred (1500) sq. ft.~~ ^{1400 sq'} on the ground floor of a one-story residence;
- b) ~~One Thousand Eight Hundred (1800) sq. ft.~~ ^{1700 sq'} of above ground living area on all multi-level residences.

NOTE: For purposes of clarification, the term "multi-level residences" shall include two-story split foyer, split entry and bi-level residences.

Such area shall include the walls of the house, but shall be exclusive of the basement and exclusive of open porches or attached garages. All structures shall be of new

construction site built. No pre-fabricated, modular, mobile home or trailer shall be placed on any Lot.

All construction will be in conformity with the uniform building codes. The same shall further comply with all federal, state and county requirements including, but not limited to, the laws of the State of Montana, and the regulations of the Montana State Board of Health pertaining to the installation and maintenance of septic sewer systems and related facilities, and all such laws and regulations must be complied with in every respect concerning any construction upon said premises.

No garage, basement or other appurtenance upon said premises shall be used as a principal dwelling. The exterior portion of any improvement constructed upon said premises must be completed within one (1) year from issuance of building permit. Homesites shall be properly addressed when built, with address numbers being a minimum of 4" in height.

3. Trailers. No trailer, trailer house, mobile home, truck (other than a pickup) camping trailer or boat/boat trailer or any inoperative or unsightly vehicle shall be parked and permitted to remain on the Properties. ~~SEE AMENDMENT~~

4. Landscape.

- (a) Removal of existing trees is prohibited as long as they enjoy healthy growth. Only those that die may be removed;
- (b) All fences must be approved as to the location and materials in writing by the architectural control committee prior to installation thereof; and
- (c) No excavation or deposition of soil, stone, sand, earth and gravel, except at the actual building or construction site, will be permitted unless written approval shall be first obtained from the architectural control committee. All excavated material must be leveled and blended into the landscape within one (1) year from the excavation thereof.

5. Animals or Pets. No animals or fowl, domestic or wild, except for domestic dogs and cats, will be kept on any of the Properties, and in no event may any animal

or fowl be raised, bred or maintained for any commercial purpose. Any dog or cat permitted hereunder shall be kept within the Lot of its Owner unless leashed and under the immediate control of its Owner. Such animal shall not be permitted to become a nuisance or annoyance to the neighborhood and is not permitted on the golf course property. The natural and prior rights of wild game and animals is recognized, and such animals shall not be hunted, molested, or otherwise harmed on the Properties.

No Owner shall permit any domestic animals to become a nuisance to other persons or to the animals wild by nature that inhabit the area surrounding the subdivision. If such animal should create any such nuisance, and after notice thereof to the Owners, said animal shall be forthwith removed from the above premises, and in the event of a refusal to remove the same by the Owners or persons in charge therewith, the same may be destroyed under the discretion of the architectural control committee, or its agents.

6. Maintenance. No trash, rubbish, debris, garbage or other unsightly items shall be accumulated or permitted to remain on any Lot. No burning of such trash, rubbish, debris or garbage shall be permitted on any of the Properties.

7. Garbage. All garbage shall be stored in containers of metal, plastic, or other suitable materials which shall prevent the escape of odors, and prevent entrance by pets or wildlife. No such container shall be located where its appearance is unsightly from any road or adjacent property. Containers in front of the Lots will be screened by solid fencing.

8. Nuisances. No noxious or offensive activity shall be carried on or permitted upon any of the Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or the golf course; nor shall the premises be used in any way or for any purpose which may endanger the health or safety of or unreasonably disturb the residents of any Lot.

9. Sanitary. The Owner of each Lot shall comply with all governing laws and regulations relating to water supply, sewage disposal, air pollution, and other sanitary requirements.

10. Fire Protection. The Owner of each Lot shall take steps as are necessary to assist in the prevention of fires on or around the subdivision. Each Owner shall, at a minimum, abide by the following standards relative to the prevention of fires.

- (a) All smoke outlets on any dwelling or outbuilding shall be equipped with arrestors wherever such outlets could possibly permit sparks to escape;
- (b) All exterior units, other than small commercial barbecues, involving the use of spark or floating ember type fuel must be approved, in writing, by the architectural control committee as to the location thereof; and
- (c) All Lot Owners shall immediately correct any unnecessary fire hazards or conditions that may exist upon the premises or as may be later determined to exist by the said committee.

11. Building Location. No buildings shall be located on any Lot closer than twenty-five (25) feet from the street right-of-way, or within ten (10) feet of any other property lines.

12. Road Access. Road access for each phase is to be provided as shown on the plat for the real property. Declarant shall either pave the roadway or shall make satisfactory arrangements for the paving of the roadway prior to the first sale of a Lot in each phase. The roadways shall be constructed and paved in accordance with the requirements of Missoula County.

13. Off-Street Parking. The architectural control committee shall require that the Owner in connection with any construction of improvements on the real property building a paved driveway sufficient for two (2) off-street parking spaces for each Lot.

* SEE AMENDMENT

14. Common Area. The Common Area as shown on the plat shall be for the benefit of Lot Owners and wildlife. Any vehicular traffic in this area shall also be prohibited. Violators are to be charged with criminal trespass.

15. Maintenance of Natural Environment. No activity shall be carried on or permitted upon any of the Properties or the Common Areas that would affect the natural environment of the subdivision or related areas, and each Owner shall take reasonable action for the maintenance of the said natural environment of the said areas.

16. Weed Control. The properties shall be maintained in accordance with the Missoula County Noxious Weed Management Act. This shall include maintenance of the Common Area.

17. EASEMENT. SEE AMENDMENTS

ARTICLE VII

GENERAL PROVISIONS

1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. 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.

3. Amendment. The covenants and restrictions of this declaration shall run with and bind the land, for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This declaration may be amended during the first twenty (20) year period by an instrument signed by not less than 90 percent of the Lot Owners, and, thereafter, by an

instrument signed by not less than 75 percent of the Lot owners. Any amendment must be recorded.

4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Amended Declaration of Covenants, Conditions and Restrictions the day and year first hereinabove written.

BUD KING CONSTRUCTION CO.

By *Trudy Green*
President

STATE OF MONTANA)
: ss.
County of Missoula)

On this 15th day of May, 1996, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared Trudy Green, known to me to be the PRESIDENT of BUD KING CONSTRUCTION CO. that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.



Sherry C. Deaton
Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires: 10-14-98

CERTIFICATION OF ATTORNEY

The undersigned, DAVID B. COTNER of the law firm of Boone, Karlberg & Haddon, Missoula, Montana, does hereby certify that he is an attorney licensed to practice law in the State of Montana, that he prepared the foregoing Declaration of Covenants, Conditions and Restrictions, and that it is the opinion of the undersigned that the foregoing complies with the subdivision regulations of the County of Missoula.

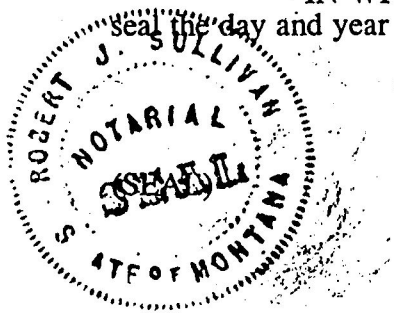
DATED this 26 day of APRIL, 1996.

David B. Cotner

STATE OF MONTANA)
: ss.
County of Missoula)

On this 26th day of April, 1996, before me, the undersigned, a Notary Public in and for the State of Montana, personally appeared David Cotner, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year first above written.



Robert J. Sullivan
Notary Public for the State of Montana
Residing at Missoula, Montana
My Commission Expires: 1/28/98