

Rocky Mountain Land
P.O. Box 2028
Coeur d'Alene, ID 83814

9512124

Re-recorded for
SECOND SUBSEQUENT AMENDMENT

**Declaration and Establishment of Covenants,
Conditions, Restrictions, Reservations,
Road Easements and Road Maintenance Provisions
For Properties Known As Enterprise Ranch (ETR)**

THIS DECLARATION initially made the 2nd day of August, 1994, by Northern Rockies Corporation, an Idaho corporation, dba Rocky Mountain Land Company, P.O. Box 2028, Coeur d'Alene, ID 83816-2028, (hereafter the "Declarant"), recorded October 10, 1994 under Auditor's No. 9411477, and First Subsequent Amendment recorded July 14, 1995 under Auditor's No. 9506564, Declarant is the owner of the following described real property, (sometimes referred to as the "premises"):

The W2 of the E2 of the SE4 and the W2 of the SE4 of Section 10, Township 29 North, Range 36 East, W.M., in Stevens County Washington.

The NE4; the SE4 of the NW4 and the N2 of the NE4 of the SW4 of Section 15; Township 29 North, Range 36 East, W.M., in Stevens County Washington.

Declarant has established a general plan for the improvement and development and sale of the premises, and declares the covenants, conditions, reservations, easements and restriction upon which and subject to which all parcels shall be improved, sold and conveyed by it as owner. Each and every one of these covenants, conditions, reservations, and restrictions is for the benefit of each owner of land included within the premises, or any mortgage or other interest therein, and shall enure to and pass with each and every parcel within the premises, and shall bind the respective successors in interest of the present owner. These covenants, conditions, reservations, and restrictions and all provisions hereof are each imposed upon such parcels, all of which are to be construed as restrictive covenants running with the title to the parcels and with each and every parcel. The Premises and Parcels, located therein are, and shall be sold, subject to, all easements in view and of record as of the date of this Declaration. Such parcels and the premises as a whole, are subject to those certain road rights of way and easements reserved, declared, and placed of record with Stevens County Washington.

The parcels located within the premises are initially designated as SUBSEQUENT AMENDMENT, ETR #1, #2A, #2B through #16.

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Article I.

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Definitions

The following terms shall have the following meanings when used in this Declaration:

1. **ETR:** ETR shall mean and refer to that certain real property and the premises described and referred to, in this Declaration.

2. **Association:** Association shall mean and refer to the ETR Property Owners's Association. The Association shall allow the Owners to act as an organized body that shall have as its duties the governance and enforcement of the Declaration for the benefit of all Owners, both current and future.

3. **Owner:** Owner shall mean and refer to the record owner of fee simple title to any recorded parcel which is a part of the premises known as ETR, but shall exclude those having such interest merely as security for the performance of an obligation. Owner shall further mean the record owner, whether one or more persons or entities claim an interest in a given parcel, and shall further mean and refer to a singular owner of one or more parcels located within the premises or property as a whole. For purposes hereof, an Owner of Record, whether one or more persons or entities, shall further include and refer to contract purchasers of parcels.

4. **Declarant:** Declarant shall mean and refer to Rocky Mountain Land Company, its successors, assigns and all others purchasing parcels in ETR through the Declarant.

5. **Parcel:** Parcel shall mean and refer to any plot of land within the described real property, owned and surveyed by the Declarant and known as ETR, and shall further refer to and mean any subsequent Stevens County, State of Washington approved subdivision of such real property.

6. **Subsequent Covenants, Conditions & Restrictions:** Subsequent covenants, conditions and restrictions shall include those imposed under any future Stevens County approved subdivision subsequent to the date hereof, and shall further refer to any supplement covenants, conditions and/or restrictions approved by the Declarant or the future Property Owner's Association which shall be filed for record with Stevens County Washington.

7. **Subdivision:** Subdivision shall mean and refer to splitting a parcel or the parcel ownership, as originally owned, surveyed and conveyed by the Declarant to Owners by Recorded Warranty Deed.

8. **Road and Utility Easements:** Road and utility easements shall refer to and include those certain road easements, and easements for utilities, in view and of record which consists of easements, rights, and rights of way of record.

Article II.

Association Membership and Voting Rights

1. **Members.** Every Owner shall be a member of the Association, regardless of whether any given Owner is entitled to vote as provided for in this Declaration. Membership shall be appurtenant to and may not be separated from any recorded parcel.

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2. **Voting Rights and Voting Members.** The Association shall have one class of Voting Membership. Owners shall be entitled to one vote per parcel except as qualified below. For voting purposes, and to be a Voting Member, same Owners of record of multiple parcels shall be limited to a single vote, and multiple Owners of record of a single parcel shall be limited to a single vote. When more than one person holds an interest in a given parcel, all such persons shall be members but the vote for such parcel shall be exercised as the multiple Owners may determine between or among themselves with one vote being cast for such parcel owned. When one owner owns multiple parcels, such parcels shall be deemed for voting purposes to be a single parcel, and such owner shall be restricted and limited to a single vote. Initially, if there are, **SUBSEQUENT AMENDMENT, SEVENTEEN (17) parcels and SEVENTEEN (17) Owners**, there shall be **SEVENTEEN (17) votes**. Upon any subsequent subdivision approved by Stevens County, the vote shall automatically increase by the number of parcels so created and/or approved.

Whenever used herein, the term "Voting Member" shall refer to and mean the Owner permitted to be a voting member under the provisions hereof, or designated as the voting member by multiple Owners of a singular parcel.

Article III.

Owner's Meetings

1. **Annual Meeting.** The first annual Owner's meeting, date, time and place shall be designated in written notice provided by Declarant to all Owners. Declarant shall assist the Owners in organizing the Association and other business associated with the first Owner's meeting. **This meeting shall occur subsequent to proposed road construction completion.** For whatever reason, lack of written notice and assistance concerning the first annual meeting, from Declarant, shall in no way lessen the terms and conditions of this Declaration. **There shall be a meeting of the Owners at 10:00 a.m. on the last Saturday of June of every year following the first annual meeting.**

2. **Method of Voting.** Voting Members unable to attend and personally vote, may vote by giving a written proxy of their right to vote to an attending Voting Member, or will be allowed to vote by mail on such matters as determined from time to time by the Association.

3. **Special Owner's Meetings.** Special Owner's meetings may be called at any time for the purpose of considering matters which, by the terms of this Declaration, require the approval of the Owners for any reasonable purpose or for other matters which are necessarily to be considered by the Association. Such meetings shall be called by written notice, signed by 50% or more of the Voting Members, which notice shall specify the date, time and place of meeting and matters to be considered thereat. No special meeting shall be called unless there shall be ten (10) days prior notice.

4. **Voting Requirements.** On all matters except amendments to this Declaration, a majority of a Voting Member quorum shall be necessary to pass any matter at either an annual or special meeting. A quorum shall consist of 50% of the Voting Members either in person or by proxy.

Article IV.

Enforcement of Declaration

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1. **Declarant's Enforcement.** Until 100% of the parcels contained within ETR have been sold or upon expiration of a period of three (3) years from the date of the recording of this Declaration, whichever shall first occur, Declarant shall have the sole and exclusive right to enforce and/or amend this Declaration. Each and every Owner purchasing parcels or property from or through the Declarant, or any subsequent Owner, covenants to observe, perform and be bound by this Declaration.

2. **Association Enforcement.** Subject to the Declarant's right to exclusive enforcement as provided above, the Association, and each Owner, shall have the right to enforce, by any proceeding in law or equity, any of the covenants or provisions of this Declaration, as now existing or as may hereafter exist, or as may be stated in any subsequent Declaration.

Article V.

Amendments to Declaration

1. **Amendment.** Subject to the rights provided exclusively to Declarant and referred to in Article III Section 1., this Declaration, and any provision contained herein, may be amended only by an instrument signed by the Voting Members of not less than sixty-six and two-thirds percent (66 2/3 %) of the recorded parcels and such parcels corresponding Voting Member. Alternatively, an amendment to this Declaration may be evidenced by the signature of the president and secretary of the Association attesting to a vote of not less than sixty-six and two-thirds percent (66 2/3 %) of the voting Owners either present or voting by proxy at a special or annual meeting of the Owners. Any amendment to this Declaration or any subsequent Declaration must be filed for record with Stevens County, Washington.

A. **Prohibited Amendments.** This Declaration, and the provisions contained herein, cannot be amended if the effect of such amendment is to decrease or to reduce the collateral which is held by the vendor under a Real Estate Contract or a beneficiary or mortgagee under a deed of trust or mortgage instrument, unless the proposed amendment is approved in writing by such beneficiary, mortgagee or contract vendor.

Article VI.

Protective Covenants

1. **Property Appearance.** No uncovered garbage or waste, junk, inoperable vehicles or abandoned mobile homes or RV trailers, or structures shall be permitted on any parcel.

2. **Building Appearance.** Any building constructed for any purpose shall have the exterior completed within one (1) calendar year from the date of ground breaking. Exterior shall be defined as that finish which shall close the exterior walls and roof of the building and shall include windows and doors and shall be built to meet all appropriate Stevens County, State of Washington Building Code(s). Manufactured homes or mobile homes of the size known as single wide are expressly prohibited. Manufactured homes and mobile homes limited to the size known as double wide, or larger, shall be set, placed or installed on a permanent foundation and shall be built and roofed to meet Steven County, State of Washington Building Code(s) and shall be finished in appearance to ground level. Any additions whatsoever to buildings or manufactured/mobile homes as defined herein, erected for any purpose, shall also be governed as contained herein.

A. **SECOND SUBSEQUENT AMENDMENT:** Exception provision is hereby made in order to provide temporary living accommodations for a period of one year from the beginning use of said temporary living accommodations, such as RV trailer or

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single wide mobile home, as moved onto owners' property, and limited to the purpose of providing temporary living accommodations during the construction of the permanent home. Upon completion of the permanent home, said temporary living accommodations shall be removed or shall be brought into compliance with this Declaration. This exception shall not limit the enforcement of Article VI in any other effects.

3. **Outbuilding Standards.** All outbuildings shall be finished according to the same criteria as set forth above.

4. **Livestock and Pets.** No animals shall be raised or permitted on any property so as to create a health, noise, or odor hazard or pollution affecting other Owners. No Commercial feed lots, kennels and/or meat processing shall be allowed. All animals shall be restricted from trespassing upon or through adjacent properties.

5. **Mining.** Mining or exploration for minerals is expressly prohibited.

6. **Surface Water.** To protect the natural ecology and environment of any named or unnamed creeks, streams, rivers, ponds, wetlands, or lakes all Owners with frontage are prohibited from constructing any structure for human or animal habitation within three hundred (300) feet of the frontage and are prohibited from creating or maintaining any landscaping requiring herbicide, pesticide, fertilizer or similar chemical substances whether manmade or organic in nature, within 200 feet of the frontage, or as shall be determined by any county, state or federal governing authority that then prevails.

7. **Nuisances.** No noxious, illegal or offensive activities whatsoever shall be carried on in any parcel, or in any part of the property known as ETR as defined herein, nor shall anything be done hereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of their respective parcel (such as, but without limiting the generality of the foregoing, unfocused lighting or live or recorded sound of unreasonable intensity or volume).

8. **Commercial Use of Property.** Any commercial use of property shall be approved by the Declarant or by the Owners in a manner as set forth in Article III, Section 4., as contained herein, and with the appropriate and necessary approval of Stevens County, State of Washington, and shall not be operated in such a manner as to create in any way whatsoever, a conflict with Article VI, Section 7., Nuisances, as contained herein.

9. **Subdivision of A Parcel.** Subdivision of a surveyed parcel as originally owned and sold by Declarant shall be limited to one single division or split, concurrent with written approval from appropriate and necessary regulating agencies of Stevens County, State of Washington and of any appropriate and necessary Federal regulating agencies.

A. **Restriction on Subsequent Subdivisions of Parcels.** Any subsequent subdivision of a parcel shall not be divided into less than **nine (9) acres**. (SUBSEQUENT AMENDMENT is the deletion of the prior phrase concerning parcels #2 & #3), except with approval by a majority of a Voting Member quorum and with concurrent approval from County, State and/or Federal regulating agencies as defined above.

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Road and Utility Easements: Provisions for Maintenance of Roads

1. **Description of Road and Utility Easements.** The ETR properties and all parcels located therein or as may be hereafter created, are subject to those certain reservation of easements, for both roads and utilities, in view and of record with Stevens County Washington; and as may hereafter be supplemented and/or amended by Declarant. Any maps attached to the easements or to this Declaration, as recorded or provided Owners, may be for estimated parcel locations only, may not be to any particular scale and may include only an estimated location of proposed roads and shall not be construed to be anything more than an illustration and estimation, except with express written designation by Declarant otherwise.

2. **Owner's Use of Easements.** The road and utility easement areas may be used by Owners of each parcel for electrical, telephone and other utility services to each parcel so long as such use does not interfere with the use of the road for ingress and egress of normal vehicular travel. Use of the easement for utility purposes by an individual Owner shall require return of the road to its prior condition under the supervision of the Association's designated agent. Each Owner shall have the right and privilege of enjoyment and use of the roads and/or easements for the purposes of providing utility and vehicle access to their individual parcels. Utilities shall include but not necessarily be limited to the following: Telephone, cable, gas, electric and water and other community utility services. Subject to such limitations as may be imposed by the Association, each Owner may delegate such Owner's right of enjoyment in and to the road easements to the members of family, guests, tenants and invitees of the Owner.

A. **Access.** An Owner shall neither restrict nor prohibit in any way the rights of other Owners to utilize existing roads or roads built to benefit any subsequent subdivision for ingress, egress and utilities across the subject parcels or properties. Further, any Owner(s) of multiple parcels shall provide appropriate and necessary recorded access for ingress, egress and utilities upon a sale or resale of any portion of ownership of said multiple parcels. No Owner shall in any way cause a parcel of land to become "landlocked".

B. **Driveway Culverts. SECOND SUBSEQUENT AMENDMENT.** All owners who build driveways to access existing and/or proposed private easement roads shall be required to install culverts at the approach to the private easement road. Culvert shall be made of a minimum of 12" corrugated metal (CMP), 20' wide and shall be properly placed so as to match the bottom of the private easement road ditch line.

3. **Utility Easements.** As more particularly referred to and described in the above-referenced Easements placed of record with Stevens County Washington, all parcels shall have a fifteen (15) foot easement paralleling all the property boundaries for each parcel. Such fifteen-foot easement is for the purpose of providing access to and use of utility easements, as well as construction access, with such utilities being defined to include but not necessarily be limited to water, sanitation, storm drains drainage, telephone and electric transmission lines, telephone cables, gas lines and the like, as may be required to service any parcel, as originally surveyed and as may be subsequently subdivided, and to benefit each Owner. Such easements are not and shall not be dedicated to the general public.

4. **Public Dedication.**

A. **Road Dedication.** If and when the County and/or other road municipality or road authority deem it appropriate that they shall accept the private or other road easements servicing the Premises into their respective highway and/or road systems, the Declarant hereby states that the road and/or road system shall transfer to such municipality or authority who shall thereafter be responsible for the further maintenance of same.

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Declarant specifically reserves the right, subject to the foregoing, to effect such transfer at any time prior to September 1997. After such date, the Association may enter into such agreements as it deems appropriate upon a vote of the majority of the voting Owners to effect such transfer. Whether such transfer may be accomplished by the Declarant or by the Association, no separate or other instrument will be necessary in the event that the municipality or authority wishes to accept the road through formal acceptance and/or dedication. The terms of this Declaration dealing with road easements upon such transfer shall automatically become null, void and of no further effect. All other terms of this Declaration shall remain in full force and effect.

B. **Utility Easement Dedication.** Declarant, in its sole discretion, may on or before September 1997, dedicate or transfer all or any part of the utility easement areas to any municipality, public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by Declarant. After the expiration date, the Association may dedicate or transfer all or any part of such utility easements and utility easement areas upon a majority vote of the voting Owners of the Association. Absent a transfer of the utility easements and easement areas, the terms of this Declaration pertinent to utility easements shall remain in full force and effect throughout its stated term.

5. **Appointment of Designated Agent With Respect to Road Easements & Maintenance Provisions.**

A. **Initial Designated Agent.** Declarant, doing business as Rocky Mountain Land Company or its assigns, shall be the Initial Designated Agent for the management, maintenance, operation and repair of the road system for a period of time ending September 1997.

B. **Association's Authority to Appoint Designated Agents.** Subsequent to the term during which Declarant shall serve as the Initial Designated Agent (September, 1997), the Association shall have the right to delegate its obligations with respect to road easements and maintenance to a third party agent for the necessary maintenance, operation, repair and management of the road system(s). Voting Members by a majority vote may designate such third party agent to contract for, and oversee, the maintenance and repairs authorized under this Declaration. An Owner of record may be a Designated Agent for such purposes.

C. **Personal Liability of Agent.** Declarant, as Agent, and any subsequent third party agents, shall not be personally liable for debts contracted by such agents on behalf of the Association and parcel Owners, unless such agent violates the restriction on account withdrawals provided for in Article VII, Section 9E without the prior written consent of a majority of the Voting Members of the Association.

D. **Authority of Designated Agent.** The Association's Designated Agent, including the Initial Designated Agent, shall have the authority to incur expenses on behalf of the Owners of parcels for the repair and maintenance of the roads as deemed reasonable and appropriate, and subject to the specific provisions of Article VII, Sections 8 and 9. Expenses incurred for such repair and maintenance shall be paid prorata per parcel.

E. **Term of Designated Agent.** Designated Agents appointed subsequent to the Initial Designated Agent (Declarant) shall continue in such capacity until such Agent may resign and/or a successor is elected by a majority of the Voting Members of the Association.

7. **Fees of Designated/Third Party Agent.**

A. **Fees of Declarant (Initial Designated Agent).** Declarant, as the Initial Designated Agent, shall be entitled to a fee of twenty percent (20%) of the actual costs incurred for

road maintenance and repair, which fee shall be an expense to be divided pro rata among the Owners of parcels in the same manner as expenses of maintenance are divided among the Owners. **9512124**

B. Fees of Subsequent Designated Agents. Compensation or fees for Designated Agents subsequent to the term of the Initial Designated Agent (Declinant) shall be determined by a majority vote of the Voting Members.

8. Authorized Road Maintenance and Repairs. The road maintenance and repairs to be performed under the terms of this Declaration shall be:

- Grading/filling of holes; and
- Drainage ditches; and
- Construction and repair of culverts; and
- Snow removal; and
- Roadside weed control as may be required from time to time by Stevens County rules, ordinances and/or regulations.

The Designated Agent shall cause snow removal to be provided, but the costs of such snow removal shall be paid for by Owners living on their respective parcels and requesting such service in writing. In the event snow removal is requested by a nonresident Owner, such service will be provided upon written request to the Designated Agent and the cost of such service shall be billed to the requesting Owner.

Any additional repairs or maintenance shall not be undertaken by the Designated Agent except with the written consent of a majority of the Voting Members.

9. Expenses of Road Maintenance and Repairs.

A. Owner's Responsibility. Owners of parcels initially benefited by and/or burdened by road easement(s), maintenance and repairs, and known as parcels, **SUBSEQUENT AMENDMENT, ETR #1, #2A, #2B through #16**, together with their assigns and successors, shall share equally on the basis of one share per parcel the cost of repairing and maintaining roads and/or easements described in this Declaration. Owners of multiple parcels shall pay one share per parcel owned. Any subsequent approved parcel subdivision concurrent with any subsequent recorded road easement necessitating road maintenance and repair shall cause the owner(s) to be subject to shared responsibility as defined herein.

(1) Failure to Pay. Statements and/or billings for repairs and maintenance provided to parcel Owners shall be payable in full within thirty days (30) of the date of billing. Any such statement not paid when due shall constitute an assessment which may be foreclosed as a mortgage lien against the affected parcel. Such lien may be foreclosed by the Association or the Designated Agent in the event the Designated Agent has been the authorized billing agent and incurred the cost for which the Agent seeks reimbursement or payment. All assessments, together with interest thereon, at the maximum interest rate allowable under Washington state law, together with attorney fees and all other expenses incurred in collection shall be served by such lien.

B. Obligations of Association. The Association shall have the obligation to pay all obligations incurred in connection with the maintenance, operation, repair and management of the roads serving the Premises and shall render to the parcel Owners not less than an annual accounting of all monies received by the Association on account or paid out for road maintenance and repairs.

C. Owner's Statements. Statements rendered by the association and/or the Designated

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Agent shall be provided to parcel Owners, and the amounts represented in such statements shall be exclusively for the improvement, repair, maintenance and management of the roads within the premises. As a standard, road improvements and the cost of same shall be those reasonably necessary to maintain the roads in original or better condition. All of such costs shall be on an equal share basis per parcel and statements shall be payable within thirty (30) days from the date of mailing. Maintenance and repair costs billed to parcel Owners shall be prorated on the basis of an equal share per parcel regardless of parcel size or the number of persons owning a parcel and using the road system. Owners of multiple parcels shall pay one share for each parcel owned.

D. **Operating Fund Account.** An Operating Fund Account for purpose of depositing payments from parcel Owners shall be established at an area bank, located in Stevens County. Such account shall be entitled as the Road Maintenance Account of the ETR Association. Parcel Owners shall be requested to make all checks payable under the terms of this Declaration to such account.

E. **Withdrawals on Account.** Withdrawals from the above designated account in amounts greater than \$300 per item shall require the signature of the Designated Agent, together with such parcel Owner as may be appointed by the Association.

10. **Declarant's Disclaimer.** Declarant, by virtue of this Agreement, neither accepts nor imposes upon itself any financial or physical responsibility for the maintenance and condition of roads, except and as may be limited to those specific responsibilities set forth under the terms of this Declaration and specifically accepted by Declarant by its signature hereon. Financial and other responsibility and liability for the roads shall be borne by the parcel Owners and not by the Declarant.

11. **Rules and Regulations for Road Use and Easements.** Declarant may establish rules and regulations for the use of the roads and/or easements provided for herein. Upon the expiration of the term under which Declarant shall serve as the Initial Designated agent, rules and regulations shall then be accomplished and established by a majority vote of the Voting Members.

Article VIII.

Term of Declaration

1. **Duration.** This Declaration, and all covenants and provisions contained herein, shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any parcel Owner for a period of fifty (50) years from the date of this Declaration, and thereafter shall continue automatically in effect for additional periods of ten (10) years unless otherwise agreed to in writing by seventy-five percent (75%) of the then existing Voting Owners of the Association.

A. **Prohibition Against Revocation of Road Maintenance Provisions.** Notwithstanding the foregoing, the provisions of this Declaration providing for the repair and maintenance of roads and easements shall not be revoked or terminated for any reason whatsoever without the prior express written approval of any governing Highway District, Stevens County, Washington.

Article IX.

General Provisions

1. **Attorney Fees.** In the event it is necessary for the Association, Declarant and/or any Owner to bring any action to enforce or interpret the terms and conditions of this Declaration, the prevailing

