

*DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
  
CONTINENTAL DIVIDE RANCH*

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THIS DECLARATION is made this 27th day of January, 2006, by Continental Divide Ranch, LLC, a Colorado Limited Liability Company (hereinafter referred to as "Declarant").

**ARTICLE 1**  
**INTRODUCTION, PURPOSE AND DECLARATION**

- 1.1 Description of the Property. Declarant is the record owner of real property situated in the County of Archuleta, State of Colorado, that is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").
- 1.2 Declarant's Purposes. Declarant desires to create a residential ranch community (small planned community) in accordance with the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-116 (2) (as the same may be amended from time to time, the "Act") consisting of individual Parcels, collectively referred to as "Continental Divide Ranch" or "the Ranch." Each Owner shall have access to the Domestic Water System as described herein upon payment of a tap fee as required by Declarant and monthly water rates as required by Declarant or the Association. The purposes of this Declaration are to set forth limitations and restrictions with respect to the use, density and design of improvements on the Property in order to preserve the natural beauty of the Property and it's setting, to preserve, protect and enhance the values and amenities of the Property, and to maintain the Property as a pleasant and desirable community.
- 1.3 Imposition of Covenants. To further the general purposes herein expressed, Declarant, for itself, its successors and assigns, hereby declares that the Property shall at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Declaration and to the covenants, conditions and restrictions, easements, reservations, assessments and charges herein contained, which will run with the Property and bind all parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devices and personal representatives.

**ARTICLE 2**  
**DEFINITIONS**

The following terms as used in this Declaration, are defined as follows:

- 2.1 "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association which shall be filed with the Secretary of State of Colorado to create the

Continental Divide Ranch Association, as such Articles may be amended and supplemented from time to time.

- 2.2 “Assessments” means the Annual, Special and Default Assessments levied pursuant to and defined in Article 5 below to meet the estimated cash requirements of the Association.
- 2.3 “Association” means the Continental Divide Ranch Property Owner’s Association, a Colorado non-profit membership corporation, or any successor to the Continental Divide Ranch Property Owner’s Association by whatever name, charged with the duties and obligations set forth in this Declaration, the Articles, and the Bylaws.
- 2.4 “Association Documents” means the Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.
- 2.5 “Board of Directors” or “Board” means the Board of Directors of the Association, which is the executive board designated in this Declaration to act on behalf of this Association in all matters not reserved to the Owners or by law.
- 2.6 “Bylaws” means the Bylaws of the Association, which establish the methods and procedures of it’s operation, as such bylaws may be amended and supplemented from time to time.
- 2.7 “Common Access and Utility Easements” means any portion of a driveway or roadway which serves in excess of one Parcel and shall further include any entry statements (including gates, if any, or lighting associated with such entry statements), shown on the Map as Navajo Peak Way, Banded Peaks Drive, and Banded Peaks Lane.
- 2.8 “Common Expenses” means (a) all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for (i) managing, operating, maintaining, repairing, altering and improving the Domestic Water System, Common Access and Utility Easements (including fees or contract arrangements related water rights and the Domestic Water System; (ii) administering and maintaining Continental Divide Ranch; (iii) levying, collecting and enforcing the assessments, charges and liens due the Association pursuant hereto, (iv) regulating and managing Continental Divide Ranch; and (v) operating the Association; and (b) allocations to reserves.
- 2.9 “Declarant” means Continental Divide Ranch, LLC, a Colorado Limited Liability Company, or its successors and assigns and any Person that (a) acquires from Declarant all or substantially all of the Property and (b) prior to or at the time of such acquisition is designated by a written instrument signed by Declarant as a successor or as assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interest as a Declarant that are being assigned, in which case Continental Divide Ranch, LLC shall retain all other rights as a Declarant. References to

the “members” of Declarant shall refer to the owners of membership interests in Continental Divide Ranch, LLC.

- 2.10 “Declarant Control Period” means the period when Declarant owns at least one Parcel in the Ranch, during which Declarant has certain special rights as described in this Declaration, including but not limited to the right to appoint the Board of Directors of the Association, the members of the Design Review Committee, and the right to approve or deny proposed home based occupations and agricultural activities on Parcels.
- 2.11 “Default Rate” means 18% interest per annum, or such other rate as shall have been established by the Board of Directors.
- 2.12 “Design Guidelines” means the guidelines and rules published and amended and supplemented from time to time by the Declarant or the Design Review Committee.
- 2.13 “Design Review Committee” or “Committee” or “DRC” means the committee formed pursuant to Article 6 to maintain the quality and architectural harmony of improvements in Continental Divide Ranch.
- 2.14 “Domestic Water System” may include any of the following, as determined by Declarant in its discretion: water well(s), pump(s), storage tank(s), distribution line(s), if any (excluding individual Parcel service lines), and related equipment, facilities, and easements, as may be shown on the Map, or which may be located in the future pursuant to this Declaration, for the purpose of providing water to the Ranch, and other property as authorized by this Declaration, in accordance with, and subject to, the terms and limitations of applicable water rights decrees, well permits, contracts, and other governmental permits and regulations.
- 2.15 “Parcel” means any legal parcel or Parcel within the Property created in accordance with applicable government laws, rules and regulations.
- 2.16 “Map” shall mean and refer to the map that has been or will be filed in the Office of the Clerk and Recorder of Archuleta County, Colorado, which map is identified as Continental Divide Ranch and includes surveys of all or a part of the Property. The boundaries of each Parcel shall be designated on the Map, with each Parcel to be identified by the number or address noted on the Map.
- 2.17 “Member” means any person holding membership in the Association.
- 2.18 “Mortgage” means any mortgage, deed of trust or other document which is recorded in the Office of the Clerk and Recorder of Archuleta County, Colorado, and which encumbers any portion of the Property or interest in it as the security of the payment of a debt or obligation.

- 2.19 "Mortgagee" means any person named as a beneficiary or mortgagee under a Mortgage, or any successor to the interest of any such person under such mortgage.
- 2.20 "Owner" means the owner of record of a Parcel. If there is more than one record holder of legal title to a Parcel, each shall be an Owner. The term Owner shall include Declarant to the extent Declarant is the holder of fee simple title to a Parcel. Owner shall not mean or refer to any person who holds an interest in a Parcel merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person has acquired a fee simple title pursuant to foreclosure, a deed in lieu of foreclosure or other proceedings.
- 2.21 "Person" (whether or not in capitalized form) means any natural person, corporation, partnership, limited liability company, association, trustee or any other entity recognized as being capable of owning real property under the laws of the State of Colorado.
- 2.22 "Property" means and includes the property described on Exhibit A and subjected to this Declaration and any additional real property from time to time made subject to these covenants pursuant to the provisions of this Declaration.
- 2.23 "Rules and Regulations" or "Ranch Rules" means any instruments adopted by the Association or the Design Review Committee for the regulation and management of Continental Divide Ranch, as such instruments may be amended from time to time.
- 2.24 "Continental Divide Ranch" or the "Ranch" means the planned community created by this Declaration, consisting of the Property and all of the improvements constructed on it.

### ARTICLE 3 THE ASSOCIATION

- 3.1 Formation of the Association. On or before the date on which Declarant conveys to any Person other than Declarant fee simple to the first Parcel within Continental Divide Ranch, Declarant shall form the Association.
- 3.2 Purposes and Powers.
- (a) The Association's purposes are to: (i) manage, operate, improve and maintain the Domestic Water System and the Common Access and Utility Easements as necessary or appropriate and enter into grazing leases with consent of the Owners to preserve the agricultural/ranch operations on the property; (ii) administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; (iii) levy, collect and enforce the assessments, liens, charges and penalties imposed pursuant hereto; (iv) preserve and enhance the water rights and water features to be located on the Property; (v) appoint a

Design Review Committee with the goal of ensuring that all improvements within Continental Divide Ranch are constructed in accordance with the Design Guidelines adopted by such Design Review Committee; (vi) take any action necessary or appropriate to protect the general welfare and safety of Owners and residents of Continental Divide Ranch and their guests, and (vii) regulate and manage Continental Divide Ranch with the goal of enhancing and protecting its value.

- (b) Unless expressly prohibited by law or any of the Association Documents, the Association may take any and all actions that it deems necessary or advisable to fulfill its purposes. Without in any way limiting the foregoing, the Association may:
- (1) adopt and amend Bylaws and Rules and Regulations;
  - (2) adopt and amend budgets for revenues, expenditures and reserves;
  - (3) collect assessments for Common Expenses from Owners;
  - (4) hire and terminate Managing Agents and other employees, agents, and independent contractors;
  - (5) institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association;
  - (6) make contracts and incur liabilities, including but not limited to acquisition, perfection, and enhancement of water rights or water service arrangements for the domestic water system, contracts for road maintenance, sharing arrangements with adjacent properties, and grazing lease arrangements upon agreement of the Owners;
  - (7) regulate the use, operation, maintenance, repair, replacement, modification, and administration of the Common Access and Utility Easements and the Domestic Water System;
  - (8) cause additional improvements to be made as part of the Common Access and Utility Easements, and Domestic Water System;
  - (9) acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real property or personal property;
  - (10) impose charges for late payment of assessments, recover reasonable attorney fees and other legal costs for collection of assessments, and other

actions to enforce the powers of the Association, regardless of whether or not suit was initiated;

- (11) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;
- (12) provide for the indemnification of the Association's officers and Board of Directors and maintain Board of Directors' and officers' liability insurance;
- (13) exercise any other powers conferred by the this Declaration or the Bylaws;
- (14) exercise all other powers that may be exercised in this state by legal entities of the same type as the Association; and
- (15) exercise any other powers necessary and proper for the governance and operation of the Association.

3.3 Declarant Reserved Right to Appoint Directors. Declarant reserves the right during the Declarant Control Period to appoint all the members of the Board of Directors of the Association:

3.4 Membership. Every Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Parcel. No Owner, whether one or more persons, shall have more than one membership per Parcel owned, but all of the persons owning each Parcel shall be entitled to rights of membership and of use and enjoyment appurtenant to such Ownership. An Owner shall not transfer, pledge or alienate his membership in the Association in any way except upon the sale or encumbrance of a Parcel, and then only to the purchaser or Mortgagee of the Parcel.

3.5 Classes of Membership. Initially, the Association shall have at least one class of voting membership composed of all Owners, including Declarant. The Bylaws may set forth additional classifications of membership from time to time.

3.6 Voting Rights. All Members shall be entitled to vote on Association matters on the basis of one vote for each Parcel. If a Parcel is legally divided into additional Parcels, as allowed pursuant to Section 8.18, each new owner, upon conveyance of the Parcel, shall become a Member with full membership rights and obligations pursuant to the Association Documents, including voting rights. After division of a Parcel, but prior to conveyance of the additional created Parcels to new Owners, the original Owner shall continue to have only one vote in the Association.

When more than one person is an Owner of any Parcel, all such persons shall be Members. The vote for such Parcel may be exercised by one person or alternative persons as the Owners themselves determine. If more than one of the multiple Owners

are present at a meeting in person or by proxy, the vote allocated to their Parcel may be cast only by agreement of a majority in interest of the Owners. There is a majority agreement if any one of the multiple Owners casts the vote allocated to the Parcel without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Parcel.

Any Owner of a Parcel which is leased may assign his or her voting right to a tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association two business days prior to any meeting in which the tenant exercises the voting right.

Any party, on becoming a Member, shall furnish to the Secretary of the Association a photocopy or certified copy of the recorded instrument, or a copy of the lease or sublease, or such other evidence as may be specified by the Board under the Bylaws or the Continental Divide Ranch Rules, to entitle the party to membership or voting rights in the Association. At the same time, the party shall provide the Association with the single name and address to which the Association shall send any notices given pursuant to the Association. The Member (or tenant) shall state in such notice the number of votes in the Association to which the Member (or tenant) believes he is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of Ownership, the Member (or tenant) shall give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association shall keep and preserve the most recent written notice received by the Association with respect to each Member (or tenant).

3.7 Owner's and Association's Addresses for Notices. All Owners of each Parcel shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands and all other communications regarding Association matters. The Owner or Owners of a Parcel shall furnish the registered address to the Secretary of the Association within five days after receiving title to the Parcel. The registration shall be in written form and signed by all of the Owners of the Parcel or by such persons as are authorized by law to represent the interests of all Owners of the Parcel.

If no address is registered or if all of the Owners cannot agree, then the address of the Parcel shall be deemed the registered address until another registered address is furnished as required under this Section.

If the address of the Parcel is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Parcel or sent to the Parcel by any other means specified for a particular notice in any of the Association Documents, or if the Parcel is unoccupied, if the notice is held and available for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the address of the

Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

Unless any Section of this Declaration expressly provides otherwise, all notices given under this Declaration shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with a courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail.

3.8 Rules and Regulations. The Association, from time to time and subject to the provisions of the Association Documents, may adopt, amend and repeal rules and regulations, to be known as the "Ranch Rules," governing, among other things and without limitation:

- (a) The use of the Domestic Water System;
- (b) The use of the Common Access and Utility Easements within Continental Divide Ranch.
- (c) The use of the fishing access described in Article 17.

A copy of the Ranch Rules in effect shall be distributed to each Member, and any change in the Ranch Rules shall be distributed to each Member within a reasonable time following the effective date of the change. The Board of Directors shall provide for the enforcement of the Continental Divide Ranch Rules, as set forth in the Bylaws. Without limiting the generality of the foregoing, the Board may suspend voting rights of a Member after notice and hearing as provided in the Bylaws for an infraction of the Continental Divide Ranch Rules.

3.9 Manager. The Association may employ or contract for the services of a Manager to act for the Association, the Board and the officers of the Association according to the powers and duties delegated to the Manager under the Bylaws or a resolution of the Board, provided that no such employment shall be by a contract having a term of more than three years, and each such contract shall be subject to cancellation by the Association on 90 days or less prior notice without cause and without payment of a termination fee. The Manager shall not have the authority to make expenditures for additions or improvements to the Property except upon specific prior approval and direction by the Board. The Board or any officer of the Association shall not be liable for any omission or improper exercise by a Manager of any such duty, power or function so delegated by written instrument executed by or on behalf of the Board.

3.10 Delegation by Association. The Association may delegate any of its rights, duties or responsibilities to any committee or other entity which it may choose to form. Any delegation by the Board under this Section is subject to compliance with the Bylaws and the requirement that the Board, when so delegating, shall not be relieved of its responsibilities under the Association Documents.

- 3.11 Ownership of Personal Property and Real Property for Common Use. The Association, through action of the Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold or other property interests within Continental Divide Ranch which are conveyed to the Association by Declarant.
- 3.12 Common Access and Utility Easement. The Association shall be responsible for maintenance of the Common Access and Utility Easements within the Property, as distinguished from individual Parcel driveways. Such maintenance shall include periodic maintenance of the surface and regular snow, ice and trash removal from all Common Access and Utility Easements and entry statements.
- 3.13 Books and Records. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees, current copies of the Association Documents, and the books, records and financial statements of the Association prepared pursuant to the Bylaws. Any Owner or Mortgagee may make a written request to the Association for a copy of the financial statements for the preceding year. The Association may charge a reasonable fee for copying such materials.
- 3.14 Reserve Account. The Association may establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Article 5 below for the operation, maintenance, repair or replacement of Domestic Water System, Common Access and Utility Easements, and any other common property owned or managed by the Association.

**ARTICLE 4**  
**OWNER'S OBLIGATIONS FOR MAINTENANCE**

- 4.1 Owner's Responsibility for Parcel. Except as provided in the Association Documents or by written agreement with the Association, all maintenance of a Parcel and the improvements located on it shall be the sole responsibility of the Owner of the Parcel. Each Owner shall be responsible for maintenance, snow plowing and improvement of his or her driveway, unless two (2) or more Parcels share a driveway, in which case the responsibility and costs of driveway maintenance shall be split equitably between the Owners of such Parcels. Each Owner shall maintain his Parcel in good order in accordance with the community-wide standard of Continental Divide Ranch. The Association acting, in the discretion of the Board, shall assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board shall notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within 30 days after the mailing of such written notice, then the

Association shall proceed. The expenses of the maintenance by the Board shall be reimbursed to the Association by the Owner within 30 days after the Association notifies the Owner of the amount due, and any sum not reimbursed within that 30 day period shall bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges shall be a Default Assessment enforceable as provided in Article 5.

- 4.2 Owner's Negligence. If the need for maintenance, repair or replacement of any portion of the Domestic Water System or Common Access and Utility Easements arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Association for the operation, maintenance, repair or replacement shall be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then those expenses shall bear interest at the Default Rate from the date of the advance by the Association until payment by the responsible Owner in full, and all such expenses and interest shall become a Default Assessment enforceable in accordance with Article 5.

## ARTICLE 5 ASSESSMENTS

- 5.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Parcel, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed, are deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges as provided in this Declaration to generally carry out the functions of the Association; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration, such Annual and Special Assessments to be fixed, established and collected from time to time as provided below; and (3) Default Assessments which may be assessed against a Parcel pursuant to the Association Documents for the Owner's failure to perform an obligation under the Association Documents or because the Association or the Committee has incurred an expense on behalf of the Owner under the Association Documents.

The Annual, Special, and Default Assessments, together with fines, interest, costs and reasonable attorney (and legal assistant) fees, shall be a charge on the land and shall be a continuing lien upon the Parcel against which each such Assessment is made until paid.

Each such Assessment, together with fines, interest, costs and reasonable attorneys' (and legal assistants') fees shall also be the personal and individual obligation of the Owner of such Parcel as of the time the Assessment falls due, and two or more Owners of a Parcel shall be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by abandonment of his Parcel or by waiver of the use or enjoyment of the Domestic Water System or Common Access and Utility Easements. Suit to recover a money judgment for unpaid Assessments and

related charges as listed above may be maintained without foreclosing or waiving the Assessment liens provided in this Declaration.

- 5.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Continental Divide Ranch, to improve and maintain the Domestic Water System (and off-site extensions thereof), and Common Access and Utility Easements, by actions including, but not limited to payment for repair, replacement and additions to any improvements on the Domestic Water System and Common Access and Utility Easements; establishment of reserve accounts; and payment of the cost of labor, equipment, materials, management and supervision and the salary or fee of the Manager.
- 5.3 Calculation and Apportionment of Annual Assessments and Common Expenses. The Board of Directors shall prepare a budget before the closing of each fiscal year of the Association and submit the budget to the Association. Annual Assessments for Common Expenses shall be based upon the estimated net cash flow for the Association to cover items including, without limitation, the cost of routine maintenance, repair and operation of the Domestic Water System and Common Access and Utility Easements; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; snow removal, landscaping, care of grounds and common lighting within the Common Access and Utility Easements; wages; common water and utility charges for the Common Access and Utility Easements; legal and accounting fees; management fees; taxes and capital improvements; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any deficit remaining from a previous assessment period; and the supplementing of the Association's funds for general, routine operation, maintenance, repairs and replacement of improvements within the Domestic Water System and Common Access and Utility Easements on a periodic basis, as needed.

Each Owner shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this Declaration, shall be divided equally among the Parcels included in the Property under this Declaration from time to time. Accordingly, at any given time, an Owner's share of Common Expenses shall be determined as a fraction, the numerator of which is the number of Parcels owned by the Owner, and the denominator of which is the number of Parcels in the Property. Any Common Expenses or portion thereof benefitting fewer than all of the Parcels shall be assessed exclusively against the Parcels benefitted. All parcels shall be assessed for the operation, maintenance, repair, replacement and improvement of the Domestic Water System.

- 5.4 Special Assessments. In addition to the Annual Assessments authorized by Sections 5.1 and 5.3 above, the Board of Directors may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described

capital improvement upon the Domestic Water System and Common Access and Utility Easements, including the necessary fixtures and personal property related thereto, or to make up any shortfall in the current year's budget. Special Assessments shall be allocated with the same formula as utilized for Annual Assessments.

Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date.

If any of the Special Assessments levied pursuant to this Section shall be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities) in the Continental Divide Ranch and if the total amount of Special Assessments levied for such construction exceeds 25% of the gross annual budget for the Association for that year, then the use of Special Assessments for such construction shall require the approval of the Owners representing at least a majority of the votes in the Association. The use of Special Assessments pursuant to this Section for constructing any Domestic Water System and Common Access and Utility Easements shall not apply to the initial construction of any Domestic Water System and Common Access and Utility Easements to be completed by Declarant as part of its development of Continental Divide Ranch. Special Assessments for construction of new facilities during the Declarant Control Period shall require approval of a majority of the non-Declarant Owners.

- 5.5 Collection and Refunds. Assessments shall be collected on a periodic basis as the Board of Directors may determine from time to time, but until the Board directs otherwise, Assessments shall be payable in advance on the first day of each calendar year. Assessments shall commence on January 1, 2007, provided, however, that Declarant may charge tap fees and water rates for the water system prior to that date.

The Association will have the right, but not the obligation, to make pro rata refunds of any Assessments in excess of the actual expenses incurred in any fiscal year. Any such excess funds not refunded will be applied to the next installment(s) of Annual Assessments due.

- 5.6 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

- 5.7 Default Assessments. All monetary fines, penalties, interest or other charges or fees assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents and any

expense (including, without limitation, attorneys' and legal assistants' fees) incurred by the Association as a result of the failure of an Owner to abide by the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Parcel which may be foreclosed or otherwise collected as provided in this Declaration.

5.8 Effect of Nonpayment of Assessment; Lien, Remedies of Association. Any installment of an Annual, Special or Default Assessment which is not paid within 30 days after its due date shall be delinquent, provided, however, that any interest accruing at the Default Rate and constituting a Default Assessment under this Declaration will be due immediately in accordance with the specific provisions of this Declaration, without 30 days' grace otherwise allowed by this Section above. In the event that an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (a) assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;
- (b) assess an interest charge from the date of delinquency at the Default Rate;
- (c) suspend the voting rights of the Owner during any period of delinquency;
- (d) accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (e) bring an action at law against any Owner personally obligated to pay the delinquent installments; and
- (f) file a statement of lien with respect of the Parcel, and foreclose as set forth in more detail below.

The remedies provided under this Declaration shall not be exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

Any Assessment chargeable to a Parcel shall constitute a lien on the Parcel, effective the due date of the Assessment. To evidence the lien, the Association may, but shall not be obligated to, prepare a written lien statement with respect to the Parcel, setting forth the name of the Owner, the legal description of the Parcel, the name of the Association, and the delinquent Assessment amounts then owing. Any such statement shall be duly signed and acknowledged by the President or a Vice-President of the Association or by the Manager, and shall be served upon the Owner of the Parcel by mail to the address of the Parcel or at such other address as the Association may have in its records for the Owner. At least 10 days after the Association mails the statement to the Owner, the Association may record the statement in the office of the Clerk and

Recorder of Archuleta County, Colorado. Thirty days following the mailing of such notice to the Owner, the Association may proceed to foreclose the statement of lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In either a personal action or foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs and reasonable attorney fees (including legal assistants' fees) with respect to the action. The Association shall have the power to bid on a Parcel at foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel.

5.9 Successor's Liability for Assessment. In addition to the personal obligation of each Owner to pay all Assessments and the Association's perpetual lien for such Assessments, all successors to the fee simple title of a Parcel, including any mortgagees, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses and attorneys' fees and legal assistants' fees against such Parcel without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. In addition, such successor shall be entitled to rely on the statement of status of Assessments given by or on behalf of the Association under Section 5.11 below.

5.10 Waiver of Parcel Exemption, Subordination of the Lien. The lien of the Assessments shall be superior to and prior to any Parcel exemption provided now or in the future by any federal law or the laws of the State of Colorado. The Association's perpetual lien on a Parcel for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) liens and encumbrances recorded before the date of the recording of this Declaration; and
- (b) liens for real estate taxes and other governmental assessments or charges duly imposed against the Parcel by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute.

All persons who hold a lien or encumbrance not described in subpart 5.10(a) and 5.10(b) above shall be deemed to consent that any such lien or encumbrance shall be subordinate to the Association's future liens for Assessments, interest, late charges, costs, expenses and attorneys' (and legal assistants') fees, as provided in this Article 5, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

Sale or transfer of any Parcel to enforce any of the liens to which the lien for Assessments is subordinate shall extinguish the lien of such Assessments as to installments which became due prior to such sale, however, all delinquent amounts owed shall continue to be the personal obligation of the responsible Owner(s). The amount of such extinguished lien may be reallocated and assessed to all Parcels as a

Common Expense at the direction of the Board of Directors. However, no such sale or transfer shall relieve the purchaser or transferee of a Parcel from liability for, or the Parcel from the lien of, any Assessments made after the sale or transfer.

- 5.11 Statement of Status of Assessments. Upon their written request, the Association shall furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Parcel in which the Owner, designee or Mortgagee has an interest. The Association shall provide the statement to the inquiring party within 14 calendar days after the registered agent of the Association receives the written request. The information contained in such statement, when signed by the Treasurer of the Association or the Manager, shall be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

## **ARTICLE 6** **DESIGN REVIEW COMMITTEE**

- 6.1 Committee and Guidelines. There is hereby established a Design Review Committee, which shall be responsible for the establishment and administration of Design Review Committee Rules to facilitate the purposes and intent of this Declaration. The Committee may amend, vary, repeal and augment the Design Review Committee Rules from time to time, in the Committee's sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental harmony of Continental Divide Ranch or other factors as necessary or desirable to fulfill the intent of the Design Review Committee Rules. However, no such amendment, variance, repeal or augmentation of the Design Review Committee Rules shall operate to revoke or otherwise impair any approval issued by the Design Review Committee with respect to any improvements before the date of the amendment, variance, repeal or augmentation. The Design Review Committee Rules shall be binding on all Owners and other persons governed by this Declaration.

The Design Review Committee Rules may include, among other things, those restrictions and limitations set forth below:

- (a) Standards establishing an architectural theme and requirements pertaining to building style and design, construction materials and site planning.
- (b) Procedures for making application to the Committee for design review and approval, including the documents to be submitted and the time limits in which the Committee must act to approve or disapprove any submission.
- (c) Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Review Committee Rules.

- (d) Minimum and maximum square foot areas of living space that may be developed on any Parcel.
- (e) Limitations on the height of any building or other improvement.
- (f) Designation of approved utility suppliers and utility connections.
- (g) Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other such improvements.
- (h) Landscaping regulations and time limitations within which all landscaping must be completed; limitations and restrictions prohibiting the removal or requiring the replacement of existing trees; guidelines encouraging the use of plants indigenous to the locale and compatible with the design theme of Continental Divide Ranch; requirements for the restriction of the Parcel, following completion of construction on it, to conform, to the greatest extent possible, to the condition of the Parcel before construction; and other practices benefiting the protection of the environment, aesthetics and architectural harmony of Continental Divide Ranch.
- (i) General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

6.2 Committee Membership and Organization. During the Declarant Control Period, Declarant shall appoint, remove or replace the members of the Committee. Thereafter, the Board of Directors shall appoint, remove or replace the members of the Committee.

6.3 Purpose and General Authority. The Committee shall review, study and either approve or reject proposed improvements, all in compliance with this Declaration and as further set forth in the Design Review Committee Rules and such rules and regulations as the Committee may establish from time to time to govern its proceedings. No improvement shall be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor shall any construction, repair or reconstruction be commenced until plans for the improvements shall have been approved by the Committee. All improvements shall be constructed only in accordance with approved plans.

- (a) Committee Discretion. The Committee shall exercise its reasonable judgment to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the Parcel, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Review Committee

Rules and the other Association Documents. The Committee, in its sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental interests of Continental Divide Ranch, or other factors as necessary or desirable to fulfill the intent of the Design Review Committee Rules, may excuse compliance with such requirements in specific situations and may permit compliance with different or alternative requirements.

No variance or other allowance granted by the Committee will excuse the particular Owner receiving the grant or any other Owner from compliance with the Design Review Committee Rules in all other instances.

- (b) Binding Effect. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

#### 6.4 Organization and Operation of Committee.

- (a) Term. The term of office of each member of the Committee, subject to Section 6.2, shall be one year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire or become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed by the party entitled to designate the Committee, as provided in Section 6.2.
- (b) Chairman. So long as Declarant appoints the Committee, Declarant shall appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the chairman shall be elected annually from among the members of the Committee by a majority vote of the members. In the absence of a chairman, the party responsible for appointing or electing the chairman may appoint or elect a successor, or if the absence is temporary, an interim chairman.
- (c) Operations. The Committee chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting. The notice shall set forth the time and place of the meeting, and notice may be waived by any member.
- (d) Voting. The affirmative vote of a majority of the members of the Committee shall govern its actions and be the act of the Committee.
- (e) Expert Consultation. The Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Committee. Upon that delegation, the approval or disapproval of plans and specifications by such

member or consultant shall be equivalent to approval or disapproval by the entire Committee.

- 6.5 Expenses. Except as provided in this Section below, all expenses of the Committee shall be paid by the Association and shall constitute a Common Expense. The Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Committee from time to time, and such fees shall be collected by the Committee and remitted to the Association to help defray the expenses of the Committee's operation.
- 6.6 Other Requirements. Compliance with the Continental Divide Ranch design review process is not a substitute for compliance with the Archuleta County or local building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction of improvements.

Further, the establishment of the Design Review Committee and procedures for architectural review shall not be construed as changing any rights or restrictions upon Owners to maintain and repair their Parcels and improvements as otherwise required under the Association Documents.

- 6.7 Limitation of Liability. The Committee shall use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee nor any individual Committee member shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual Committee member acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by the appropriate governmental board or commission for Archuleta County or any municipal government having jurisdiction in such matters. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Board, the Design Review Committee, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Committee's decision. The Association, however, shall not be obligated to indemnify each member of the Committee to the extent any such member of the Committee is adjudged to be liable for gross negligence or willful misconduct in the performance of his duty as a member of the Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of

the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

## 6.8 Enforcement.

- (a) Inspection. Any member or authorized consultant of the Design Review Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Parcel at any reasonable time, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Parcel to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the Design Review Committee.
- (b) Completion of Construction. Before any improvements on a Parcel may be occupied, the Owner of the Parcel shall be required to obtain a temporary certificate of compliance issued by the Design Review Committee indicating substantial completion of the improvements in accordance with the plans and specifications approved by the Committee, and imposing such conditions for issuance of a final certificate of compliance as the Committee may determine appropriate in its reasonable discretion. If the conditions are not satisfied as scheduled, the Committee may apply the deposit toward the cost of completing the work, charge the owner for any deficiency, and/or enforce such other remedies as are available to the Association for the failure of the Owner to comply with these covenants.
- (c) Certificate of Compliance. Upon payment of a reasonable fee established from time to time by the Design Review Committee, and upon written request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Committee shall issue an acknowledged certificate, in recordable form, setting forth generally whether, to the best of the Committee's knowledge, the improvements on a particular Parcel are in compliance with the terms and conditions of the Design Review Committee Rules. Unless the Committee responds to such request within 30 days after receipt of the request, it shall be conclusively presumed that the Owner and the Owner's improvements are in conformance with all the terms and conditions subject to the control of the Committee.
- (d) Deemed Nuisances. Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member shall be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below.
  - (1) Fines for Violations. The Committee may adopt a schedule of fines for failure to abide by the Committee rules and the Design Review Committee

Rules, including fines for failure to obtain any required approval from the Committee.

- (2) Removal of Nonconforming Improvements. The Association, upon request of the Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Parcel at any reasonable time after notice to the Owner, without being deemed guilty of trespass or theft, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants. The Owner of the improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within 30 days after the Association gives the Owner notice of the expenses, the sum owed to the Association shall bear interest at the Default Rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest shall be a Default Assessment enforceable as provided in Article 5.

6.9 Continuity of Construction. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 18 months after commencement, unless an exception is granted in writing by the Committee. If an improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 18-month period, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine of not less than \$ 100 per day (or such other reasonable amount as the Association may set) to be charged against the Owner of the Parcel until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control. Such charges shall be a Default Assessment and lien as provided in Article 5.

6.10 Reconstruction of Domestic Water System and Common Access and Utility Easements. The reconstruction by the Association after destruction by casualty or otherwise of any Domestic Water System and Common Access and Utility Easements that is accomplished in substantial compliance with "as built" plans for such Domestic Water System and Common Access and Utility Easements shall not require compliance with the provisions of this Article or the Design Review Committee Rules.

## ARTICLE 7

### EASEMENTS AND PROPERTY RIGHTS OF OWNERS

7.1 Owners' Easements of Access and Enjoyment. Every Owner has, and the Declarant hereby grants, a perpetual, non-exclusive easement for access and utilities to and from his or her Parcel over the Common Access and Utility Easements as shown on the Map. Every Owner shall have, and the Declarant hereby grants, a perpetual, non-exclusive

right and easement in common with all of the other Owners to reasonably use and enjoy the Common Access and Utility Easements, subject to regulation by the Board and restrictions as stated in Articles 8 and 9. The easements granted hereunder are appurtenant to and shall pass with the title to every Parcel, subject to the provisions set forth in this Article. Declarant reserves the right to grant to adjacent or other properties the right to use of the Common Access and Utility Easements, subject to the acknowledgment of such parcel owners of the obligation to pay their pro rata share of expenses and costs related to the operation, maintenance, repair and replacement of the Common Access and Utility Easements. Nothing in this Declaration or the other Association Documents shall be construed as a dedication of the Common Access and Utility Easements to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any by such authority or utility, absent an express written agreement to that effect. The Common Access and Utility Easements are private amenities for the common use, benefit, and enjoyment of the Owners and their permitted guests only.

- 7.2 Domestic Water System Easement. Every Owner's Parcel shall be subject to the Domestic Water System Easement, to be located within the access and utility easements as shown on the Map, for the benefit of the Association and all other Parcels, for the installation, operation, replacement, maintenance and repair of the Domestic Water System. Declarant reserves the right to grant to adjacent or other property owners the right to connect to the Domestic Water System. Such grant to any adjacent or other parcels shall be subject to the obligation of such parcel owners to pay all cost and expenses related to the extension of and installation of any new lines, pumps or storage facilities related to service exclusive to such adjacent or other parcels and the acknowledgment of such parcel owners of the obligation to pay their pro rata share of expenses and costs related to the operation, maintenance, repair and replacement of the Domestic Water System.
- 7.3 Delegation of Use. Subject to Section 7.2 above, any Owner may delegate, in accordance with the Association Documents, including specifically, but without limitation, the Ranch Rules, his or her rights of access and enjoyment described in above to his or her tenants, family, guests or invitees.
- 7.5 Association's Easements Over Parcels. Declarant hereby grants the Association and the Design Review Committee an easement over, across, through and under each Parcel to (a) exercise any right held by the Association or the Design Review Committee under this Declaration or any other Association Document and (b) perform any obligation imposed by the Association or the Design Review Committee by this Declaration or any other Association Document. Notwithstanding the foregoing, neither the Association nor the Design Review Committee shall enter upon any Parcel without reasonable prior notice, either verbal or written, to the Owner of the Parcel, except in cases of emergency.

- 7.6 Recorded Easements. The Property shall be subject to all easements as shown on any recorded Map, all easements created by this Declaration, and to any other easements of record or of use as of the date of recordation of this Declaration.

**ARTICLE 8**  
**PROPERTY USE RESTRICTIONS**

- 8.1 Residential and Limited Agricultural Uses. Each Parcel designated on the Map, excluding the Domestic Water System and Common Access and Utility Easements, shall be used solely for residential purposes, including home based occupations and residential tenants, and limited personal or commercial agricultural use, such as horse breeding or training, cattle or llama raising, hay growing, or other similar agricultural uses, provided that, the number of livestock on a Parcel shall not exceed one animal per five acres, and any such uses shall be reasonably conducted in an effort to minimize any disturbance to neighboring Parcel owners. Feedlots, pigs or pig farms, sheep or sheep farms, slaughterhouses, and other such operations which could cause a nuisance to other Parcels are prohibited. Owners shall submit proposals for permitted agricultural uses and home based occupations to the Design Review Committee and, during the period of Declarant Control, to Declarant for approval prior to conducting operations, which proposals shall describe the type of animals, the operations, and any related barns, corrals, or other structures along with proposed designs. The Committee shall review the proposals in the same manner as proposals for other improvements, and shall approve, require changes, or deny the proposal based on the criteria herein, in the Design Review Rules, and whether the proposed operation can be conducted in harmony with neighboring Parcels and the character of Continental Divide Ranch. Except as approved by the Committee or Declarant for limited agricultural use, or acceptable home based occupations, no business or commercial building may be erected on any Parcel, and no businesses or commercial enterprise or other non-residential use may be conducted on any part of the Property. In the event of a conflict between the decision of Declarant and the Committee, the decision of the Declarant shall govern.

Home occupations, rental activity, and permitted agricultural uses shall not: create significant vehicular traffic; require storage of any significant materials, machinery, inventory or other items; require processing of materials and the finish of products or the assembly of parts produced off-site; require significant additional parking at such Parcel, whether for customers, delivery or otherwise; or otherwise violate any provision of this Declaration. Retail businesses on the Property are strictly prohibited.

- 8.2 Motorized Vehicles. Trucks, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, boats or boat or similar vehicles (other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less) and any other motorized vehicles which are not in use shall be parked, stored, kept or placed only in the numbers and in the locations approved, in advance and in writing, by the Design Review Committee. Any vehicles that are not required to obtain Design Review

Committee approval pursuant to this Section shall be parked only on driveway areas (located on each Parcel in accordance with Design Review Committee Rules regarding set-back requirements). This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property for Declarant or the other Owners. Owners may store recreational vehicles and boats on driveway areas for temporary use on the Property for periods not to exceed 14 days at a time or 28 days per year without advance written approval by the Design Review Committee. Without limiting the generality of the above, certain recreational vehicles may be used within the Ranch, but shall be subject to regulation, including hours and areas of permitted operation, under the Ranch Rules. Use of all motor vehicles, including trucks, motorcycles, snowmobiles, etc., shall be restricted to roadways or to the users' Parcel, but shall not, in any event be allowed to become an annoyance or nuisance to surrounding Parcels.

- 8.3 Excavation. No excavation shall be made except in connection with improvements approved as provided in this Declaration. For purposes of this Section, "excavation" means any disturbance of the surface of the land that results in removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.
- 8.4 No Illegal, Noxious or Offensive Activity. No illegal, obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public or private nuisance. No junk autos or equipment, trucks or car bodies will be allowed to accumulate. Owners shall dispose of all refuse and garbage accumulated by them in a neat and sanitary manner, inoffensive to neighbors, and in conformity with State and County laws, rules, and regulations, and they will further comply with all such laws, rules and regulations relating to control of noxious weeds, rodents, and predators. Exterior lighting shall not cause glare to any adjacent Parcel or Property. Mercury vapor lamps will not be permitted. Entry lighting shall be subdued and the bulb shall be shrouded so as to project light down and not horizontally. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Property or improvements, shall be placed or used on any portion of the Property.
- 8.5 Animals, Pets and Grazing. The Board and/or the Declarant may adopt Rules and Regulations concerning animals and pets on the Property, including without limitation their types and numbers. To the extent there are no such Ranch Rules adopted by the Board, or to the extent they do not conflict, the following provisions shall apply to all Owners. In the event of conflict, the Ranch Rules shall prevail. Only the following animals are allowed: (i) Household pets --not more than 4 dogs, 4 cats and/or 4 other interior confined household pets, and (ii) Farm Animals— one farm animal per five acres owned are allowed (no pigs or sheep are allowed). Household pets may be allowed to roam free of a leash when on the Owner's Parcel, but shall not be allowed on other Parcels without consent. When in common areas, household pets shall be on a leash, unless they are well trained and can be effectively controlled by the Owner's

voice or other commands. Farm Animals must be kept within fenced areas and shall not be allowed to create a nuisance for adjacent Parcel Owners. Pets must not be allowed to harass or harm wildlife at any time. Significant wildlife species inhabit this area and, if Owners do not take preventive measures concerning their domestic animals, such interaction will cause conflicts with them. Residents should be aware that harassment or harm to wildlife by their domestic pets could result in civil and/or criminal penalties. Dogs shall not be allowed to bark so as to annoy other Owners. Excessive barking shall be considered a nuisance.

- 8.6 Abandoned and Inoperable Vehicles. No abandoned or inoperable vehicles of any kind shall be stored or parked on any portion of the Property, except in a garage. "Abandoned or inoperable vehicle" is defined as any vehicle, which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation or residing away from Continental Divide Ranch. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle by the Association. If such vehicle has not been removed within 72 hours after notice has been given, the Association shall have the right to remove the vehicle without liability, and the expense of removal shall be a Default Assessment charged against the Owner. All work on automobiles or other vehicle repair shall be performed in an enclosed garage except in emergencies.
- 8.7 General Practices Prohibited. The following practices are prohibited at Continental Divide Ranch:
- (a) Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Committee;
  - (b) Removing any rock, plant material, top soil or similar items from any property of others without their consent;
  - (c) Violation of any state, federal, or local law, ordinance, rule or regulation.
- 8.8 No Outside Clotheslines. No laundry or wash shall be dried or hung outside any building, except in backyard areas shielded from view of adjacent Parcels.
- 8.9 Signs. No signs of any kind shall be displayed to the public view on or from any portion of the Property except, (i) during the Special Declarant Rights Period, signs of Declarant or its affiliates or assigns, and (ii) signs required by law. No "For Sale" or "For Rent" signs are allowed on the Property.
- 8.10 No Hazardous Activities. No activities shall be conducted on any portion of the Property and no improvements may be constructed on any portion of the Property which are or might be unsafe or hazardous to any person or Property; provided,

however that construction activities for which all applicable permits and Design Review Committee approval have been obtained and which are conducted in accordance with industry standards shall not violate this Section. Without limiting the generality of the foregoing (a) no open fires shall be lighted or permitted on the Property except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace, except for controlled picnic fires and attended fires authorized in writing by Declarant or the Association, (b) no careless disposition of cigarettes or other flammable materials are permitted, and (c) discharge of firearms for hunting or other allowed purposes shall be conducted in a safe and prudent manner so as not to endanger adjacent properties or their inhabitants.

- 8.11 Antenna. No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device shall be permitted without the prior written consent of the Committee and appropriate screening as required by the Design Review Committee Rules.
- 8.12 Existing Vegetation. "Vegetation" shall mean trees, shrubs and grasses of all types, whether natural or planted, and whether maintained by the Owner or the Association. No existing native vegetation shall be over-irrigated to the extent that it is damaged or dies. To minimize impacts to existing vegetation, all utilities, improvements, hook-ups, wires, pipes, conduit, lines, cables and the like shall follow the designated driveway to the building site, even if the distance is longer, unless approved by the DRC.
- 8.13 Noxious Plant Abatement. Parcel owners are responsible for annual noxious weed or plant abatement. Musk weed, thistle or other noxious plants must be sprayed or removed to minimize or eradicate the spread of noxious weeds.
- 8.14 Timber and Existing Vegetation Removal. Timber and "existing vegetation" removal on individual Parcels shall be strictly prohibited except as set forth herein. Plans for timber and existing vegetation removal for building construction, driveway corridors, view corridors, fire mitigation, or other valid purposes must be submitted for review and approved by the DRC prior to any removal activity and shall comply with landscaping and re-vegetation requirements. Removal and cutting of Gambel Oak and other brush-type vegetation shall be permitted to reduce fire hazards. Mowing of grass in meadows shall be permitted. Declarant shall be allowed to remove timber at any time without DRC approval in conjunction with development of Continental Divide Ranch.
- 8.15 Feeding of Wildlife Prohibited. No person shall feed or provide food in any manner for wildlife within Continental Divide Ranch.
- 8.16 Refuse Time Limit. Refuse for trash pickup or otherwise stored outside within Continental Divide Ranch must be placed in a Wildlife Proof Refuse Container (WPRC). WPRC's shall be provided by Parcel Owners or the Parcel Owners' waste management company. WPRC's shall only be allowed to remain outdoors from dawn to dusk on the day of trash pickup.

- 8.17 Driveways. All driveways and parking areas shall be constructed of gravel, decomposed granite, concrete, brick pavers, or asphalt paving, unless the DRC determines otherwise. Access roads and driveways shall be at grade or where required to exceed grade shall be culverted to allow free flow of water in the event that watercourses and drainage exceed their banks.
- 8.18 Subdivision. Parcels shall be allowed to be divided into two or three parcels of 35 acres or more. Once conveyed to new owners, the new parcels created shall be considered Parcels under this Declaration, and their owners shall have all rights and obligations under this Declaration as other Owners.
- 8.19 Maintenance. Owners shall maintain their Parcels and all landscaping features in good condition and repair. Owners shall maintain all dwellings and improvements in good repair and periodically repair damage to such structures when deterioration becomes apparent. The DRC shall be consulted concerning changes to color, type of painting or stain, structural additions, or other external changes and modifications. Unsightly conditions shall be considered a nuisance.
- 8.20 Mineral Development. Development of oil, gas, coal, gravel, or other minerals within the 10 parcels in the Ranch by Owners or Declarant is prohibited; provided, however, that Declarant may obtain gravel from any parcels owned by Declarant, or parcels owned by others with the permission of the Owner, for use in developing roads and other improvements within the Ranch. This section 8.20 can only be amended by approval of 100% of the Owners, and by Declarant during the Declarant Control Period.

**ARTICLE 9**  
**LIMITATION AND RESTRICTIONS ON BUILDING IMPROVEMENTS**

- 9.1 Permitted Improvements. The following improvements are permitted on each Parcel:
- (a) For each 35 acres owned, Owners may build up to one single-family residence with garages, one guest house, and two barns, as such may be further restricted or defined by the Design Review Committee Rules, except that guesthouses may be built no earlier than 5 years before the primary residence is built. In the event a guesthouse is to be constructed prior to the primary dwelling, the Owner must submit primary dwelling plans for review simultaneously with the guesthouse plans and must further deposit, at the time of submittal of such plans, \$30,000.00 with the Association to be held in an interest bearing account for the Owner. The \$30,000.00 deposit with interest earned thereon shall be released to the Owner upon the issuance of the certificate of occupancy for the primary dwelling. If the primary dwelling is not completed within 5 years of posting the deposit with the Association, the deposit and all interest accrued thereon shall be forfeited by the Owner and become the sole property of the Association;

- (b) Such enclosed service areas for garbage, trash, utilities and other maintenance facilities as may be approved in writing by the Design Review Committee;
- (c) Such fences, walls, driveways and parking areas as may be approved in writing by the Design Review Committee;
- (d) Landscaping improvements approved in writing by the Design Review Committee; and
- (e) Swimming pools, hot tubs, tennis courts, solar devices and greenhouses approved in writing by the Design Review Committee.
- (f) Other outbuildings as approved in writing by the Design Review Committee.

## 9.2 Prohibited Improvements.

- (a) No structures or buildings of a temporary character (except a sales facility or construction trailer for Declarant's use in selling or developing Parcels within the Ranch), nor any mobile home, house trailer, manufactured home, modular home, factory built home, tent, shack or other such structure shall be placed or used within the Ranch, either temporarily or permanently, without prior written approval of the Design Review Committee, which approval may be withheld in its sole discretion. Notwithstanding the preceding sentence, necessary appurtenances, modest construction trailers and structures of a temporary nature may be used without the Design Review Committee's approval during the period of performance of construction of any improvement for which necessary government permits and Committee approval have been obtained, provided that no overnight occupancy shall be permitted in any such appurtenance, trailer or structure and such appurtenances, trailers or structures shall be removed from the Ranch on the earlier of 12 months after the initial use thereof or the date of substantial completion of said improvement. Tents, campers, and travel trailers may be used by Owners for recreational camping and temporary residence (not to exceed 10 days in a given month) prior to or after construction of improvements, provided that there are no more than 4 of these collectively on a Parcel at a given time. Otherwise, mobile, modular, and factory built homes are specifically and expressly prohibited.
- (b) No Owner shall do or permit any work, place any landscaping or install any other improvements or allow the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Property, except to the extent such alteration and drainage pattern is approved in writing by the Committee, and except for rights reserved to Declarant to alter or change drainage patterns.

- 9.3 Square Footage Requirements. All residences shall have a habitable floor space of no less than 2,300 square feet and no more than 12,000 square feet, exclusive of a basement, porch or garage. All guesthouses shall have a habitable floor space of no less than 800 square feet, but no greater than the lesser of 3000 square feet or 50% of the main home square footage, exclusive of a basement, porch or garage. The DRC may modify this minimum square footage requirement and/or establish a maximum square footage requirement with respect to structures on the Property.
- 9.4 Gates and Fences. Fences will be subject to the Design Review Committee Rules and will be of wood posts and wood rails, barbless wire, or electric fence, and will be constructed so as to allow, the movement of big game, including elk and deer, on the Property. No gates, fences, or other obstructions shall be placed upon or across any of the Roads or Common Access and Utility Easements. This restriction shall not prevent an Owner from placing a gate on a driveway on his or her Parcel, so long as all Owners using the driveway consent.
- 9.5 Utilities. Owners shall be responsible for utility installation and maintenance in accord with local and state regulations. Each structure designed for occupancy shall connect to the Central Water System, and shall connect to a private sewage system constructed at the sole expense of the Owner in conformance with regulations imposed by the State of Colorado, Archuleta County or other regulatory agencies. All new utility lines, cables, pipelines and tanks will be underground.
- 9.6 Wildfire Mitigation. Each Owner will be responsible for the creation of a safety zone surrounding his homesite using the following guidelines:
- (a) Thin out continuous tree and brush cover within 30 feet of homesite. Adequate thinning in the 30 foot safety zone when the outer edge of the tree crowns are at least 10 to 12 feet apart. Occasional clumps of 2 to 3 trees may be retained for natural landscape effects. Also, small patches of brush or shrubs may be left, but should be separated by at least 10 foot clear areas of irrigated grass or noncombustible material.
  - (b) Dispose of all slash and debris left from thinning by either chipping, lopping and scattering or removal from site.
  - (c) Remove dead limbs, leaves and other ground litter from within the safety zone.
  - (d) Mow dry grasses and weeds to a height of 2 inches or less during periods of high fire danger.
  - (e) Stack firewood uphill at least 15 feet from your home. Firewood on site shall not exceed four (4) cords at any time and shall be neatly maintained.
  - (f) Trim any branches that extend over the eaves of your roof. Branches

within 15 feet of the chimney should be removed.

- (g) Install chimney screens or spark arrestors.

**ARTICLE 10**  
**INSURANCE AND FIDELITY BONDS**

- 10.1 Authority to Purchase. All insurance policies relating to the Domestic Water System and Common Access and Utility Easements shall be purchased by the Board of Directors or its duly authorized agent. The Board of Directors, the Manager and Declarant shall not be liable for failure to obtain any coverage required by this Article 10 or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs. Notwithstanding the foregoing, if the insurance described in Sections 10.3 and 10.4 below is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or otherwise delivered to all Owners.
- 10.2 General Insurance Provisions. All such insurance coverage obtained by the Board of Directors shall conform to the following provisions:
- The deductible, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments allocable to all of the Parcels or to only some of the Parcels, if the claims or damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners, or as an item to be paid from working capital reserves established by the Board of Directors.
- 10.3 Physical Damage Insurance on Domestic Water System and Common Access and Utility Easements. The Association may obtain insurance for all insurable improvements, if any, on the Domestic Water System and Common Access and Utility Easements in an amount equal to the full replacement value,(i.e., 100% of the current "replacement cost" exclusive of land, foundation, excavation, depreciation on personal property, and other items normally excluded from coverage), which shall include all building service equipment and the like, common personal property and supplies, and any fixtures or equipment within the Domestic Water System and Common Access and Utility Easements.
- 10.4 Liability Insurance. The Association may obtain a comprehensive policy of commercial general liability insurance (including bodily injury, libel, slander, false arrest, and invasion of privacy coverage) and property damage insurance with such limits as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Association, its officers, the Manager, each Owner and the respective employees, agents and all persons acting as agents of the Association against

any liability to the public or the Owners (and their guests, invitees, tenants, agents, and employees) arising in connection with the ownership, operation, maintenance, or use of the Domestic Water System and Common Access and Utility Easements within Continental Divide Ranch and any other areas under the control of the Association. The Owners shall be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Domestic Water System and Common Access and Utility Easements.

Such comprehensive policy of public liability insurance shall include the following:

- (a) coverage for contractual liability, liability for non-owned and hired automobiles, and, if applicable, host liquor liability, employer's liability, and such other risks as shall customarily be covered with respect to developments similar to Continental Divide Ranch in construction, location, and use;
- (b) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured; and
- (c) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to an Owner because of the negligent acts of the Association or another Owner.

The Board of Directors shall review the coverage limits at least once every two years, but, generally, the Board shall carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to Continental Divide Ranch and in no event shall such coverage be less than \$1,000,000 for all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained in an amount not less than \$2,000,000.

- 10.5 Fidelity Insurance. Fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, Directors, trustees, and employees, and on the part of all others who handle or are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds shall be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in such an amount as the Board may determine appropriate. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons, serving without compensation from the definition of "employees," or similar terms or expressions. Such bonds shall cover the maximum funds that will be in the custody of the Association or any management agent at any time while the bond is in force, and such coverage will be not less than two months' current assessments plus reserves, as calculated from the current budget of the Association.

10.6 Provisions Common to Physical Damage Insurance and Liability Insurance . Any insurance coverage obtained by the Association under the provisions of this Article above shall be subject to the following provisions and limitations:

- (a) the named insured under any such policies shall include Declarant, until all of the Parcels in Continental Divide Ranch have been conveyed, and the Association, as attorney-in-fact for the use and benefit of the Owners, or the authorized representative of the Association (including any trustee with whom the Association may enter into an insurance trust agreement, or any successor trustee, each of which is sometimes referred to in this Declaration as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under such policies;
- (b) each Owner shall be an insured person with respect to liability arising out of the Owner's interest in the Domestic Water System and Common Access and Utility Easements or membership in the Association;
- (c) in no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees;
- (d) the policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of any Owner (including an Owner's family, tenants, servants, agents, invitees, and guests) when such act or neglect is not within the control of the Association, or (ii) any act or neglect or failure of the Association to comply with any warranty or condition with regard to any portion of the Property over which the Association has no control; or (iii) conduct of any kind on the part of an Owner (including the Owner's family, tenants, servants, agents and guests) or any Director, officer, employer, or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter;
- (e) the policies shall contain a waiver by the insurer of any right to claim by way of subrogation against Declarant, the Board of Directors, the Association, the Manager, and any Owner and their respective agents, employees, or tenants, and in the case of Owners, members of their households, and of any defenses based upon co-insurance; and
- (f) the policies described in Sections 10.3 and 10.4 above shall provide that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the physical damage policy or policies purchased by the Board shall be deemed primary coverage, and any individual owners' policies shall be deemed excess coverage.

- 10.7 Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance shall be obtained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and Directors on behalf of the Association.
- 10.8 Workmen's Compensation Insurance. The Association shall obtain workmen's compensation or similar insurance with respect to its employees, if any, in the amounts, and forms as may now or hereafter be required by law.
- 10.9 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it deems appropriate with respect to the Association's responsibilities and duties.
- 10.10 Insurance Obtained by Owners. Each Owner shall have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's personal property and personal liability. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Parcel as such Owner concludes to be desirable; provided, however, that no insurance coverage obtained by an Owner shall operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner shall include a waiver of the particular insurance company's right of subrogation against the Association and other Owners.

**ARTICLE 11**  
**ASSOCIATION AS ATTORNEY-IN-FACT**

Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements on the Domestic Water System and Common Access and Utility Easements upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article 13 below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE 12**  
**DAMAGE OR DESTRUCTION**

- 12.1 Estimate of Damage or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Domestic Water System and Common Access and Utility Easements, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Domestic Water System and Common Access and Utility Easements so damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction.
- 12.2 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.
- 12.3 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 5.4 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, except as provided in Section 5.4, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.
- 12.4 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Section 5.4 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under Section 5.4 above, or, if no Special Assessments were made, then equally to the Owners, as their interests appear.
- 12.5 Decision Not to Rebuild. If Owners representing at least 80% of the votes in the Association, including the vote of every Owner of improvements that will not be restored and including, during the Special Declarant Rights Period, the vote of

Declarant, agree in writing not to repair and reconstruct and no alternative improvements are authorized, then the Property shall be restored to its natural state and maintained as an undeveloped portion of the Domestic Water System and Common Access and Utility Easements by the Association in a neat and attractive condition.

- 12.6 Damage or Destruction Affecting Parcels. In the event of damage or destruction to the improvements located on any of the Parcels, the Owner thereof shall promptly repair and restore the damaged improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced but then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of \$100 per day or such other rate imposed by the Board, charged against the Owner of the Parcel until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine shall be a Default Assessment and lien against the Parcel as provided in Section 5.7 above.

### ARTICLE 13 CONDEMNATION

- 13.1 Rights of Owners. Whenever all or any part of the Domestic Water System and Common Access and Utility Easements shall be taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.
- 13.2 Partial Condemnation. Distribution of Award, Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Domestic Water System and Common Access and Utility Easements on which improvements have been constructed, then, unless, within 60 days after such taking, Owners representing at least 80% of the votes in the Association, including during the Special Declarant Rights Period, the vote of Declarant, shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Domestic Water System Easement and Common Access and Utility Easements to the extent lands are available therefor, in accordance with plans approved by the Committee. If such improvements are to be repaired or restored, the provisions in Article 13 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Domestic Water System Easement and Common Access and Utility Easements, or if there is a

decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed on the basis of the Common Expenses allocated equally to the Owners, as their interests appear.

- 13.3 Complete Condemnation. If all of Continental Divide Ranch is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Domestic Water System Easement and Common Access and Utility Easements shall be distributed as provided in Section 13.2 above.

#### **ARTICLE 14** **ENFORCEMENT OF COVENANTS**

- 14.1 Violations Deemed a Nuisance. Every violation of this Declaration or any other of the Association Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation. In addition, all public and private remedies allowed at law or equity against anyone in violation of this Declaration shall be available.
- 14.2 Compliance. Each Owner or other occupant of any part of the Property shall comply with the provisions of the Association Documents as the same may be amended from time to time.
- 14.3 Failure to Comply. Failure to comply with the Association Documents shall be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing if provided in the Bylaws shall be given to the delinquent party prior to commencing any legal proceedings.
- 14.4 Who May Enforce. Any action to enforce the Association Documents may be brought by the Board, the Design Review Committee, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Association Documents, then the aggrieved Owner may bring such an action.
- 14.5 Remedies. In addition to the remedies set forth above in this Article, any violation of the Association Documents shall give to the Board, the Manager, or the Design Review Committee on behalf of the Owners, the right to enter upon the offending premises or take appropriate peaceful action to abate, remove, modify, or replace, at the expense of the offending Owner, any structure, thing or condition that may exist thereon contrary to the interest of the Owners and meaning of the Association Documents. If the offense occurs on any easement, walkway, Domestic Water System Easement and Common Access and Utility Easements or the like, the cure shall be at the expense of the Owner or other person responsible for the offending condition.

- 14.6 Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.
- 14.7 No Waiver. The failure of the Board of Directors, the Design Review Committee, the Manager, or any aggrieved Owner to enforce the Association Documents shall not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Association Documents at any future time.
- 14.8 No Liability. No member of the Board of Directors, Declarant, the Design Review Committee, the Manager or any Owner shall be liable to any other Owner for the failure to enforce any of the Association Documents at any time.
- 14.9 Recovery of Costs. In any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Association Documents or the restraint of violations of the Association Documents, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees (and legal assistants' fees).

**ARTICLE 15**  
**DURATION OF THESE COVENANTS AND AMENDMENT**

- 15.1 Term. This Declaration and any amendments or supplements hereto shall remain in effect from the date of recordation until the 21st anniversary of the date this Declaration is first recorded in the office of the Clerk and Recorder of La Plata County, Colorado. Thereafter these Covenants shall be automatically extended for successive periods of 10 years each, unless otherwise terminated or modified as provided below.
- 15.2 Amendment. Except as otherwise provided in this Article 15, this Declaration, or any provision of it, may be, at any time, terminated, extended, modified, supplemented or amended, or revoked as to the whole or any portion of the Property, upon the written consent of Owners holding a majority of the votes in the Association, and of Declarant until all Parcels owned by Declarant are sold. Amendments made pursuant to this Section shall inure to the benefit of and be binding upon all Owners of any part of the Property, their family, tenants, guests, invitees and employees, and their respective heirs, successors and assigns. A certificate of a licensed abstract or title company showing record ownership of the Property and a certificate of the Secretary of the Association documenting votes held and voting rights exercised on the basis of such ownership records shall be evidence of such ownership and voting representation for the purposes of any such amendment.
- 15.3 Notice of Amendment. No amendment or revocation of this Declaration shall be effective unless a written notice of the proposed amendment is sent to every Owner reasonably in advance of any action taken or purported to be taken and such Owner has been given the opportunity to vote or give its consent thereto.

- 15.4 Effective on Recording. Any modification, supplement, amendment or revocation shall be immediately effective upon recording in Archuleta County, Colorado, a copy of such amendment, modification, supplement or revocation executed and acknowledged by the necessary number of Owners (and by Declarant, as required), accompanied by a certificate of a licensed abstract or title company as to ownership, or alternatively, upon the recording in Archuleta County, Colorado, of a copy of the amendment, modification or revocation together with a duly authenticated certificate of the Secretary of the Association stating that the required number of consents of Owners were obtained, as evidenced by a certificate of a licensed title or abstract company or other authoritative evidence of compliance with the requirements of this Declaration regarding amendments, which shall be placed on file in the office of the Association.

**ARTICLE 16**  
**DOMESTIC WATER SYSTEM**

- 16.1 Domestic Water System. Declarant will or has established the Domestic Water System, to supply water to the Ranch. Declarant shall be responsible for the initial construction and development of the Domestic Water System. Thereafter, the costs of operations, maintenance, repairs, improvements, or reconstruction of the Domestic Water System shall be paid by the users of the Domestic Water System.
- 16.2 Type of Water System. Declarant intends to construct a central water system to serve the Parcels. Declarant intends to construct a water diversion from wells or surface water in or near the Navajo River from which the water supply will be obtained. The water will be appropriately treated, after which Declarant intends to supply it to the Parcels through water lines, pumps, and other necessary infrastructure.
- 16.3 Ownership of the Domestic Water System. Ownership of the Domestic Water System shall remain with the Declarant, unless Declarant determines to convey ownership to the Association. Upon written notice of intent to convey provided by the Declarant to the Association, the Association shall be obligated to accept conveyance of the water system free and clear of liens and encumbrances but subject to limitations appurtenant to the Domestic Water System such as decrees, permits, contracts, applicable government regulations, water service agreements, and Declarant reserved rights. Declarant may develop rules and regulations governing the use of the Domestic Water System, which shall be binding on the Owners and all other users of the Domestic Water System.
- 16.4 Management of the Domestic Water System. Declarant shall manage and operate the Domestic Water System as long as Declarant owns it, unless Declarant delegates this responsible in writing to the Association, in which case the Association shall accept such responsibility. In the event Declarant dedicates the Domestic Water System to the Association, the Association shall thereafter be responsible for the operation, management, maintenance, repair and replacement of the Domestic Water System. The Association's obligations and authority related to the Domestic Water System as

described in this Declaration shall commence upon Declarant's dedication of management or ownership to the Association.

- 16.5 Installation of Water Service Lines, Water Meters and Taps. It shall be the sole expense and responsibility of each Owner or Other Parcel Owner to install water service lines from the Domestic Water System lines to improvements on each Parcel or Other Parcel and to install a water meter (type as designated by Declarant or the Association) in a frost free location with an outside electronic read-out, and a physical water tap to the Domestic Water System main line. Owners shall use qualified, reputable contractors to conduct such work. Advance written consent from the owner of the Domestic Water System prior to any connection or tap and an opportunity of the owner of the Domestic Water System to have the same inspected by a professional engineer engaged by the owner of the Domestic Water System for such purpose shall be strictly required. The cost or expense of such engineer engaged by the owner of the Domestic Water System shall be paid by the Owner or Other Parcel Owner upon receipt of invoice therefore. All water lines, including mains and service lines, shall be underground.
- 16.6 Disclaimer. Declarant shall endeavor to supply a reliable, quality potable water supply to the Owners. However, the Owners recognize that interruptions in service and other problems can happen for various reasons, and Declarant makes no representations or warranties regarding the operation, quality, capacity, or performance of the Domestic Water System. Declarant shall be excused from any liability arising from the good faith performance of its responsibilities. Declarant shall not be liable for interruptions in service, problems with water quality, or conditions resulting therefrom. Further, Declarant shall not be liable for events beyond its reasonable control, including drought, fires, acts of God, water shortages, senior water right calls, administration by the Division of Water Resources or other government agencies, and other circumstances.
- 16.7 Rationing and Water Use Restrictions. In the event that demand for water exceeds the capacity of the Domestic Water System due to drought, well problems, senior water right calls, administration by the Division of Water Resources, or other circumstances, Declarant or the Association may restrict water usage as they deem necessary to account for such circumstances, and to ensure equal access to the available water from the Domestic Water System by all Owners and Other Parcel Owners. Use of water from the Domestic Water System and all individual water wells shall comply with all applicable laws and regulations, including water court decrees, augmentation plans and well permits. Declarant or the Association shall have the authority to restrict any use which violates said laws and regulations.
- 16.8 Future Connections to Domestic Water System. Declarant has authorized connection to the Domestic Water System for all Parcels within Continental Divide Ranch and any Parcels or property which may be added to Continental Divide Ranch. Additionally, Declarant reserves the right to authorize connection to the Domestic Water System by other parcels or properties ("Other Parcels"), provided Declarant determines that such connections and their use will not adversely impact service to the Parcels; and further

contingent upon Other Parcel Owners undertaking the obligation to pay their pro rata share of expenses and costs related to the operation, maintenance, repair and replacement of the Domestic Water System. Declarant or the Other Parcel Owners shall pay for the cost of any line extensions, additional pumps storage or other facilities necessary to accommodate connections to Other Parcels. Any tap fees for such connections shall be the property of the Declarant.

- 16.9 Individual Water Wells. With Declarant's approval, Owners may drill an exempt domestic well on their Parcels for each 35 acres owned, as authorized under C.R.S. 92-37-602, and as permitted by the Colorado Division of Water Resources; provided, however, that Declarant may restrict the location or production from such wells by reason of interference with, or potential impacts upon the Domestic Water System.
- 16.10 Taps, Users Fees. Each Owner or Other Parcel Owner shall pay a water tap fee for the Domestic Water System to Declarant, and periodic user fees as required by Declarant. For each 105 acre Parcel, the tap fee shall be \$25,000, or such other amount as required by Declarant. If an Owner subdivides his 105 acre Parcel into additional parcels as allowed herein, an additional tap fee of \$25,000 shall be paid to Declarant for each additional parcel created (or such other amount as required by Declarant) ("Additional Tap Fee"). As an example, if an Owner divides his Parcel into three 35 acre parcels, he shall pay two Additional Tap Fees for two of the new parcels, and his initial tap fee shall cover the third parcel. If an Owner subdivides into two parcels, he shall pay one Additional Tap Fee. Additional Tap Fees shall be due upon sale of the new parcels.
- 16.11 Water Service Agreement. Prior to using water from the Domestic Water System, the Owners and Other Parcel Owners shall enter into a water service agreement with Declarant setting forth, among other things, the amount of water an Owner may use and types of uses authorized. Each Lot Owner or Other Parcel Owner who connects to the Domestic Water System or otherwise utilizes water therefrom, agrees, for himself, his heirs, successors and assigns, to use the water in strict compliance with all applicable laws and regulations governing use of water from the Domestic Water System, including water court decrees, well permits, and any rules and regulations adopted by Declarant.
- 16.12 Assignment. Declarant may convey or assign any or all of its rights, title, interest and obligations related to the Domestic Water System to any other person or entity. In such event, Declarant's successors or assigns shall assume all conveyed rights, title, interest and obligations of Declarant hereunder with respect to the Domestic Water System.

## ARTICLE 17 FISHING

- 17.1 Fishing Access. Declarant will provide access from the Ranch to the Navajo River ("the River") for fishing opportunities for all Owners. Declarant will provide an

approximately 30 foot easement along the south bank of the River for approximately a half mile stretch of the River.

17.2 Fishing Rules. Declarant may draft rules and regulations governing fishing in the River ("Fishing Rules") which will be binding on all Owners. The Fishing Rules may supplement or amend any fishing rules in this Declaration, and will govern over any contrary provisions herein.

- (a) Each Owner and his guests shall be allowed to keep two (2) fish between twelve inches (12") and sixteen inches (16"); provided, however, that not more than a total of eight (8) fish shall be kept by all those in an Owner's party in one day. All other fishing shall be catch and release.
- (b) Only fly fishing shall be allowed, except for children under fourteen (14).
- (c) For fish that will be returned to the River, Owners and their guests shall use reasonable efforts to employ conservation practices which protect the health of the fish, so they can continue to live and reproduce after being caught. Such practices include, but are not limited to the following: 1) using barbless hooks; 2) attempting not to damage the fish when removing hooks or otherwise handling the fish; and 3) wetting hands before handling the fish.
- (d) Owners shall be courteous to other fishermen in their fishing practices, including in selection of fishing sites.
- (e) The River can be cold and swift. Owners shall be safety conscious when fishing, and shall keep young children under their supervision and control.
- (f) Owners shall keep any pets under their control when fishing, and shall not allow pets to disturb the fishing experience of other fishermen.

## ARTICLE 18 DECLARANT RESERVED RIGHTS

18.1 Reserved Rights. In addition to reserved rights set forth elsewhere in this Declaration, Declarant reserves the following rights:

- (a) To complete all improvements related to development of the Ranch, including the roads and domestic water system. Nothing herein shall be construed as preventing Declarant from constructing improvements for the Ranch, or requiring any DRC approvals for such improvements.
- (b) To maintain sales offices within the Ranch, including within modular or temporary structures; and signs advertising the Ranch and Parcels for sale.

(c) To use roadways, utilities, easements, and common elements within the Ranch to make improvements within the Ranch.

- 18.2 Assignment. Declarant may convey or assign any or all of its rights, title, interest and obligations under the Declaration to any other person or entity. In such event, Declarant's successors or assigns shall assume all conveyed rights, title, interest and obligations of Declarant hereunder.
- 18.3 Expiration of Declarant Reserved Rights. Declarant's reserved rights shall expire upon Declarant providing written notice of relinquishment of such rights to the Association or, if not sooner terminated, within twenty-five (25) years of the date of this Declaration, **or such other period as may be specified herein for a particular right.**

## ARTICLE 19 MISCELLANEOUS PROVISIONS

- 19.1 Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of its provisions. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.
- 19.2 Construction. In interpreting words in this Declaration, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.
- 19.3 Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.
- 19.4 Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.
- 19.5 Limitation of Liability. Neither the Association nor any officer or member of the Board shall be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Association Documents if the action or failure to act was made in good faith. The Association shall indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.
- 19.6 Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control. In case of conflict





**EXHIBIT A**  
**DESCRIPTION OF THE PROPERTY**

Parcels 1-10, Continental Divide Ranch, according to the plat recorded in Archuleta County, Colorado under Reception No. \_\_\_\_\_.