

DECLARATION  
 FOR  
 THE RESERVE ON THE EAST RIVER  
 JANUARY 2005



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## DECLARATION FOR THE RESERVE ON THE EAST RIVER

This Declaration for the Reserve on the East River is made this \_\_\_ day of January, 2005, by Cockrell Investment Partners, L.P., a Texas limited partnership (Declarant).

## ARTICLE 1 — STATEMENTS OF PURPOSE AND DECLARATION

- 1.1 The Reserve Property. Declarant owns land in Gunnison County, Colorado, described on the attached *Exhibit A* (the *Reserve Property*). Declarant is developing the Reserve Property as a residential planned community which will be known formally as the Reserve on the East River (and sometimes simply called the Reserve), in accordance with the Colorado Common Interest Ownership Act (defined as the Act and more fully described in Article 2).
- 1.2 Declarant's Purpose. Declarant's purpose in making this Declaration is to provide for the orderly, responsible and attractive development of the Reserve Property.
- 1.3 Imposition of Covenants. To accomplish the purposes stated above, Declarant declares that from the date of recording this Declaration forward, the Reserve Property constitutes a planned community under the Act and will be held, sold and conveyed subject to the following protective covenants, conditions, restrictions and easements (together, *Covenants*). These Covenants run with the land and bind all parties (including Declarant) who own any part of the Reserve Property, all parties who have any other right, title or interest in all or any part of the lands included within the boundaries of the Reserve Property, and also the heirs, successors and assigns, tenants, guests, employees and invitees of all such parties.

## ARTICLE 2 — DEFINITIONS

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

- 2.1 *Act* means the Colorado Common Interest Ownership Act, Colorado Revised Statutes §38-33.3-101 through §38-33.3-319, as amended, supplemented or restated from time to time.
- 2.2 *Annual Assessment* means the Assessment levied annually pursuant to Section 8.3.

- 2.3 *Articles or Articles of Incorporation* means the articles of incorporation filed with the Colorado Secretary of State to create the Reserve on the East River Association, as such articles may be amended, supplemented or restated from time to time.
- 2.4 *Assessments* mean the Annual, Special and Default Assessments.
- 2.5 *Association* means the Reserve on the East River Association, a Colorado nonprofit membership corporation, and any successor of that entity by whatever name, charged with the duties of administering the Reserve as provided in the Reserve Documents.
- 2.6 *Board of Directors or Board or Director* refers to the board of directors of the Association or any of its constituent members. The Board is the executive board, as defined in the Act, designated by this Declaration to act on behalf of the Association.
- 2.7 *Building Envelope* means a portion of a Homestead within which the Owner is permitted to construct an Owner's Residence, a Guest House and related Improvements, subject to the Design Guidelines and County regulations. Declarant has depicted one, two, three or four representative Building Envelopes on each Owner Parcel as shown generally on the Plat and as described on Exhibit C. The Design Review Committee, using the discretion accorded the Committee under Section 5.4 below, may reconfigure any Building Envelope, provided that in any event, the Building Envelope shall be located within the Homestead and shall overlap with at least a portion of the Building Envelope depicted on the Plat.
- 2.8 *Bylaws* means the bylaws of the Association, which establish the methods and procedures of its operation, as such bylaws may be amended, supplemented or restated from time to time.
- 2.9 *Caretaker Unit* means a secondary dwelling unit constructed on a Reserve Parcel, as permitted under the terms of this Declaration and applicable regulations of Gunnison County, Colorado.
- 2.10 *Common Area* means the real property and Improvements in which the Association owns an interest for the benefit of the Association generally, and for the common use, benefit and enjoyment of some or all of the Owners and such other persons who may be permitted to use the Common Area under the terms of this Declaration or any agreement with the Association. Such interest conveyed to the Association may include, without limitation, estates in fee, for terms of years, or easements.

*The Common Area extends over easements established by Declarant on the Owner Parcels, outside the boundaries of a Homestead, as more fully explained in Article 9 below.*

- 2.11 *Common Expenses* means (i) all expenses expressly declared to be Common Expenses by the Reserve Documents; (ii) insurance premiums for the insurance carried as provided in Section 11.1; (iii) all expenses lawfully determined to be Common Expenses by the Board of Directors; (iv) all expenses to be allocated among Owners as provided in Article 8; and (v) all other expenses of administrating, servicing, conserving, managing, maintaining, repairing and replacing the Common Area.
- 2.12 *County*, standing alone in a phrase, means Gunnison County, Colorado.
- 2.13 *Declarant* means Cockrell Investment Partners, L.P., a Texas Limited partnership, its successors or assigns, including any Successor Declarant to the extent the rights of Declarant are assigned to the Successor Declarant, as provided in this Declaration below.
- 2.14 *Default Assessment* means any Assessment levied pursuant to Section 8.6 below.
- 2.15 *Default Rate* means an annual rate of interest that is established by the Board of Directors from time to time as permitted by the Act or other applicable law.
- 2.16 *Design Guidelines* means the Development Review and Performance Standards for the Reserve on the East River, consisting of guidelines and rules published, amended, supplemented and restated from time to time by the Design Review Committee and governing matters including, among others, design and landscaping standards and construction rules for the Reserve.
- 2.17 *Design Review Committee* or *Committee* means the committee formed pursuant to this Declaration to maintain the quality and architectural harmony of the Improvements in the Reserve on the East River.
- 2.18 *Development Rights* or *Special Declarant Rights* is defined in Section 10.1.
- 2.19 *Eligible Mortgage Holder* means a First Mortgagee or any insurer or guarantor of a First Mortgage which has notified the

Association in writing of its name and address and status as a holder, insurer or guarantor of a First Mortgage. Such notice will be deemed to include a request that the Eligible Mortgage Holder be given the notices described in Section 16.3.

- 2.20 *First Mortgage* means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.
- 2.21 *First Mortgagee* means the holder of record of a First Mortgage.
- 2.22 *Guest House* means a secondary dwelling unit constructed within a Building Envelope, as permitted under the terms of this Declaration, and applicable regulations of Gunnison County, Colorado.
- 2.23 *Homestead* refers to approximately two acres of an Owner Parcel possessed exclusively by the Owner. Declarant has defined the boundaries of a Homestead on each Owner Parcel as shown generally on the Plat. The Design Review Committee, using the discretion accorded the Committee under Section 5.4 below, may reconfigure the boundaries of a Homestead in the general location shown on the Plat.
- 2.24 *Improvement or Improvements* means all Owners' Residences and other buildings, parking areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, excavation, grading and all other site work, road construction, utility improvements, removal of trees or plantings, changes in any exterior or shape, and any new exterior construction or exterior improvement which may not be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude that does not change exterior colors or exterior appearances. "Improvements" does include both original improvements and all later changes and improvements.
- 2.25 *Lodge Manager* refers to any manager engaged by the Association to perform the functions generally described in Section 7.7.B.
- 2.26 *Member* means any person holding a membership in the Association.
- 2.27 *Mortgage* means any mortgage, deed of trust or other document which is recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, and which encumbers any portion of or interest in the Reserve Property as security for payment of a debt or performance of an obligation.

- 2.28 *Mortgagee* means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.
- 2.29 *Owner* means the owner of record (including Declarant, and including a contract seller, but excluding a contract purchaser), whether one or more persons, of fee simple title to any Owner Parcel, but does not refer to any person who holds such interest merely as security for the performance of a debt or other obligation (such as a Mortgagee), unless and until such person has acquired fee simple title pursuant to foreclosure or other proceedings.
- 2.30 *Owner Parcel* refers to any Parcel on which an Owner's Residence may be constructed. As shown on the Plat, the Owner Parcels include Parcels I through 24. (An Owner Parcel is a "Unit" as defined in the Act.)
- 2.31 *Owner's Agent* means members of an Owner's family, and the Owner's tenant, agent, employee, guest, invitee or licensee.
- 2.32 *Owner's Residence* means a primary dwelling unit for residential use (subject to Section 4.4 below) constructed on any Owner Parcel.
- 2.33 *Parcel* means a parcel of the Reserve Property that is designated as either an Owner Parcel or a Reserve Parcel pursuant to this Declaration and the Plat. Reference to a Parcel includes (i) any Owner's Residence constructed on the Owner Parcel in question, (ii) any Guest House that may be constructed on an Owner Parcel, (iii) any Caretaker Unit constructed on the Reserve Parcel in question, and (iv) any other Improvements and appurtenances existing on the Parcel, as permitted under the Design Guidelines, now or in the future.
- 2.34 *Period of Declarant Control* means the period during which Declarant (or any Successor Declarant) may appoint and remove the Directors and Officers of the Association as permitted under the Act, and as explained in Section 10.1.E.

As provided in the Act as currently in effect, the Period of Declarant Control will begin on the date this Declaration is first recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, and will end no later than (i) 60 days after conveyance of 18 Owner Parcels (representing 75% of the Owner Parcels that may be created within the Reserve Property) to Owners other than Declarant or any Successor Declarant, or (ii) two years after the last conveyance of an Owner Parcel by Declarant (or any Successor Declarant) in the ordinary course of business, whichever of the foregoing dates or events occurs first.

Notwithstanding the foregoing, the Period of Declarant Control will be extended at the option of Declarant (A) if the Act is amended to allow for the extension of the Period of Declarant Control beyond the limiting dates outlined in this Section above, or (B) if the Period of Declarant Control is reinstated or extended by agreement between Declarant and the Association.

After the termination of the Period of Declarant Control, Declarant, if still an Owner, will have all the rights and duties ordinarily given to Members under this Declaration (together with any other Special Declarant Rights reserved by Declarant and still in effect).

- 2.35 *Person* (whether or not in capitalized form) means a natural person, a corporation, a partnership, a limited liability company, a limited liability partnership, a limited liability limited partnership, an association, a trust, or any other entity or combination thereof.
- 2.36 *Plat* means any land survey plat (including any amendment or supplement) depicting all or part of the Reserve Property, together with such other diagrammatic plans and information regarding the Reserve Property as may be required by the Act or other applicable law, or included in the discretion of Declarant, all as recorded in the office of the Clerk and Recorder of Gunnison County, Colorado.
- 2.37 *Reserve* means the planned community established by this Declaration and formally known as The Reserve on the East River.
- 2.38 *Reserve Central* refers to the Parcel identified by that name on the Plat.
- 2.39 *Reserve Documents* means the basic documents creating and governing the Reserve, including (among others) the Plat, this Declaration, the Articles, the Bylaws, the Design Guidelines, the Reserve Rules and any procedures, regulations and policies adopted under such documents by Declarant, the Association, the Board of Directors or the Design Review Committee and their authorized committees.
- 2.40 *Reserve Manager* means the person engaged to oversee the operations of the Reserve, including without limitation the entry to the Reserve; the horses and livestock kept and agricultural operations conducted at the Reserve; the ditches on the Reserve Property and the fences on those portions of the Reserve Property outside of any Homestead; and the Stables and other Common Areas (including without limitation any Common Areas established as easements on an

Owner Parcel) outside the Homestead boundaries as provided in Article 9). In addition, the Reserve Manager may perform other functions for management of the Reserve Property, as designated by Declarant during the Special Declarant Rights Period, and after, as designated by the Board.

- 2.41 *Reserve Parcel* refers to any Parcel designated as "Reserve Parcel" on the Plat. The Association will own the Reserve Parcel(s) as Common Area.
- 2.42 *Reserve Property* means the real property in Gunnison County, Colorado, described on Exhibit A which is subject to this Declaration. Reserve Property also includes adjacent property leased from the State of Colorado by Declarant and/or Declarant's affiliate.
- 2.43 *Reserve Rules* refers to the rules and regulations of the Association, more fully defined in Section 7.4.
- 2.44 *Related Assessment Costs* means fines, penalties, interest, costs, reasonable attorneys' (and legal assistants') fees and other charges allowed under the Act.
- 2.45 *Special Assessment* means an Assessment levied pursuant to Section 8.5 below.
- 2.46 *Special Declarant Rights* are defined in Section 10.1 below.
- 2.47 *Special Declarant Rights Period* means the period beginning on the date this Declaration is first recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, and ending the earlier of (i) the date on which Declarant has sold or otherwise conveyed to any other person the last of all the Parcels in the Reserve Property, and (ii) the 25th anniversary of the date this Declaration is first recorded in Gunnison County, Colorado, unless Declarant terminates the Special Declarant Rights Period in advance, as provided by this Declaration.
- 2.48 *Stables* means any stables complex which Declarant may construct on one or more Parcels within the Common Area (which is shown on the Plat and located within the Common Area), and includes any maintenance shop facility, barns, paddocks, stalls, arenas, Caretaker Unit and related and supporting amenities and Improvements operated in connection with the complex.

- 2.49 *Successor Declarant* means any person to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as permitted by Section 18.6 and evidenced by an assignment of record in the office of the Clerk and Recorder of Gunnison County, Colorado, designating such party as a Successor Declarant, signed by the transferor and the transferee, and otherwise complying with the requirements of the Act.

### ARTICLE 3 – THE PLANNED COMMUNITY

- 3.1 *Establishment of Planned Community.* By this Declaration, the Reserve is established as a planned community under the Act consisting initially of 1 Reserve Parcel and 24 Owner Parcels, all as depicted on the Plat.
- 3.2 *Declaration of Parcel Boundaries.* The boundaries of each Parcel are delineated on the Plat, and each Parcel is identified by the number and address noted on the Plat.
- 3.3 *Plat.* The Plat will conform to the requirements of the Act and will be filed for record in the office of the Clerk and Recorder of Gunnison County, Colorado. The Plat may consist of a single document or a series of documents filed from time to time, as stages of construction of the Reserve are completed.
- 3.4 *Recorded Easements and Licenses.* The recording data for recorded easements and licenses appurtenant to or included in the Reserve are set forth on attached Exhibit B.
- 3.5 *Restriction of Ownership.* An Owner Parcel may be owned by an individual, his or her spouse, and up to two lineal descendants of the individual and/or his or her spouse. No other individual(s) shall own an Owner Parcel or an interest therein, directly or indirectly. If an Owner Parcel is owned by a trust, limited liability company or other entity, the limitations of this Section shall apply to the beneficiaries of the trust, the members and managers of the limited liability company and the beneficial owners of any other entity, but not to the estate of a deceased Owner with more than two lineal descendants. However, such estate may not convey the Owner Parcel to more than two of the deceased Owner's lineal descendants.

### ARTICLE 4 – RESERVE PROPERTY USE GUIDELINES

- 4.1 *General Provisions Regarding the Development and Use.* Declarant has created The Reserve on the East River as a residential and recreational community, and to further the interests of Declarant and every other Owner, Declarant has established a general plan for the development and use of the Reserve. Any Improvements existing or constructed on the Reserve

Property are subject to land development, architectural and design guidelines as set forth in Article 5. In addition, the Reserve Property is subject to guidelines and restrictions concerning land use and individual conduct as provided in this Article. Declarant's purpose in establishing this general plan is to protect the quality of life for all Owners at the Reserve, the aesthetics and environment within the Reserve Property, and the vitality and sense of community within the Reserve.

4.2 Reserve Rules. The guidelines established by Declarant in this Declaration may be supplemented by Reserve Rules issued by the Board of Directors from time to time in accordance with the Act, Section 7.4 and the Bylaws.

4.3 Binding Effect. All provisions of this Declaration and the Reserve Rules also apply to all occupants and tenants of any Parcel and the family, guests and invitees of any Member. Any lease of any Parcel must provide that the tenant and all occupants of the Parcel are bound by the terms of the Reserve Documents.

4.4 Use of Owner Parcels.

A. Easements. Each Owner Parcel shall be subject to (i) easements establishing Common Area for the use and benefit of the Association for various purposes, (ii) easements for the benefit of other Owners, for access and/or other purposes, all as shown on the Plat or by other documents recorded in Gunnison County, Colorado, and (iii) easements recorded or otherwise established against the Owner Parcels, including those listed on the attached Exhibit B. These easements are more fully described in Article 9.

B. General Provisions Applicable to Owner Parcels. Each Owner Parcel may be developed by the construction of either one or two dwelling units, subject to the requirements of the Design Guidelines and any applicable land use or other regulations of Gunnison County, Colorado, as in effect from time to time.

1. If the Owner elects to build two dwelling units, the Owner must designate one as the Owner's Residence, which shall be the primary dwelling unit, and the other as a Guest House, which shall be a secondary dwelling unit. The Guest House may be attached to or detached from the Owner's Residence, subject to the limitations of Paragraph 5 of this Section 4.4.B.
2. The interior living space of the Owner's Residence must measure at least 2,500 square feet and must not exceed 7,500 square feet, subject to such further limitations that may be imposed by the Design Guidelines and/or Exhibit C.

3. The interior living space of the Guest House must not exceed (i) 2000 square feet or (ii) the maximum area permitted under the County regulations, as in effect from time to time, whichever is smaller.
4. In addition, each Owner Parcel may contain up to 1500 square feet of attached and/or detached garage space.
5. No building on an Owner Parcel shall have interior living space which exceeds 9,000 square feet. The aggregate size of the Owner's Residence, Guest House and garage space shall not exceed 11,000 square feet.
6. In any case, if the requirements imposed by the County regarding the development of an Owner Parcel vary from the requirements imposed by Reserve Documents, including this Declaration, the more restrictive requirements will govern the development of the Owner Parcel.
7. If the Owner elects to build a detached Guest House, up to 500 square feet of the garage space allowed under Paragraph 4 of this Section 4.4.B may be added to such Guest House in addition to the 2,000 square feet maximum interior living space allowed under Paragraph 3 of this Section 4.4.B.
8. The Owner's Residence, the Guest House, if any, the garage and all Improvements, except for fences and utilities, must be located within the Building Envelope as described on attached *Exhibit C*.
9. No additional dwelling units, apart from an Owner's Residence and a Guest House, shall be permitted on an Owner Parcel.
10. All buildings shall have unobtrusive, exclusively muted earth-tone colors and materials that blend with the surrounding natural terrain and environment. Native stone and log are preferred exterior materials. No exterior walls shall consist of metal, T-III or any similar material, composition shingles or unplastered cement or similar block. No whites, light beiges or bright colors or excessive glass shall be allowed. No design materials or construction techniques which would unnecessarily call attention to the building shall be permitted. No A-frames or geodesic domes shall be permitted. At least 25% of the exterior material, excluding the windows and roof, on all buildings shall be an architecturally appropriate material different from the primary exterior material. The Design Guidelines may further refine, limit and prescribe exterior materials to limit visibility of buildings and cause them to blend with the natural terrain and environment.

11. All driveways, buildings and other Improvements shall be located, designed and constructed so as to avoid affecting wetlands to the extent feasible. If it is not feasible to avoid affecting wetlands, the Owner shall be responsible for designing and constructing all appropriate mitigation measures and for obtaining all required permits, including a permit from the United States Army Corps of Engineers. The Committee shall have broad discretion to reject plans and specifications for any Improvements which will impact wetlands. Owners shall comply with all terms and provisions of the Permit issued by the United States Army Corps of Engineers for construction of the Reserve on the East River access road and Common Areas.

C. Businesses. No Owner Parcel may be used at any time for the purpose of conducting any industry, trade, profession, manufacturing or business of any description, except as provided in this Section 4.4.C.

First, this provision will not preclude an Owner from maintaining and operating an in-home occupation from the Owner's Residence or Guest House, subject to these conditions:

1. The business must be carried on entirely within the Improvements on the Owner Parcel and be secondary and incidental to the use of the Improvements for residential purposes.
2. There must be no external evidence of the conduct of the business, and the business must not entail any customer or client visits to the Owner Parcel.
3. The business must not employ individuals on site who do not reside in the Owner's Residence on the Owner Parcel.

Second, the restriction against business activity first stated in this Section 4.4.C above will not apply to any activity conducted by Declarant with respect to its development and sale of the Owner Parcels or development of the Reserve as contemplated by this Declaration.

Third, this restriction will not apply to any haying or other agricultural and ranching operations that may be conducted on Common Area, as provided in Section 9.10.

Finally, this restriction will not apply to the ranch and agricultural operations, including without limitation, the hay sales and care of horses, carried out by the Reserve Manager at Reserve Central and on Reserve Parcels.

- 4.5 Use and Maintenance of Ponds on Owner Parcels. Each Owner shall maintain and have exclusive use of each pond and associated water rights located on such Owner's Owner Parcel. The Association shall have the right to maintain such pond and water rights at the expense of any Owner who fails to maintain his or her pond and associated water rights.
- 4.6 Fences.
- A. No fences, walls or barriers shall be constructed, erected or maintained on any Owner Parcel except for fences within each Homestead upon approval by the Committee. All fences shall comply with Design Guidelines adopted by Declarant and/or the Committee.
- B. The Association shall be responsible for the expense of maintaining that part of the perimeter fencing around the Reserve not maintained by the owner(s) of adjacent land. Perimeter fencing around the Reserve shall not exceed 42 inches in height. Perimeter fences shall be limited to a maximum of three strands or rails. Perimeter rail fences shall only use rounded rails. Perimeter wire fences shall not be made of woven wire. Wire and rail fences shall have a kickspace (distance between the top two wires or rails) of not less than 18 inches. The top rail shall be made of a solid material in heavy wildlife use areas, to make it more visible to wildlife.
- 4.7 Excavation. No mining or excavation of any kind is permitted except in connection with Improvements approved as provided in these Covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in a removal of earth, rock, or other substance below the natural surface of the land.
- 4.8 Water and Water Rights. Each structure designed for occupancy must connect with a domestic water well located on the Parcel or on another Parcel, in compliance with all applicable well permit requirements and other applicable laws, codes and regulations for exempt wells, and in compliance with the Design Guidelines. The Design Guidelines may require that the water system on any Owner Parcel be designed as capable of connecting to central water service facilities, in the event that a central system is made available from time to time by any water district which may be formed with jurisdiction over the Reserve Property or any other approved utility supplier.
- 4.9 Wells. No well from which water, oil or gas is produced shall be dug or drilled, nor shall storage tanks, reservoirs or any installation of power, telephone or other utility lines (wire, pipe or conduit) be made or operated anywhere on the Reserve Property, except in connection with (i) water wells and works planned and installed in accordance with this

Declaration (including without limitation Section 4.8 above and this Section 4.9 below), the Design Guidelines and other applicable Reserve Documents and (ii) wells and works operated by public agencies or duly certified public utility companies, if any, having jurisdiction over the Reserve Property.

Declarant reserves the right to drill, case, equip, use and install, maintain, repair and replace one or more water wells on any Parcel, in addition to any well available by right to the Owner of the Parcel, on the condition that (i) such additional wells are permitted under applicable statutes, codes and regulations and (ii) such additional wells are reserved for the use and benefit of the Association or for one or more Owners: No Owner shall appropriate springs or other water on his or any other Owner Parcel, such right being reserved by Declarant exclusively for the Association.

- 4.10 Sanitation. Each structure designed for occupancy must connect to an individual sewage disposal system in compliance with Reserve Documents and applicable laws, codes and regulations.
- 4.11 Irrigation. The Reserve Manager alone shall have responsibility for and control over all irrigation for the benefit of the Reserve Property from ditches on the Reserve Property, including without limitation the ditches, related irrigation facilities and water diversions which may be located on any Owner Parcel inside or outside of the Homestead boundaries, subject to the rights of owners of water rights and ditches on the Reserve Property (as described in Section 9.II below). Each Owner shall be entitled to manage any irrigation of the Owner's Homestead with water from a well serving the Owner Parcel in question, in accordance with applicable statutes, codes, and regulations and in accordance with the standards set by this Declaration. No Owner may divert, impede, or interrupt the flow of water in the irrigation ditches, ponds and other water courses anywhere on the Reserve Property without the approval of the owner of the ditch, pond or other water course and the Reserve Manager, subject to oversight by the Design Review Committee. The maintenance of any water diversion through an Owner's Homestead, initiated by the Owner and approved by the Design Review Committee, will be the responsibility of that Owner.
- 4.12 Signs. No signs of any kind may be displayed on or from any portion of the Reserve Property except (i) during the Special Declarant Rights Period, signs of Declarant or its affiliates or assigns (which shall be approved by the Committee), (ii) signs required by law, and (iii) property address signs, the size, number, design and location of which must comply with the Design Guidelines and be approved by the Design Review Committee.

4.13 Visitors. No solicitation activities will be permitted on the Reserve. Owners who have extended invitations to guests, agents or invitees to visit the Owner Parcel at any time will be responsible for ensuring that such visits do not interfere with the use and enjoyment by other Owners of their Owner Parcels and the other Reserve Property.

4.14 Animals and Pets. No animals, livestock or poultry of any kind shall be kept, raised or bred on any portion of the Reserve Property, except (i) dogs, cats or other interior confined household pets belonging to an Owner, (ii) horses and other animals permitted by the Reserve Manager at the Stables, and (iii) horses tethered securely and temporarily (not overnight) within a Homestead perimeter.

A. Containment. Household pets, such as dogs and cats, must be contained inside or within the boundaries of an Owner's Homestead. All pets must be fed within an enclosed structure. No pet may be permitted to run at large at any time, and all dogs shall be kept on a leash or under voice command.

B. Noise and Nuisances. Owners of pets on the Reserve Property will be required to take all steps necessary to control barking or other disturbances caused by their pets.

C. Enforcement. If the Reserve Manager determines that a pet has interfered with wildlife or with the use and enjoyment by any Owner of the Reserve Property, then the Reserve Manager may require the pet to be maintained on a leash not to exceed 20 feet in length.

For the protection of the wildlife habitat in and around the Reserve Property, the animals boarded at the Stables and all persons on the Reserve Property, household pets which create a continuing nuisance by roaming or excess barking or other unacceptable behavior will be subject to expulsion from the Reserve Property upon complaint by two or more Owners and a finding by the Board of Directors.

4.15 Wildlife. Each person on the Reserve is to abide by any wildlife regulations imposed by the Association or any governmental or public or private agency having jurisdiction over the Reserve Property. No harassment of wildlife is permitted. The feeding, baiting, salting or other means of attracting wildlife to individual yards is prohibited, except for feeding birds which, subject to reasonable rules adopted by the Association, is allowed.

The Reserve Rules may include specific guidelines, supplementing this Declaration, directing the Owners and other occupants of the Reserve to take measures as necessary to discourage bears, mountain lions and other wildlife from becoming acclimated to the people on and about the Reserve Property and to protect the safety of all persons on the Reserve Property. The Reserve Rules shall adhere to the objectives of this Declaration for the preservation of wildlife and the environment in and around the Reserve Property.

4.16 Unsuitability Prohibited. The Reserve Property, including Owner Parcels, shall be maintained in a neat, clean and attractive condition at all times. Without limiting the generality of the foregoing:

A. Electrical, Television, Natural Gas and Telephone Service. All installations upon any Owner Parcel for the transmission of utilities, telephone service, the reception of audio or visual signals or electricity (except satellite dishes, permitted as set forth in Paragraph G, below), and all pipes and tanks for water, gas, sewer, drainage or other purposes must be installed and maintained below the surface of the ground, unless applicable law requires above-ground installation.

B. Refuse. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed on any Owner Parcel or area within the Reserve. Refuse and garbage shall be removed from the Owner Parcel at least weekly and placed in the central dumpster maintained by the Association. There shall be no burning, burying or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from public view and from the wind and protected from bears, wildlife and other animals and other disturbance. All Owner Parcels shall at all times, including during construction, be maintained in a neat and attractive condition. All construction debris shall be stored within a dumpster or other comparable container or receptacle.

C. Service Areas. Service areas and facilities for hanging, drying or airing clothing must be kept within an enclosed structure.

D. Vehicle Storage and Parking on Owner Parcels. No trucks, trail bikes, recreational vehicles, all terrain vehicles, motor homes, motor coaches, snowmobiles, campers, motorized or non-motorized trailers, pickup campers, pop-up campers, boats or boat trailers or similar vehicles or business vehicles (other than passenger automobiles or pickup or utility trucks with a capacity of 3/4 ton or less) or any other motorized or non-motorized vehicles may be parked, stored or in any manner kept or placed on any portion of an Owner Parcel, except in an enclosed garage.

Any vehicles that are not required to be parked within enclosed garages pursuant to this Section may be parked only on parking areas (located on the Owner Parcel in accordance with Design Guidelines). This restriction, however, will not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Reserve Property or the Owners.

Notwithstanding the foregoing, the Association may designate areas for off-street temporary parking for maintenance and delivery vehicles or to accommodate special circumstances.

*E. Vehicle Storage and Parking on Reserve Parcels and Common Area.* The Association has the right to park any type of vehicle owned or used by the Association on the Reserve Property only within parking areas located on Reserve Parcels and designated for such purpose by Declarant or approved by the Design Review Committee.

Declarant and the Reserve Manager and their respective agents and employees have the right to park and store, within areas on the Reserve Parcels designated by Declarant or by the Design Review Committee, such vehicles as required for any agricultural operations and recreation activities conducted on the Reserve Parcels and for the development maintenance and use of the Reserve.

*F. Idle, Abandoned, Inoperable or Oversized Vehicles.* No work on automobiles or other vehicle repair may be performed in any visible or exposed portion of the Reserve Property, except in emergencies. No idle, abandoned or inoperable vehicles of any kind may be stored or parked on any portion of the Reserve Property, except in an enclosed parking garage. "Idle, 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. A written notice describing the idle, abandoned or inoperable vehicle that has not been stored in an enclosed area, as required above, and requesting removal of the vehicle, may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed to a location off the Reserve Property or to an enclosed garage on the Reserve Property within 72 hours after notice has been given, the Association has the right to remove the vehicle without liability, and the expense of removal shall be a Default Assessment charged against the Owner as provided in Section 8.6. Declarant or the Committee may require an Owner to store all unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery at a designated location or locations. "Oversized" vehicles, for purposes of this Section, will be vehicles which are too high to clear the entrance to a residential garage.

G. *Antennae and Satellite Dishes.* The Design Guidelines will permit the installation of satellite dishes measuring up to 18 inches in diameter, provided, however, that the Design Review Committee will have the right to approve the number of dishes an Owner may install on an Owner Parcel, and the right to require screening of any dish consistent with the architectural values protected by the Reserve Documents. No exterior radio, television, microwave or other antenna or antenna dish or signal capture and distribution device is permitted without the prior written consent of the Committee and appropriate screening as required by the Design Guidelines.

H. *Limitation on Outdoor Facilities.* Outdoor hot tubs may be permitted on a Parcel with the approval of the Design Review Committee. That approval may be conditioned upon requirements including, without limitation, the addition of appropriate screening and noise abatement Improvements. No tennis courts or similar facilities may be constructed on any Owner Parcel.

- 4.17 *Drainage.* No Owner may perform or permit any work, place any landscaping or install any other Improvements or permit any condition which alters or interferes with the drainage pattern of the Reserve Property, except to the extent the alteration and drainage pattern is approved in writing by the Committee, and except for rights reserved to Declarant under this Declaration or other agreement to alter or change drainage patterns.
- 4.18 *Construction Regulations of the Design Guidelines.* All Owners and contractors shall comply with the Design Guidelines regulating construction activities. Such regulations may cover, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners' representatives on the Reserve Property at any time; rules regarding pets of construction personnel at the construction site; the conservation of landscape materials; and fire prevention.
- 4.19 *Temporary Structures.* Temporary structures, including but not limited to trailers, mobile homes or tents, are not permitted on the Reserve Property, except as the Committee may determine to be necessary during construction on a case-by-case basis, and except as necessary for the build-out of the Reserve by Declarant and for the exercise by Declarant of any Special Declarant Rights.
- 4.20 *Compliance with Laws and Environmental Regulations.* Subject to the rights of reasonable contest, each Owner shall promptly and timely comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Reserve Property. Without limiting the generality of the foregoing, no Owner shall dispose or allow any Owner's Agent to release, discharge or emit from the Reserve

Property or dispose of any material on Reserve Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

- 4.21 Recreational Vehicles. No snowmobiles, motorcycles, motorbikes, all terrain vehicles or other motorized vehicles are permitted to be operated on the Reserve Property except (i) for access to public lands or a Parcel, and then, only on a road, (ii) vehicles operated by Declarant or the Reserve Manager in conducting any activities permitted or required under this Declaration, (iii) licensed motorcycles and motorbikes that are driven on roadways for access to public lands or a Parcel (not for recreation) and (iv) vehicles used as specifically permitted by the Reserve Rules (including regulations for the protection of wildlife). Under no circumstances shall Owners or an Owner's Agent drive any vehicle or conveyance described in this Section 4.21 or any other motor vehicle on Reserve Property, except on a road or driveway, and then, only for access, not recreation.
- 4.22 Use of Garages. No Owner or occupant of any Owner Parcel may convert the required indoor garage spaces built on any Owner Parcel to any use that precludes the use of the main floor garage space for parking motor vehicles.
- 4.23 Outside Burning. No exterior fires are permitted on the Reserve Property, except barbecues, outside fireplaces and braziers contained within facilities or receptacles and in areas designated and approved by the Committee.
- 4.24 Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the safety and security of persons, animals, property or Improvements, may be placed or used on any portion of the Reserve Property.
- 4.25 Lighting. All exterior lighting of the Improvements and grounds on the Reserve Property are subject to regulation by the Design Review Committee. Dusk-to-dawn and motion-sensitive lighting are prohibited to avoid interference with nighttime feeding areas of elk, deer and other wildlife. Exterior lighting shall be kept to a minimum. Subtle, low voltage lighting is required. Any exterior lights shall be placed on Buildings. Maximum bulb wattage shall not exceed Gunnison County limits, subject to further restriction by the Design Review Committee. Exterior light fixtures shall direct light to the ground and shall be "full cut-off" type. Lights shall not be used to light buildings. Light shall not spill beyond the Owner Residence and Guest House, except as may be needed to reach parking areas. The exterior lighting scheme must be indicated on the site plan in the final approval package.
- 4.26 Nuisance and Hazardous Activities. No obnoxious or offensive activity shall be carried on within the Reserve Property, nor shall anything be done or permitted which shall constitute a public nuisance or cause embarrassment, disturbance or

annoyance to others. Further, no activities or Improvements which are unsafe to any person or property will be permitted on the Reserve Property. Without limiting the generality of the foregoing, no firearms may be discharged on the Reserve Property except (i) in cases of self-defense of persons, animals or property, and (ii) in conjunction with normal ranching operations.

4.27 Wood Burning Devices. Wood burning devices may be operated on the Reserve Property in conformance with the regulations of Gunnison County, Colorado.

4.28 Hunting. Hunting on the Reserve Property is prohibited, except the Reserve Manager or other employees or agents of the Association will be permitted to use firearms on any part of the Reserve Property for the purposes of wildlife management or predator control; provided, however, any Owner affected by such activities will be given reasonable notice of entry by the Reserve Manager or other Association agents or employees, except in the case of emergency. This restriction will not preclude Owners from using the Reserve to access surrounding public lands for the purpose of hunting.

4.29 Foliage Removal.

A. Each Owner Parcel and all trees, landscaping and foliage thereon shall be maintained in its natural condition, except as approved by the Architectural Review Board. Lawns and artificial landscaping shall be minimal and in no event shall an irrigated lawn and garden exceed 1,000 square feet. Subject to approval by the Design Review Committee, no trees or foliage shall be cut or removed from any Owner Parcel except only (1) as required to permit ingress and egress to and from the Building Envelope, (2) to clear the actual construction site for any Owner Residence, Guest House or garage, (3) to remove any diseased or dead trees or foliage, (4) to remove any trees and foliage that poses a danger to any building, (5) as required for wildfire safety or (6) for any recreational or other easement. The Association shall have authority to levy a large fine for the cutting or removal of trees or foliage in violation of this section.

B. Notwithstanding the provisions of Section 4.29.A, Declarant reserves the right to remove foliage to construct roads, utilities and other Improvements and to enhance views.

4.30 Declarant's Exemption. Nothing in this Declaration shall be construed to prevent (i) the exercise by Declarant of any Special Declarant Right or (ii) the construction and maintenance by Declarant or its duly authorized agents of temporary structures, trailers, Improvements or signs necessary or convenient to the development, marketing or sale of property within the Reserve.

## ARTICLE 5 — DESIGN REVIEW GUIDELINES AND COMMITTEE

- 5.1 Committee and Guidelines. The Design Review Committee is responsible for the establishment and administration of Design Guidelines. The Committee may issue and enforce separate and distinct Design Guidelines applicable to the Owner Parcels and the Reserve Parcels as well as Design Guidelines that relate to the Reserve generally. Further, the Committee may amend, vary, repeat and augment the Design Guidelines 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 the Reserve or other factors as necessary or desirable to fulfill the intent of the Design Guidelines. The Design Guidelines bind all Owners and other persons governed by this Declaration, except as specifically limited or exempted under this Declaration.
- 5.2 Scope of Design Guidelines. The Design Guidelines may include, among other things, the following restrictions and limitations:
- A. Design and Materials Standards. Standards and requirements pertaining to architectural and building style and design, construction materials and site planning.
  - B. Application Procedures. Procedures for making application to the Committee for design review approval, including the documents to be submitted and the time limits in which the Committee must act to approve or disapprove any submission.
  - C. Documents. Standards for the preparation of the documents to be submitted with any application for approval, including without limitation a requirement that any plans be drawn by an architect holding a license in the State of Colorado and membership in the American Institution of Architects.
  - D. Construction Schedules. Time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under the Design Guidelines.
  - E. Height and Setback Restrictions. Limitations on the height of any building or other Improvement, and setback or view corridor requirements in compliance with the Building Envelope(s) described on the Plat and in Exhibit C.
  - F. Screening. Specifications for the location, dimensions and appearance or screening of any fences, accessory structures, antennae or other such Improvements (to the extent permitted under the Reserve Documents).

G. Landscaping. Landscaping regulations, including requirements for installing, maintaining and confining landscaping to the Homestead on any Owner Parcel and to a limited building area on other Parcels, 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 of the Parcel in question; and other practices benefiting the protection of the environment aesthetics and architectural harmony of the Reserve.

H. Deposits Pending Completion. At the Committee's discretion, requirements for the deposit by the Owner, into an account held by the Committee or a third party acceptable to the Committee, of funds sufficient to complete all exterior and landscape Improvements approved for the Parcel in question.

I. General Conditions. 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.

5.3 Committee Membership and Organization. The Committee shall be comprised of one or more persons. The Committee may, but need not, include any Member of the Association, and one or more consulting architects, landscape architects and other design professionals may be engaged to serve on or advise the Committee. Declarant, in its sole discretion, will appoint, remove and replace all the members of the Committee until the earlier of (i) the date Declarant has waived this right to appoint the Committee by notice to the Association recorded in the office of the Clerk and Recorder of Gunnison County, Colorado, or (ii) the expiration of the Special Declarant Rights Period. At that time the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Committee. Declarant, before the recording of such notice, or the Association, after the recording of such notice, may direct that the Committee be organized as a Colorado nonprofit corporation. The Committee may be comprised of one or more or all members of the Association's Board of Directors.

5.4 Purpose and General Authority. The Committee will review, study and either approve (with or without conditions) or reject all proposed Improvements, all in compliance with this Declaration, the Design Guidelines and such Reserve Rules and regulations as the Committee may establish from time to time to govern its proceedings. No Improvement may be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor may any construction, repair or reconstruction

be commenced on any Parcel, until the Committee has approved the plans for the Improvements; provided, however, that Improvements that are completely within a building and not visible from the outside of the building may be undertaken without such approval. All Improvements will be constructed only in accordance with approved plans.

A. Committee Discretion. The Committee will exercise its prudent judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, materials, color, location on the Parcel, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Reserve Documents. The Committee, in its sole discretion based on concerns for good planning and design, the aesthetic, architectural and environmental features of the Reserve, or other factors as necessary or desirable to fulfill the intent of the Design Guidelines, may reconfigure Homesteads and Building Envelopes in the general location shown on the Plat, excuse compliance with requirements in specific situations and may permit compliance with different or alternative requirements; provided, however, that the Committee shall first solicit comments from the Owner of any Owner Parcel whose Building Envelope is visible from and within 500 feet of the Building Envelope for which such change or variance is sought. The Design Review Committee shall endeavor to reasonably minimize the visibility of all buildings on Owner Parcels from Colorado Highway 135 and from the Building Envelopes on other Owner Parcels.

Without limiting the generality of the foregoing, from time to time, the Committee may allow variances from the Design Guidelines otherwise generally applicable to the Reserve to preserve and maintain Improvements existing on the Reserve on the date of this Declaration, including, for example, the Improvements on Reserve Central.

B. Binding Effect. The actions of the Committee in the exercise of its discretion will be conclusive and binding on all interested parties.

5.5 Organization and Operation of Committee. The Design Guidelines may include provisions setting the term of Committee members and the administration of its duties as the Committee deems appropriate from time to time. Without limiting the generality of the foregoing, the Design Guidelines shall be consistent with the following principles:

A. Chairman. So long as Declarant appoints the Committee, Declarant will appoint the chairman. At such time as the Committee is appointed by the Board of Directors, the Board will designate the chairman.

B. Expert Consultation. The Committee may avail itself of technical and professional advice and consultants as it deems appropriate and obtain reimbursement of such expenses from the Owner who is applying for approval. Also, the Committee may delegate its review responsibilities 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 will be equivalent to approval or disapproval by the entire Committee. However, the Committee will not delegate the responsibility of completing a final review and issuing a final decision approving or disapproving plans for any proposed Improvement.

C. Expenses. Except as provided in this Section, the Association will pay all expenses of the Committee as a Common Expense. The Committee has the right to charge a fee for each application submitted to it for review, in an amount established by the Committee from time to time, to help defray the expenses of the Committee's operation.

5.6 Other Requirements. Compliance with the Reserve design review process is not a substitute for compliance with applicable building, zoning and land use regulations, and each Owner is responsible for obtaining all approvals, licenses and permits required before commencing construction of Improvements.

5.7 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 will 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. 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 the Committee's approval or denial of the Improvements. Neither the Board, the Committee, nor any agent of either of them, 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 Reserve Documents, nor for any structural or other defects in any work done according to such plans and specifications. The Association shall hold harmless, defend and indemnify the Committee in any suit or proceeding which may arise by reason of the Committee's decision.

5.8 Enforcement.

A. Inspection. Any member or consultant of the Committee, or any authorized officer, director, employee or agent of the Association may enter upon any Owner Parcel at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect Improvements constructed or under construction on the Owner Parcel to determine whether the Improvements have been or are being built in compliance with the Reserve Documents and the plans and specifications approved by the Committee.

B. Completion of Construction. Before any Owner's Residence may be occupied, the Owner shall be required to obtain a temporary certificate of compliance issued by the Design Review Committee confirming 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.

C. Remedies. Without limiting the remedies otherwise available under this Declaration or applicable law for the enforcement of these Covenants, the provisions of this Article 5 and the Design Guidelines 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 or the Reserve Rules and the Design Guidelines, including fines for failure to obtain any required approval from the Committee.
2. Removal of Nonconforming Improvements. In addition to the remedies set forth in Article 17, any violation of the Reserve Documents will give to the Board, the Design Review Committee, any managing agent engaged by the Association or Declarant, on behalf of the Owners, the right, after 30 days' notice and an opportunity to cure, 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 Improvement thing or condition that violates the Reserve Documents. The Owner of the Owner Parcel shall immediately reimburse the Association for all expenses incurred in connection with such removal. If the offense occurs in any Common Area or easement, the Owner or other person responsible shall pay the cost of the cure. If the Owner fails to reimburse the Association within 30 days after demand, the sum owed to the Association will 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 will be a Default Assessment enforceable as provided in Article 8.

- 5.9 Continuity of Construction. All Improvements commenced on the Property must be prosecuted diligently and completed within 24 months after commencement, unless an exception is granted in writing by the Committee. The Association may impose a fine against the Owner of the Owner Parcel until construction is resumed, or the Improvement is completed, as applicable. Such charges will be a Default Assessment and lien as provided in Article 8.
- 5.10 Reconstruction of Common Area. The reconstruction by the Association after destruction by casualty or otherwise of any Common Area that is accomplished in substantial compliance with "as-built" plans for such Common Area will not require compliance with the provisions of this Article or the Design Guidelines.

#### ARTICLE 6 – ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- 6.1 Membership. Every Owner shall be a Member, and only Owners may be Members. Membership is appurtenant to and may not be separated from ownership of an Owner Parcel. No Owner, whether one or more persons, will have more than one membership per Owner Parcel owned, but all of the persons owning each Owner Parcel will be entitled to rights of membership and use and enjoyment appurtenant to such ownership. Ownership of each Owner Parcel shall be restricted as provided in Section 3.5.
- 6.2 Transfer of Membership. An Owner may not transfer, pledge, or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Owner Parcel and then only to the purchaser or Mortgagee of his Owner Parcel.
- 6.3 Classes of Membership. The Association shall have one class of voting membership, comprised of all Owners, including Declarant.
- 6.4 Voting Rights. Each Owner is entitled to vote in Association matters on the basis of one vote for each Owner Parcel owned.

When more than one person holds an interest in any Owner Parcel, all such persons will be Members. The vote for such Owner Parcel will be exercised by one person as the Owners among themselves determine. If more than one of the multiple Owners is present at a meeting in person or by proxy, the vote allocated to their Owner Parcel may be cast only in accordance with the agreement of a majority in interest of the Owners. If any one of the multiple Owners casts the vote allocated to his Owner Parcel without protest by any of the other Owners of the Owner Parcel, the Association may rely on such vote as representing the Owners of that Owner Parcel.

An Owner of an Owner Parcel which is leased may not assign his voting right to the tenant.

- 6.5 Appointment of Officers and Directors by Declarant. Until the expiration of the Period of Declarant Control and subject to the limitations of the Act, Declarant will retain the exclusive powers to appoint and remove Directors and officers of the Association. Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove Directors and officers of the Association before the end of the Period of Declarant Control by providing a written notice to that effect to the Association and otherwise complying with the procedures for termination of this Special Declarant Right, as set forth in the Bylaws. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Period of Declarant Control, Declarant may require throughout the balance of the Period of Declarant Control (had such control not been voluntarily terminated) that specified actions of the Association or the Board, as described in an instrument executed and recorded by Declarant in the office of the Clerk and Recorder of Gunnison County, Colorado, be approved by Declarant before those actions become effective.

After the Period of Declarant Control, the directors and the officers of the Association will be elected as provided in the Bylaws.

- 6.6 Owner's and Association's Addresses for Notices. Any person, on becoming a Member, shall furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board vesting the person with the interest required to make him a Member. All Owners of each Owner Parcel must have the same registered mailing address for use by the Association or other Owners for notices and other communications regarding Association matters. The Owner or Owners of an Owner Parcel shall furnish written notice of such registered address to the Secretary of the Association within five days after the Owner or Owners acquire title to the Owner Parcel.

If no address is registered or if all the Owners cannot agree, then the first address of the Owner or Owners as shown on the vesting deed will be deemed their registered address until another registered address is furnished as required under this Section.

All notices and demands intended to be served upon the Board of Directors shall be sent to the address of the Association as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

Unless applicable provisions of this Declaration or the Act expressly require 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 deposit with a courier service; or regular, registered or certified mail, postage prepaid, which shall be effective five days after deposit in the U.S. mail.

## ARTICLE 7 — POWERS AND DUTIES OF ASSOCIATION

- 7.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration and the Act, the Association is responsible for the administration and operation of the Reserve. The Board of Directors shall exercise for the Association all powers, duties and authority vested in or obligated to be taken by the Association and not reserved to Declarant or a vote of the Members by this Declaration, the other Reserve Documents, the Act or other applicable law.
- 7.2 Common Area. The Association, through action of the Board of Directors, may acquire, hold and dispose of real property and personal property, including without limitation any fee, leasehold or other property interests. The beneficial interest in any such property will be deemed to be owned by the Owners in undivided shares allocated equally among the Owner Parcels subject to this Declaration. Such interests will not be transferable except with the transfer of an Owner Parcel. The conveyance of an Owner Parcel will transfer ownership of the transferor's beneficial interest in such property without any reference to it. Each Owner may use all such property in accordance with the purposes for which it is intended, without hindering or encroaching on the rights of other Owners.
- 7.3 Provisions Generally Applicable to Common Area. The provisions in this Section 7.3 pertain to Common Area acquired by the Association as provided above.

A. Use of Common Area. Any Common Area is generally for the common use, benefit and enjoyment of the Owners and their families and guests and each other person as may be permitted to use the Common Area by the terms of this Declaration or the Reserve Rules. Notwithstanding the preceding sentence, the Reserve Rules and the deeds and easement grants and other documents by which the Association acquires Common Area may provide that the use of specified Common Areas may be limited to all Owners and their Immediate Families at all times and/or during specified dates or hours.

B. No Dedication to the Public. Nothing contained in this Declaration or the other Reserve Documents shall be construed as a dedication 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 Common Area by any such authority or utility, absent an express written agreement to that effect.

C. Association's Responsibility for Common Area. The Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the management and control of any Common Area (including furnishings and equipment related thereto), and shall keep it in good, clean, and attractive condition and repair. The duties of the Association under this Section 7.3.C include (without limitation) responsibility for any ditches (subject to the provisions of Section 9.11 below), roads, hayfields, ponds, fencing, the East River fishery and any other amenities located within the Common Area, whether located on a Reserve Parcel or located within easements granted to the Association over those portions of the Owner Parcels outside of the Homestead boundaries, as provided in Article 9 below.

D. Declarant's Right to Perform for the Account of the Association. In the event the Association does not repair or maintain any part of the Common Area, Declarant has the right, but not the obligation, to perform such duties for the Association. In that event, Declarant shall be entitled to reimbursement from the Association of all costs incurred in performing the Association's functions, such reimbursement being due within 30 days after the receipt by the Association of an invoice from Declarant itemizing the costs incurred. After expiration of the 30-day period allowed for payment, Declarant may collect interest on the amount due at the Default Rate.

E. Association's Agreements Regarding Common Area. The Association, acting through the Board of Directors, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Area without the approval by the Owners, subject, however, to the rights of Declarant under Articles 10 and 15 and the rights of Owners to use the Common Area as provided in this Declaration. Without limiting the generality of the foregoing, the Association may grant such rights to suppliers of utilities serving the Reserve or property adjacent to the Reserve, and to developers or owners of property adjacent to the Reserve for the purpose of accommodating minor encroachments onto the Common Area or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Area by the Owners.

7.4 Reserve Rules and Regulations.

A. Board's Power. From time to time, and subject to the rights of Declarant under Article 10, the Bylaws and the other Reserve Documents, the Board of Directors may adopt amend and repeal Reserve Rules and regulations relating to the Reserve (the Reserve Rules), for purposes including (for example and not by way of limitation) the following: the professional management and enhancement of the East River fishery; the prevention of fire hazards; the prevention of disorder or disturbances of the peace; the regulation of pedestrian and vehicular traffic; the protection of wildlife; the regulation of the use of the Common Area to assure the full and fair enjoyment of use by Owners; the protection of

property and property rights; and the promotion of the general health, safety and welfare of persons residing in and visiting the Reserve. Each Owner and Owner's family members, guests, tenants and invitees are bound by this Declaration to comply with the Reserve Rules.

**B. Enforcement.** The Reserve Rules must be reasonable and fairly applied, but the Reserve Rules may reasonably differentiate between Owners, their Immediate Families, other family members, guests or tenants of an Owner, and full-time residents of the Reserve. The Board of Directors will provide for enforcement of the Reserve Rules. Without limiting the generality of the foregoing, for a violation of the Reserve Rules the Board may impose reasonable fines and penalties, exclude violators from use of some or all Common Areas, and suspend the violating Member's voting rights after notice and hearing as provided in the Bylaws. The Association may enforce the collection of any unpaid fines and penalties for an infraction of the Reserve Rules as a Default Assessment.

7.5 **Charges for Services.** The Board may establish charges for the Association's services on a regular or irregular basis to an Owner or his family members, guests and tenants to assist the Association in offsetting the expenses of the Association, including without limitation depreciation and capital expenses. Any charges imposed under this Section must be reasonable and fairly applied, except that the Board may differentiate between reasonable categories of Owners, family members, tenants and guests. The Association may enforce such charges as Assessments under the terms of this Declaration.

7.6 **Taxes.** The Association will pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes and all other taxes, duties, charges, fees and payments levied by any governmental or public authority on, or arising in connection with, the Common Area.

7.7 **Association Management.**

**A. Reserve Manager.** The Reserve Manager shall be an employee or independent contractor of the Association and shall report to the Board of Directors. Throughout the Special Declarant Rights Period, (i) the Declarant will have the right to hire the Reserve Manager, and (ii) the Board may not terminate the employment or engagement of a Reserve Manager hired by Declarant without the written consent of Declarant. The duties of the Reserve Manager include (without limitation) the exclusive control of all irrigation for the benefit of the Reserve Property out of ditches on the Reserve Property for agricultural, piscatorial or aesthetic and ranching purposes, as provided in Section 4.11 above; the

management of all operations at the Stables; the supervision of the maintenance and repairs of all roads within the Reserve Property; and the enforcement of the Reserve Rules and the other Reserve Documents.

Notwithstanding any provision contained in this Declaration to the contrary, it is the intent of this Declaration that the Board of Directors shall not be able to independently terminate the management contract with the Reserve Manager hired by Declarant without the approval of Owners holding at least 67% of the votes in the Association.

*B. Lodge Manager.* The Association may also engage a Lodge Manager, who may be an employee of the Association or an independent contractor with his or her own employees, in any case reporting to the Board of Directors. The duties of the Lodge Manager may include the supervision and operation of any lodges and cabins constructed on the Reserve Parcels.

*C. Delegation or Other Management Duties.* The Association, acting through the Board, may employ or contract for the services of a manager to act for the Association, the Board and the officers to oversee the Association's financial affairs or to perform other administrative functions for the Board. Neither the Board nor any officer of the Association will be liable for any omission or improper exercise by a manager of any such duty, power, or function so delegated or on behalf of the Board.

*D. Committees.* The Association, acting through the Board, may delegate any of its rights, duties or responsibilities to any committee or other entity that the Board may choose to form.

*E. Limitation.* Any delegation by the Board under this Section 7.7 is subject to compliance with the Act and the Reserve Documents and the requirement that the Board, when so delegating, will not be relieved of its responsibilities under the Act and the Reserve Documents.

7.8 *Books and Records.* The Association shall make available for inspection by Owners, Mortgagees, and prospective purchasers and mortgagees of Owner Parcels and upon request, during normal business hours, current copies of the Reserve Documents, and the books, records and financial statements of the Association. Any Owner or Mortgagee may make a written request to the Association for a copy of the Association's financial statements for the preceding year. The Association may charge a reasonable fee for copying such materials.

7.9 *Reserves and Working Capital Accounts.* The Association shall establish and maintain adequate reserve and working capital funds from Annual Assessments levied and collected pursuant to Article 8. The Association shall use the funds for

maintenance, repair or replacement of any Common Area and any Improvements located within the Common Area that must be replaced on a periodic basis, for any other facilities made available to the Association that must be replaced on a periodic basis with contribution from the Association, and for unforeseen expenditures.

7.10 Implied Rights and Obligations. The Association shall perform all of the duties and obligations imposed on it expressly by the Reserve Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Reserve Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Reserve Documents, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Reserve Documents, or (iii) reasonably necessary to effectuate any such right or privilege.

7.11 Owner's Obligation for Maintenance. Except as specifically provided in the Declaration and in the other Reserve Documents, all maintenance of a Homestead and the Improvements located on it are the sole responsibility of the Owner of the Owner Parcel. The Association may, in the discretion of the Board, 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 the high standards of the Reserve. Before assuming such 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 may proceed. The Owner shall reimburse the Association for the expenses of the maintenance by the Board 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 will be a Default Assessment enforceable as provided in Article 8.

7.12 Delivery of Documents by Declarant. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including, without limitation, the following items:

- A. The original or a certified copy of the recorded Declaration, as it may be amended, the Articles of Incorporation, Bylaws, Design Guidelines, minute books, other books and records, and any Rules which may have been promulgated.
- B. An accounting for Association funds and audited financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends.

C. The Association funds, books and records.

D. All of the tangible personal property that has been represented by the Declarant to be the property of the Association or that is necessary for and has been used exclusively in the operation and enjoyment of the Common Areas.

E. A copy, for the nonexclusive use of the Association, of any plans and specifications used in the construction of improvements in the Reserve.

F. All insurance policies then in force in which the Owners, the Association, or its directors and officers are named as insured persons.

G. Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Common Areas.

H. Any other permits issued by governmental bodies applicable to the Reserve and which are currently in force or which were issued within one (1) year prior to the date on which Owners other than the Declarant took control of the Association.

I. Written warranties of any contractor, subcontractors, suppliers and manufacturers that are still effective.

J. A roster of Owners and their addresses and telephone numbers, if known, as shown on the Declarant's records.

K. Employment contracts in which the Association is a contracting party.

L. Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person performing the services.

7.13 Powers of the Board. Except for those matters expressly reserved to the Members as provided in the Reserve Documents and the Act and the Colorado Revised Nonprofit Corporation Act, the Board may act in all instances on behalf of the Association, to:

A. Adopt and amend bylaws and rules, regulations and policies.

B. Determine Common Expenses and adopt and amend budgets for revenues, expenditures and reserves and collect Assessments.

C. Hire and terminate Managers and other employees, agents and independent contractors.

D. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Reserve.

E. Make contracts and incur liabilities, except that any agreement for professional management of the Association's business or other contract providing for services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

F. Regulate the use, maintenance, repair, replacement and modification of Common Areas.

G. Cause additional improvements to be made as a part of the Common Areas.

H. Acquire, hold, encumber and convey in the name of the Association any right, title or interest in real or personal property, except that Common Areas may be conveyed or subjected to a security interest only if Members entitled to cast at least sixty-seven percent (67%) of the votes agree to that action.

I. Grant easements, leases, licenses and concessions through or over the Common Areas.

J. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Areas.

K. Impose charges (including without limitation, late charges and default interest) for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of provisions of the Reserve Documents or otherwise suspend other membership privileges (except that notice and opportunity to be heard shall not be required before suspension of membership privileges for failure to pay Assessments within thirty (30) days after they become due).

L. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments.

M. Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance.

N. Assign its right to future income, including the right to receive Assessments.

O. Exercise any other powers conferred by the Declaration or Association Bylaws.

P. Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association, including without limitation, those powers specified by the Colorado Revised Nonprofit Corporation Act.

Q. Exercise any other powers necessary and proper for the governance and operation of the Association.

7.14 Road Maintenance and Dust Control. All roads within the Reserve shall be constructed in accordance with the road permit(s) issued by Gunnison County, Colorado. Upon completion of construction of the roads, all maintenance, repairs and snow plowing and supervision shall be the duty of and vested in the Association. The Association shall:

A. Keep in good repair all roads within the Reserve and maintain the same in suitable condition for use by the members of the Association and drivers of fire trucks and other emergency vehicles.

B. Provide dust control not less than once a year and at any time that the use of any road within the Reserve is the cause of dust pollution in the form of the use of magnesium chloride, oil treatment or other suitable dust retardant.

## ARTICLE 8 — ASSESSMENTS

8.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Owner Parcel in the Reserve Property, hereby covenants, and each Owner, by accepting a deed for an Owner Parcel, is deemed to covenant to pay the Assessments levied by the Association. All Assessments against an Owner Parcel, together with Related Assessment Costs, are a charge on the land and a continuing lien upon the Owner Parcel until paid.

Each such Assessment together with Related Assessment Costs are also the personal and individual obligation of the Owner of such Owner Parcel as of the time the Assessment falls due, and multiple Owners of an Owner Parcel are jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessments by waiver of the use or enjoyment of the Common Area. The Association may maintain a suit to recover a money judgment for unpaid Assessments and related charges as listed above without foreclosing or waiving the Assessment liens provided in this Declaration.

8.2 General Purpose of Assessments. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of the Reserve and for the improvement and maintenance of the Common Area, as more fully set forth in this Article below.

8.3 Annual Assessments.

A. Calculation of Annual Assessments. The Board of Directors shall prepare a budget before the close of each fiscal year of the Association and submit the budget to the Association as required by the Act. Within ninety (90) days after the adoption of the proposed budget, the Board shall mail, by ordinary first class mail, or otherwise deliver, a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget within a reasonable time after mailing or other delivery of the summaries. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum of all Members is present. In the event that a proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

The Board shall base Annual Assessments upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of any Common Area and the Improvements located on it; expenses of management; premiums for insurance coverage as deemed desirable or necessary by the Association; snow removal, landscaping, care of grounds, common lighting within any Common Area; routine

renovations within any Common Area; wages; common water and utility charges for any Common Area; legal and accounting fees; management fees; 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 working capital and reserve funds for general, routine maintenance, repairs, and replacement of Improvements within any Common Area on a periodic basis.

B. Apportionment of Annual Assessments. Except as specifically provided in this Declaration or by resolution of the Board consistent with the Act and the Reserve Documents, the Board shall divide the Common Expenses equally among the Owner Parcels included in the Reserve under this Declaration from time to time, subject to the following qualifications:

1. The Board may assess any Common Expenses which benefit fewer than all of the Owners exclusively against the Owner Parcels benefited, and the Board may make other special allocations of costs and Common Expenses as necessary to administer the Association's operations on an equitable basis.
2. The Board may assess costs of insurance in proportion to risk, and the costs of utilities in proportion to usage.

C. Collection. Owners shall pay Annual Assessments in a lump sum or periodic installments, as the Board may determine from time to time, but until the Board directs otherwise, Owners shall pay Annual Assessments yearly in advance by April 1. The Association has the right, but not the obligation, to make pro-rata refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year. The Association shall apply such excess funds that are not refunded to the next installments) of Annual Assessments due or to the Association's reserves.

D. Date of Commencement of Annual Assessments. The Annual Assessments shall commence as to all Owner Parcels on July 1, 2005. The first Annual Assessment levied against an Owner Parcel will be prorated from the date of the conveyance of the Parcel, according to the number of days remaining in the calendar year.

8.4 Capitalization of the Association. The Board of Directors may capitalize the Association by an equitable assessment on all Owner Parcels.

8.5 Special Assessments.

A. Determination by Board. Subject to the budget procedures required by the Act, the Board of Directors may levy one or

more Special Assessments 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 within the Common Area, including the necessary fixtures and personal property related to it or to make up any shortfall in the current year's budget.

**B. Apportionment and Collection of Special Assessments.** The Board will apportion Special Assessments among the Owner Parcels and collect payment in the same manner as set forth above for Annual Assessments.

**C. Notice.** The Association shall provide notice of the amount and due dates for such Special Assessments to each Owner at least 30 days prior to the due date.

**D. Member Approval.** If any of the Special Assessments levied pursuant to this Section are to be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities in the Reserve), and if the total amount of the Special Assessments levied for such construction exceeds 100% of the gross annual budget for the Association for that year, then the use of Special Assessments for that construction will require the approval of Owners representing more than 50% of the votes in the Association. In addition, as long as the Special Declarant Rights Period remains in effect, the use of Special Assessments for such construction will also require the approval of Declarant.

#### 8.6 Default Assessments.

**A. General.** All monetary fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Reserve Documents, or any expense of the Association which is the obligation of an Owner and which is incurred by the Association on behalf of the Owner pursuant to the Reserve 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 Reserve Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below and in accordance with the Act.

**B. Association Charge for Owner's Account.** Without limiting the generality of the preceding paragraph, in the event that the need for maintenance, repair or replacement of all or any portion of the Common Area is caused by the negligent or willful act or omission of an Owner or Owner's Agent, or if misconduct on the part of an Owner or an Owner's Agent otherwise results in the Association's incurring some expense, then the expenses incurred by the Association for such maintenance, repair or replacement or otherwise caused by the misconduct shall be a personal obligation of such Owner.

If the Owner fails to repay the expenses incurred by the Association within 30 days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section and such expenses will automatically become a Default Assessment enforceable in accordance with Article 8 below.

- 8.7 *General Remedies of Association for Nonpayment of Assessment.* Any installment of an Annual Assessment or a Special Assessment which is not paid within 30 days after its due date is delinquent if such an Assessment installment becomes delinquent, or if any Default Assessment is levied, the Association, in its sole discretion, may take any or all of the following actions:
- A. Assess a late charge for each delinquency at rates set by the Board of Directors from time to time;
  - B. Charge interest from the date of delinquency at the Default Rate;
  - C. Suspend the membership privileges and/or voting rights of the Owner during any period of delinquency;
  - D. Accelerate all remaining Assessment installments, if any, for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;
  - E. Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;
  - F. File a statement of lien with respect to the Owner Parcel and foreclose as set forth in more detail below;
  - G. Take any other action authorized by law or the Reserve Documents.

The remedies provided under this Declaration are not exclusive, and the Association may enforce any other remedies to collect delinquent Assessments as may be available at law or in equity. All of the Association's remedies shall be cumulative.

- 8.8 *Assessment Liens.* Any Assessment chargeable to an Owner Parcel constitutes a lien on the Owner Parcel, effective the due date of the Assessment. To evidence the lien, the Association may, but is not required to, prepare a written lien statement setting forth the name of the Owner, the description of the Owner Parcel, the name of the Association and the delinquent Assessment amounts then owing. The President or Vice President of the Association or the manager of the Association shall sign the notice, and the Association shall serve the notice upon the Owner by any method permitted by this

Declaration, subject to any requirements of the Act or other applicable law. Ten days or more after the Association serves the statement on the Owner, the Association may record the same in the office of the Clerk and Recorder of Gunnison County, Colorado. The Association has the power to bid on an Owner Parcel sold to satisfy the lien at foreclosure sale and to acquire and hold, lease, mortgage and convey the Owner Parcel.

8.9 Successor's Liability for Assessment. All successors to the fee simple title of an Owner Parcel, except as provided in Section 8.10 below, are jointly and severally liable with the prior Owner or Owners of the Owner Parcel for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees and legal assistants' fees against the Owner Parcel, without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor is not personal and will terminate upon termination of such successor's fee simple interest in the Owner Parcel. In addition, such successor is entitled to rely on any statement of the status of Assessments given by the Association under Section 8.13 below.

8.10 Waiver of Homestead Exemption: Subordination of the Lien. The Association's Assessments lien is superior and prior to any homestead exemption provided now or in the future by any federal law or the laws of the State of Colorado, and to all other liens and encumbrances except the following:

A. Liens and encumbrances recorded before the date of the recording of this Declaration.

B. Liens for real estate taxes and other governmental assessments or charges duly imposed against the Owner Parcel by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

C. The lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Association's lien; all subject, however, to the provisions of the Act limiting the priority of a First Mortgage over payments due and owing to the Association.

With respect to Section 8.10.C above, any First Mortgagee who acquires title to an Owner Parcel by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale under the First Mortgage, will take the Owner Parcel free of any claims for unpaid Assessments and Related Assessment Costs against the Owner Parcel which accrue prior to the time such First Mortgagee or purchaser acquires title to the Owner Parcel, except the limited amounts of Assessments having priority over a First Mortgage, as provided in the Act.

All other persons holding a lien not described in Sections 8.10.A through 8.10.C are deemed to consent that any such lien or encumbrance shall be subordinate to the Association's future liens for Assessments and Related Assessment Costs, as provided in this Article, regardless of whether such consent is specifically set forth in the instrument creating any such lien or encumbrance.

- 8.11 Extinguishment of Association's Lien. The sale or transfer of any Owner Parcel to enforce any of the liens to which the lien for Assessments and Related Assessment Costs is subordinate will extinguish the lien of such Assessments and Related Assessment Costs as to installments which became due prior to such sale or transfer to the extent provided in the Act. However, no such sale or transfer will relieve the purchaser or transferee of an Owner Parcel from liability for, or the Owner Parcel from the lien of, any Assessments made after the sale or transfer.
- 8.12 Exempt Property. The Common Area is exempt from the Assessments and liens created under this Declaration.
- 8.13 Statement of Status of Assessments. 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 Owner Parcel in which the Owner, designee or Mortgagee has an interest. The Association will deliver the statement personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party within 14 calendar days after the registered agent of the Association receives the request by personal delivery or by certified mail, first-class postage prepaid, return receipt requested or as otherwise required by the Act. The information contained in such statement, when signed by the Treasurer of the Association or the Association's manager, will 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.
- 8.14 Protection of Association's Lien. With the approval of the Board of Directors, the Association may protect its lien for Assessments against any Owner Parcel by submitting a bid at any sale held for delinquent taxes payable with respect to the Owner Parcel.
- 8.15 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 will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will 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 in accordance with any budget procedures as may be required by the Act.

## ARTICLE 9 — PROPERTY RIGHTS OF OWNERS

- 9.1 Owner's Easements for Access and Enjoyment. Every Owner has a perpetual, non-exclusive easement over designated easements, streets, roads, walkways and other thoroughfares on the Reserve Property for access to and from his Owner Parcel and for the use of enjoyment of the Common Area, which easement is appurtenant to and will pass with the title to every Owner Parcel, subject to the following provisions.
- 9.2 Delegation of Use. Any Owner may delegate his rights of access and enjoyment described in Section 9.1 above to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the Reserve Rules and the other Reserve Documents.
- 9.3 Easements of Record and of Use. The Reserve Property is subject to all easements shown on the Plat and to any other easement of record or use as of the date of recordation of this Declaration, including those listed on the attached *Exhibit B*.
- 9.4 Easements for Driveways. Without limiting the generality of Sections 9.1 and 9.3 above, some Owner Parcels are subject to easements for the benefit of an adjacent or nearby Owner Parcel, for driveway access. Any such driveway need not be located within the boundaries drawn for such easement as shown on the Plat. After construction of the driveway, the Owner of the Owner Parcel burdened by the driveway easement shall be entitled to amend the easement description (without any requirement for joinder by the Association or any other Owners) to reflect the boundaries of the driveway as constructed.
- At the direction of the Board, the Association may enter into one or more contracts for snow plowing and other maintenance of the driveways on the Owner Parcels, including, if the Board elects, the driveways extending onto the Homesteads. The costs of such contracts will be Common Expenses allocated as provided in this Declaration.
- 9.5 Emergency Access Easement. A general easement is granted by this Declaration to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon all roads and upon the Reserve Property in the proper performance of their duties.
- 9.6 Combination of Owner Parcels Prohibited. Owner Parcels shall not be combined.

- 9.7 Partition or Subdivision of Owner Parcels. No part of an Owner Parcel may be partitioned or subdivided.
- 9.8 No Partition of Common Area. No Owner may bring any action for partition or division of the Common Area. By acceptance of a deed or other instrument of conveyance or assignment covering an Owner Parcel, each Owner is deemed to have specifically waived such Owner's rights to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this Section may be pleaded as a bar to any such action. Any Owner who institutes or maintains any such action shall be liable to the Association, and by taking title subject to this Declaration, agrees to reimburse the Association for its costs, expenses and reasonable attorneys' (and legal assistants') fees in defending such action.
- 9.9 Easement over Owner Parcels. All portions of an Owner Parcel outside the boundaries of the Homestead are encumbered with an easement granted to the Association as Common Area for the use, benefit and enjoyment of the Association generally and/or for the Owners of the other Owner Parcels. The use of such easement will include, without limitation, bike paths, hiking trails, equestrian trails and facilities, fencing, Nordic skiing trails, fishing areas and other recreational or access uses; the use and maintenance of the ponds, streams and other waterways located on any Owner Parcel; and the various purposes described in Article 10 and in other provisions of this Declaration.

The use of this easement will be regulated by the Reserve Rules and other Association Documents. The purpose of these regulations included in the Reserve Rules is to ensure for each Owner both the opportunity to enjoy the Common Area and also privacy in and around the Homestead on the Owner Parcel. Accordingly, the Reserve Rules will include (without limitation) regulations that restrict access ways to designated trails, fishing locations and other recreational areas, and regulations that facilitate agricultural and ranching operations. Easements that are labeled as "Common Area" on the Plat or otherwise established by recorded documents and located within the boundary of an Owner Parcel will be covered by insurance carried by the Association in accordance with the Reserve Documents.

- 9.10 Association's Agricultural Activities. Each Owner, by accepting a deed conveying an Owner Parcel, acknowledges that the Association, acting through the Board of Directors, the Reserve Manager or other manager, and acting either in its own name or as agent for the Owners, may conduct haying and other agricultural and ranching operations, including without limitation the grazing of livestock, within the Common Areas, as shown on the Plat or other instrument recorded in Gunnison County, Colorado. The Association, acting as provided above, for itself or as agent for the Owners, shall be entitled to execute leases, licenses or other agreements with persons engaged in farming operations to use such Common Areas for crops and other agricultural activities. The costs and proceeds of all such operations shall accrue to the Association.

- 9.11 Access Rights of Owners of Ditches and Water Rights. The Reserve Property is subject to the rights and right-of-ways, to the extent established and maintained in accordance with Colorado law, of persons who own water rights and ditch rights, for access over and through the Reserve Property for the use and benefit of such water or ditch rights.
- 9.12 Association Easement over Owner Parcels. As provided in Section 5.8.A, each Owner Parcel is subject to an easement in favor of the members and consultants of the Design Review Committee and the directors, employees and agents of the Association to inspect Improvements for compliance with the Reserve Documents and approved plans and specifications.
- 9.13 Blanket Easements. There is hereby created a blanket easement upon, across, over, in and under the Reserve for the benefit of the Common Areas and the Parcels and the structures and Improvements situated on the Reserve, for ingress and egress, landscape irrigation system, parking, installing, replacing, repairing and maintaining all utilities, including, but not limited to, water wells, water, sewer, gas, telephone, cable television and electricity, and such other purposes as deemed appropriate by the Board, except that such easements may not be utilized by the utility providers until after receiving written approval from the Board. The Board may condition its approval on such matters as it deems appropriate, including without limitation, the location, design, alterations to existing structures and impact on the Common Areas and the Reserve. Said blanket easement includes future utility services not presently available to the Parcels which may reasonably be required in the future. By virtue of this easement, after receiving approval of the Board, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Parcels and to affix and maintain electrical and/or telephone wires, circuits, conduits and pipes on, above, across and under the Parcels, all in a manner customary for such companies in the area surrounding the Reserve, subject to approval by the Association as provided above. Upon exercise of the rights contained in this Section, the utility providers, at their sole cost and expense, shall repair (or replace if necessary) the Reserve and all Improvements thereon to their condition as they existed prior to the utility providers performing any work.
- 9.14 Reservation of Easements, Exceptions and Exclusions. The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Parcels and Common Areas for the best interest of the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Parcel, over and across the Reserve roads, which right shall be appurtenant to the Owner's Parcel, and which right shall be subject to limited and reasonable restrictions on the use of Common Areas set forth in writing by the Association.

- 9.15 Leasing. An Owner shall have the right to lease his or her Owner Tract in its entirety upon such terms and conditions as the Owner may deem advisable; provided, however, that (a) no lease shall be made for less than a six-month period; (b) all leases shall be in writing and shall provide that the lease is subject to the terms of the Reserve Documents and a copy of the Reserve Rules are provided to the lessee with the lease; (c) an Owner Tract may be leased only for the uses provided herein; and (d) any failure of a lessee to comply with the terms of this Declaration or any other Reserve Documents shall be a default under the lease enforceable by the Association as a third party beneficiary, whether or not the lease contains such a provision. All leases shall be filed with the Association before becoming effective.

#### ARTICLE 10 — SPECIAL DECLARANT RIGHTS AND ADDITIONAL RESERVED RIGHTS

- 10.1 Special Declarant Rights. On or before December 31, 2024 or until the expiration of the Special Declarant Rights Period, whichever occurs later, Declarant shall have the following rights (Special Declarant Rights) with respect to all of the Reserve Property:

A. Completion of Improvements. The right to complete Improvements as indicated on the Plat filed with respect to the Reserve Property;

B. Development Rights. The right to exercise all "development rights"; as defined from time to time in the Act (and referred to here as "Development Rights"), including without limitation the right to create Owner Parcels and Common Area on the Reserve Property, subject to the limitations of Section 3.1.

C. Sales Activities. The right to maintain one sales office, one management office and signs advertising the Reserve on the Common Area and the right to maintain a model residence on any Owner Parcel owned by Declarant. The offices, model residence and signs will be of sizes and styles as determined by Declarant, and the office need not comply with the Design Guidelines. In addition, Declarant may relocate the office, model residence and signs within the Project from time to time. At all times, the office, model residence and signs will remain the property of Declarant and Declarant may remove them from the Reserve at any time during or promptly after the expiration of the Special Declarant Rights Period.

D. Easements. The right to create and use access, trail, utility and other easements through any Common Area on the Reserve Property conveyed by Declarant to the Association and/or through any Owner Parcel (except on the Homestead) for the purpose of implementing Declarant's development plan.

E. Association Directors and Officers. The right to appoint any officer or director of the Association until the end of the Period of Declarant Control as provided in the Act. The right of Declarant to appoint the Board and officers of the Association will diminish over time until the Period of Declarant Control has expired, triggering an election by the Owners of an independent Board, according to the following schedule:

1. No later than 60 days after the conveyance by Declarant of 25% of the 24 Owner Parcels created under this Declaration, at least one member of the Board, and not less than 25% of the members of the Board, must be elected by Members other than Declarant.
2. No later than 60 days after the conveyance by Declarant of 50% of the 24 Owner Parcels created under this Declaration, at least 33 1/3% of the members of the Board must be elected by Members other than Declarant.
3. The Period of Declarant Control and Declarant's right to appoint any members of the Board and the officers of the Association, will terminate no later than 60 days after the conveyance by Declarant of 75% of the 24 Owner Parcels created under this Declaration, or two years after the last conveyance of an Owner Parcel by Declarant in the ordinary course of business, whichever of such events occurs first.

F. Amendment. The right to amend the Plat, Declaration and other Reserve Documents as provided herein.

G. Expansion. The right to expand the Reserve, as provided in Article 15.

H: Boundary Adjustment. The right to adjust the southerly boundary of the Reserve near Colorado Highway 135 with the neighboring property owners (presently Philip C. Weatherly and Phila M. Weatherly) and to replat one or more Owner Parcel boundaries as necessary or convenient to maintain over 35 acres in each Owner Parcel, on condition that no Homestead or Building Envelope on an Owner Parcel not owned by Declarant shall be changed without the Owner's approval.

10.2 Order of Exercise of Declarant's Rights. Further, the fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Reserve Property will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Reserve.

- 10.3 Supplemental Provisions Regarding Declarant's Rights. Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to unilaterally amend this Declaration and any Plat in connection with the exercise of any Development Rights or any other Special Declarant Rights to the extent permitted by the Act and Declarant also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.
- 10.4 Utility Easements. Declarant reserves a general easement upon, across, over, in, and under all portions of the Reserve Property, except the Homesteads, for ingress and egress and for installation, replacement repair and maintenance of all utilities, including but not limited to water wells, water, sewer, gas, telephone, and electrical, cable and other communications systems. By virtue of this easement, it will be expressly permissible and proper for the Association and/or companies providing such services to install and maintain necessary equipment pipes, wires, circuits and conduits under and over the Reserve Property outside of the Homestead boundaries. No water, sewer, gas, telephone, electrical, communications or other utility or service lines, systems or facilities may be installed or relocated on or above the surface of the Reserve Property (including the Homesteads) unless approved by the Design Review Committee. These items may be temporarily installed above ground during construction, if approved by the Design Review Committee, subject to the requirements, if any, of any other authority having jurisdiction over the Reserve Property.
- 10.5 Drainage and Irrigation Easements. Declarant reserves an easement to enter on any portion of the Reserve Property for the purpose of modifying the grade of any drainage channels on the Reserve Property to improve the drainage of water.

Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Reserve Property on the date this Declaration is recorded, and Declarant reserves the right to construct, access and maintain additional irrigation ditches and lines on the Reserve Property for the maintenance of any Common Area which Declarant has conveyed to the Association and for such other purposes as Declarant may from time to time deem appropriate. Any Owner of an Owner Parcel over which such ditches cross is prohibited from taking or diverting water from the ditches or constructing any Improvements within the easements established for such ditches without the prior written consent of Declarant and any entity to whom Declarant may have granted the right to control the ditches in question.

- 10.6 Ponds, Streams and Other Water Courses. Certain areas on the Reserve Property may be designated as easements for streams, ponds and other water courses and for associated drainage and maintenance facilities, as shown on any Plat or other documents recorded from time to time in the office of the Clerk and Recorder of Gunnison County, Colorado.

Declarant reserves the right to go on such easements with personnel, vehicles and equipment including heavy equipment, to construct, maintain, repair and replace the facilities relating to such water courses from time to time.

- 10.7 *General Provision.* Any entity using these general easements provided under Section 10.4., 10.5 and 10.6 above must use all commercially reasonable efforts to install and maintain the easements for utilities, drainage, or irrigation ditches without disturbing the uses of the Owners, the Association and Declarant; prosecute its installation and maintenance activities as promptly as reasonably possible; and in the case of utility work, restore the surface and any fences or other Improvements disturbed by the work to its original condition as soon as possible after completion of its work; provided, however, that the obligation for such restoration will not include the replacement of trees that were disturbed in the course of the proper use of the easements. Should any entity furnishing a service covered by these general easements request a specific easement by separate recordable document Declarant reserves for Declarant and/or the Association the right and authority to grant such easement upon, across, over, or under any part or ail of the Property without conflicting with the terms of this Declaration. This general easement will not affect, avoid, extinguish or modify any other recorded easement affecting the Reserve Property.
- 10.8 *Declarant's Rights Incident to Construction.* Declarant reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under, and across any Owner Parcel and/or Common Area which Declarant has conveyed to the Association, together with the right to store materials on such Common Area and to make such other use of such Common Area as may be reasonably necessary or incident to the construction of Improvements on the Reserve Property. However, Declarant may not exercise such rights in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Reserve by the Owners. Such easement includes the right to store material.
- 10.9 *Reservation of Right to Create Easements.* Declarant reserves the right to establish from time to time, on or before December 31, 2024, by declaration or otherwise, other easements, permits or licenses over any Common Area or Owner Parcel (except on the Homestead) for equestrian facilities, fishing facilities, trails or to serve the interest of the Owners and the Association.
- 10.10 *Maintenance Easement.* An easement is hereby reserved to Declarant and granted to the Association and any member of the Board of Directors, the Reserve Manager and their respective officers, agents, employees, and assigns, upon, across, over, in, and under all portions of the Reserve Property outside the boundaries of any Homestead and a right to make such use of the Reserve Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Reserve Documents.

- 10.11 Easements Deemed Created. Any and all conveyances made by Declarant to the Association or any Owner will be conclusively deemed to incorporate these reservations of rights and easements, whether or not set forth in such grants.
- 10.12 Assignment by Declarant. Declarant has the right to delegate the rights and obligations for use of the easements reserved by Declarant under this Declaration to Declarant's agents, employees, contractors and consultants. Declarant may also assign any one or more of the easements reserved under this Declaration to the Association or any Successor Declarant. Upon the last to occur of (i) the expiration of the Special Declarant Rights Period and (ii) the date on which Declarant no longer owns any portion of the Reserve Property, all rights of Declarant under Sections 10.4, 10.5 and 10.6 of this Declaration will be deemed assigned to the Association, to the extent Declarant has not previously transferred such rights by express grant to the Association.
- 10.13 Reserve Rules. The Association may not issue, amend or revoke the Reserve Rules without the approval of Declarant as long as the Special Declarant Rights Period continues in effect. Declarant may waive this right before the end of the Special Declarant Rights Period by providing the Association with written notice of the waiver in form suitable for recording in the office of the Clerk and Recorder of Gunnison County, Colorado.

#### ARTICLE 11 — INSURANCE AND FIDELITY BONDS

- 11.1 Authority to Purchase. The Board of Directors or its duly authorized agent will purchase all insurance policies of any kind relating to the Common Area meeting, at least, any minimum requirements of the Act.
- 11.2 Notice to Owners. The Board of Directors shall promptly furnish to each Owner written notice of adverse changes in, or termination of, insurance coverages obtained on behalf of the Association under this Article, such notice to be delivered to all Owners by hand delivery or by United States mail, postage prepaid, or by such other method as may be required by the Act.
- 11.3 Property Insurance on Common Area. The Association shall obtain and maintain in full force and effect property insurance covering any personal property owned by the Association, and covering all insurable Improvements on the Common Area, in an amount equal to full replacement value (i.e., 100% of the current "replacement cost" exclusive of land, excavation, depreciation on personal property and other items normally excluded from physical damage insurance coverage).

- II.4 Liability Insurance. The Association shall obtain and maintain in full force and effect commercial general liability insurance (including coverage for bodily injury, property damage and personal injury) with such limits and endorsements as the Board of Directors may from time to time determine, insuring each member of the Board of Directors, the Association, the Reserve Manager, each Owner, any manager engaged by the Association and the employees and agents of the Association, the Reserve Manager and the Association's manager, if any, against any liability to the public or the Owners (and their guests, invitees, tenants, agents and employees) arising out of or related to the ownership, existence, operation, management maintenance or use of the Common Areas, including the horse operations and all aspects of the Reserve operations generally. Declarant will be included as an additional insured in Declarant's capacity as an Owner. The Owners will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.
- II.5 Fidelity Insurance. The Association will maintain fidelity bonds, to the extent obtainable at reasonable cost 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 belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a manager, the Association will obtain such bond for the manager and its officers, employees, and agents, as applicable.
- II.6 General Insurance Provisions.
- A. Coverage of Declarant. As long as Declarant owns any Owner Parcel, Declarant will be protected by all such policies in the same manner as any Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article will not be deemed to protect or be for the benefit of any general contractor engaged by Declarant in the construction of any Improvements on the Reserve Property.
- B. Deductible. Depending on the area within the Property damaged or destroyed and covered by an insurance claim submitted on behalf of the Association, the Board of Directors may treat the deductible amount, if any, on any insurance policy purchased by the Board of Directors as a Common Expense payable from Assessments allocable to all of the Owner Parcels or to only some of the Owner Parcels, or as an item to be paid from working capital reserves established by the Board of Directors. Also, the Board may collect the deductible from one or more specific Owners if the claims or damages arise from the negligence of the Owner or Owners in Question. The Association may enforce payment of any amount due from an individual Owner toward the deductible in accordance with Article 8 above.

C. *Premiums.* Insurance premiums for the insurance coverage obtained by the Board of Directors in accordance with this Article are a Common Expense to be paid by regular Annual Assessments.

D. *Named Insureds Under Physical Damage Insurance.* The named insured under any physical damage insurance policies carried by the Association will include Declarant until all of the Parcels 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 will have exclusive authority to negotiate losses and receive payments under such policies.

E. *Insured Persons Under Liability Policies.* Each Owner will be an insured person with respect to liability arising out of the Owner's membership in the Association.

F. *No Contribution.* In no event will the insurance coverage maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees.

G. *Coverage.* The policies will provide that coverage will not be prejudiced by (i) any act or neglect of any Owner (including an Owner's Agent) when such act or neglect is not within the control of the Association; or (ii) conduct of any kind on the part of an Owner (including an Owner's Agent) or any director, officer, employee or Manager of the Association, without prior demand to the Association and a reasonable opportunity to cure the matter.

H. *Mortgagee Clause.* The physical damage policies will contain the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located, and provide that coverage may not be canceled in the middle or at the end of any policy year or other period of coverage or substantially modified or reduced (including cancellation for nonpayment of premiums) without at least 30 days' prior written notice mailed to the Association and to each Owner and First Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

I. *Waiver of Subrogation.* The physical damage policies will contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Board of Directors, the Association, the Manager, and any Owner or their respective agents, employees, or tenants, and of any defenses based upon co-insurance.

- II.7 Personal Liability Insurance of Officers and Directors. The Association will maintain appropriate officers' and directors' personal liability insurance, to the extent available at reasonable cost, to protect the officers and Directors from personal liability in connection with their duties and responsibilities on behalf of the Association.
- II.8 Other Insurance. The Association may obtain insurance against such other insurable risks of a similar or dissimilar nature as it deems appropriate with respect to the Association's responsibilities and duties.
- II.9 Insurance Obtained by Owners. Each Owner is responsible for obtaining insurance for such Owner's benefit at such Owner's expense, covering the Owner Parcel and the Owner's Residence and other Improvements of the Owner, and covering the Owner's personal property and personal liability.

#### ARTICLE 12 — ASSOCIATION AS ATTORNEY-IN-FACT

By taking title subject to this Declaration, each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact in such Owner's name, place and stead for the purposes of dealing with any Improvements covered by insurance written in the name of the Association upon their damage or destruction as provided in Article 13 below, or a complete or partial taking as provided in Article 14 below. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Reserve Property will constitute appointment of the Association as the grantee's attorney-in-fact, and the Association will have full 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 to exercise the powers granted to the Association as attorney-in-fact.

#### ARTICLE 13 — DAMAGE OR DESTRUCTION

##### 13.1 Damage or Destruction of Common Area.

A. Estimate of Damage or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Common Area, unless such damage or destruction is minor, the Board of Directors will obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in this Article means restoring the damaged or destroyed Improvements to substantially the same condition in which they existed immediately prior to the damage or destruction.

B. Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association will diligently pursue the repair and reconstruction of the damaged or destroyed Improvements to completion. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to complete repair and reconstruction, and no consent or other action by any Owner will be necessary. Assessments of the Association will not be abated during the period of insurance adjustments and repair and reconstruction.

C. Funds for Repair and Reconstruction. The Association will use the proceeds received from any hazard insurance carried by the Association for the purpose of repair and reconstruction. If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may levy, assess and collect in advance from the Owners a Special Assessment sufficient to provide funds to pay the estimated or actual costs of repair and reconstruction.

D. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. The first money disbursed in payment for the costs of repair and reconstruction will 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, the balance will be distributed or credited to the Owners in proportion to the contributions each Owner made as Special Assessments, or if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of Common Expenses under Section 8.3.B, first to the Mortgagees and then to the Owners, as their interests appear.

E. Decision Not to Rebuild Common Area. If Owners representing at least 80% of votes in the Association, including during the Special Declarant Rights Period, the vote of Declarant, and any other votes required by the Act, agree in writing not to repair and reconstruct Improvements within the Common Area, and if no alternative Improvements are authorized, then the Association will restore damaged property to its natural state and maintain it as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Any remaining insurance proceeds will be distributed in accordance with Section 13.1.D.

- 13.2 Damage or Destruction Affecting Homesteads. In the event of damage or destruction to the Owner's Residence or other Improvements located within any Homestead, the Owner will either promptly repair or restore the damaged Improvements or Residence to their condition existing immediately prior to such damage or destruction or restore the Homestead to its natural state and maintain it as an undeveloped Homestead in a neat and attractive condition. The Owner will complete such work in accordance with the procedures and schedules provided in the Design Guidelines and/or Reserve Rules.

#### ARTICLE 14 — CONDEMNATION

- 14.1 Rights of Owners. If all or any part of the Common Area is taken by any authority having power of condemnation or eminent domain, or if all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Board of Directors acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice of the taking or conveyance. The Association will act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

- 14.2 Partial Condemnation: Distribution of Award: Reconstruction. The award made for such taking will be payable to the Association as trustee for those Owners for whom use of the Common Area was conveyed, and the award will be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless within 60 days after such taking, Owners who represent at least 67% of the votes in the Association, including, during the Special Declarant Rights Period, the vote of Declarant, otherwise agree, the Association will restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement 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 for repair and restoration after casualty damage or destruction will be applicable. If the taking does not involve any Improvements on the Common Area, 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 will be distributed as provided in Section 13.1.D.

- 14.3 Complete Condemnation. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration will terminate, and the portion of the condemnation award attributable to the Common Area will be distributed as provided in the Act.

## ARTICLE 15 – EXPANSION

- 15.1 Expansion Property. Declarant hereby reserves the right to expand the Reserve and plat up to 19 additional Owner Parcels on or before December 31, 2024 by the addition of some or all of the real property described as follows:
- A. The Northeast Quarter of the Northeast Quarter (NE1/4NE1/4) of Section 3, Township 15 South, Range 85 West, 6th Principal Meridian, County of Gunnison, State of Colorado; and/or
- B. The real property described on attached *Exhibit D*.
- 15.2 Expansion Procedure. Such expansion shall be accomplished by the recording in the records of Gunnison County, Colorado, of a certificate or certificates setting forth the legal description(s) of the real property so added to the Reserve together with a Plat or Plats of such additional real property. Such certificate(s) may be incorporated into the Plat or Plats of such additional real property. Such certificate(s) may also set forth any specific provisions that pertain only to the additional real property. The recording of the certificate(s) shall subject the Reserve, as so enlarged, to all of the terms and conditions of this Declaration, except only as may be modified by such certificate(s). No approval of such expansion by Lot owners, Mortgage holders or any other person or entity shall be required.

## ARTICLE 16 – MORTGAGEE PROTECTIONS

- 16.1 Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Mortgages. This Article is supplemental to, and not in substitution for, any other provisions of this Declaration, but in the case of any conflict this Article will control.
- 16.2 Percentage of Eligible Mortgage Holders. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgage Holders is required, it will mean the approval or consent of Eligible Mortgage Holders under Mortgages encumbering Owner Parcels which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Owner Parcels then subject to Mortgages held by Eligible Mortgage Holders.

- 16.3 Notice of Actions. The Association will give prompt written notice to each Eligible Mortgage Holder of the following:
- A. Any condemnation loss or any casualty loss which affects a material portion of the Common Area or any Owner Parcel in which an interest is held by the Eligible Mortgage Holder.
  - B. Any delinquency which remains uncured for 90 days in the payment of Assessments by an Owner whose Owner Parcel is encumbered by a Mortgage held by such Eligible Mortgage Holder.
- 16.4 Consent Required.
- A. Document Changes. No amendment of any of the following described provisions of this Declaration will be effective without the vote of at least 67% of the Owners in the Association (subject to Section 18.3 below) and the approval in writing of at least 51% of the Eligible Mortgage Holders:
- 1. Imposition of any restrictions on an Owner's right to sell or transfer his Owner Parcel.
  - 2. Termination of this Declaration after the occurrence of substantial destruction or condemnation.
  - 3. The benefits of Eligible Mortgage Holders.
- B. Actions. The Association may not take any of the following actions, except as such rights have been specifically reserved by Declarant under the provisions of this Declaration, without the approval of at least 51% of the Eligible Mortgage Holders:
- 1. Termination of this Declaration for reasons other than substantial destruction or condemnation, as permitted with the approval percentages specified in Articles 13 and 14 above.
  - 2. Merger of the Project with any other common interest community.
- 16.5 Notice of Objection. Unless an Eligible Mortgage Holder provides the Secretary of the Association with written notice of its objection, if any, to any proposed amendment or action outlined above within 30 days following the receipt of notice delivered by certified or registered mail, return receipt requested, of such proposed amendment or action, the Eligible Mortgage Holder will be deemed conclusively to have approved the proposed amendment or action.

- 16.6 First Mortgagee's Rights. An Eligible Mortgage Holder is entitled to cure any delinquency of the Owner of the Owner Parcel encumbered by the Eligible Mortgage Holder in the payment of Assessments of which the Eligible Mortgage Holder has received notice under Section 16.3.B above. In that event, the Eligible Mortgage Holder will be entitled to obtain a release from the lien imposed or perfected by reason of such delinquency.
- 16.7 Title Taken by First Mortgagee. Any First Mortgagee who obtains title to an Owner Parcel pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, will be liable for all Assessments due and payable as of the date title to the Owner Parcel vests in the First Mortgagee under the statutes of Colorado governing foreclosures.

#### ARTICLE 17 — ENFORCEMENT OF COVENANTS

##### 17.1 Compliance: Effect of Declaration.

A. Compliance. Each Owner or other occupant of any part of the Property will comply with the provisions of the Reserve Documents.

B. Effect of Declaration. Each provision of this Declaration is deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Reserve is granted, devised or conveyed, regardless of whether this Declaration is referenced in such deed or other instrument. By virtue of acceptance of any right, title or interest in any real property within the Reserve by an Owner or the Association, this Declaration is deemed accepted, ratified, adopted and declared as a personal covenant of such Owner or the Association, as the case may be.

As a personal covenant, this Declaration is binding on such Owner or the Association and such Owner or the Association's respective heirs, personal representatives, successors and assigns. Further, as a personal covenant of an Owner, this Declaration is deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of the Association, but not to, with or for the benefit of any other Owner. As a personal covenant of the Association, this Declaration is deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of each Owner.

This Declaration is deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude, running, in each case, as a burden with and upon the title to each Parcel. As a real covenant and also as an

equitable servitude, this Declaration is deemed a covenant and servitude for the benefit of any real property owned by Declarant within and for the benefit of any and all other real property within the Reserve.

- 17.2 *Violations Deemed a Nuisance.* Every violation of this Declaration or any other of the Reserve Documents is deemed to be a nuisance and is subject to all the remedies provided for the abatement or correction of the violation under the Reserve Documents and the Reserve Documents and the Act. In addition, all public and private remedies allowed at law or equity against anyone in violation of these covenants will be available, subject to Section 17.4 below.
- 17.3 *Remedies for Failure to Comply.* Failure to comply with the Reserve Documents will 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 as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

All the remedies set forth herein are cumulative and not exclusive.

- 17.4 *Who May Enforce.* Any action to enforce the Association Documents may be brought by Declarant, the Board, the Design Review Committee, or the Manager in the name of the Association on behalf of the Owners or by an Owner.
- 17.5 *Interpretation of the Reserve Documents.* The Association, by and through its Board of Directors, has the exclusive right to construe and interpret the provisions of the Reserve Documents. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of the Reserve Documents will be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions of the Reserve Documents.
- 17.6 *Limitation on Liability.*

A. *Regarding Enforcement.* No member of the Board of Directors, Declarant, Manager, the Design Review Committee or an Owner will be liable to any other Owner for the failure to enforce any of the Reserve Documents at any time.

B. *Appointees of Declarant.* No Director or officer of the Association who was appointed by Declarant will be personally liable to the Association or any Member for any injury, damage, loss, costs or expense suffered or incurred by reason of

any act or omission of such officer or director, unless a court of competent jurisdiction finds that such officer or director breached a fiduciary duty that such officer or director owed to the Association or a Member.

*C. Independent Officers and Directors.* No director or officer of the Association who was not appointed by Declarant and no employee, agent or committee member of the Association will be personally liable to the Association or any Member for any injury, damage, loss, cost or expense suffered or incurred by reason of any act or omission of such officer, director, employee, agent or committee member, unless a court of competent jurisdiction finds that the act or omission of such officer, director, employee, agent or committee member was wanton and willful.

*D. Indemnity by Association.* The Association shall indemnify, defend and hold harmless each present or former officer, director, employee, agent or committee member against any and all claims, suits, proceedings, injuries, damages, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees (and legal assistants' fees) and disbursements, asserted against or incurred by any such present or future officer, director, employee, agent or committee member to the fullest extent permitted by law.

17.7 *No Waiver.* The failure of the Board of Directors, Declarant the Manager, or any aggrieved Owner to enforce the Reserve Documents will not be deemed a waiver of the right to do so for any subsequent violation or of the right to enforce any other part of the Reserve Documents at any future time.

17.8 *Recovery of Costs.* If legal assistance is obtained to enforce any of the provisions of the Association Documents, or 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 awarded all costs incurred by it in such action, including reasonable attorneys' fees and costs, legal assistants' fees and expert witness fees.

17.9 *Resolution of Disputes.* If any dispute or question arises between Members or between Members and the Association or relating to the interpretation, performance or nonperformance, violation, or enforcement of the Association Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

## ARTICLE 18 — DURATION OF THESE COVENANTS AND AMENDMENT

18.1 Term. This Declaration will remain in effect perpetually from the date of recordation.

18.2 Amendment.

A. Amendment by Owners. Except with respect to amendments permitted to be made by Declarant unilaterally under this Declaration and the Act, the Plat, this Declaration, or any provision of it, may be terminated, extended, modified or revoked as to the whole or any portion of the Reserve Property, upon the written consent of Owners holding more than 67% of the votes in the Association. Amendments made pursuant to this Section will inure to the benefit of and be binding upon all Owners, their families, tenants, guests, invitees and employees, and their respective heirs, successors, and assigns.

B. Mortgagee Approval Not Required. Except as provided in Article 16, the Declaration and/or Plat may be amended as set forth in this Declaration and such amendment shall be effective notwithstanding the fact that such Mortgagees have not approved such amendment.

C. Execution of Amendment. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under this Declaration and the Act.

18.3 Declarant's Approval. Notwithstanding the provisions of Section 18.2, (i) no termination, extension, modification, revocation, amendment or restatement of this Declaration will be effective in any event during the Period of Declarant Control, unless the written approval of Declarant is first obtained; and (ii) no termination, extension, modification, revocation, amendment or restatement of this Declaration may be made during the Special Declarant Rights Period to impair any easement reserved for the benefit of Declarant, or the right of Declarant to appoint the Architectural Control Committee, or any of the Special Declarant Rights or Declarant's other rights under Article 7, Article 10, Article 15 or this Article 18, unless the written approval of Declarant is first obtained.

- 18.4 Notice of Amendment. No amendment or revocation of this Declaration will 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.
- 18.5 Effective on Recording. Any amendment or revocation made with the consents required under this Declaration will be effective immediately upon the recording in Gunnison County, Colorado, of a copy of such amendment or revocation which has been executed and acknowledged by the President of the Association or another officer authorized for that purpose, all in accordance with the Act. In the case of any amendment or revocation made by vote of the Association generally or by Owners, the amendment or revocation shall be accompanied by a certificate of the Secretary or an Assistant Secretary of the Association stating that the required number of consents of Owners (and if applicable, Eligible Mortgage Holders) were obtained.
- 18.6 Assignment by Declarant. Subject to the requirements and limitations of the Act, Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations under this Declaration to any successor who takes title to all or part of the Reserve Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Gunnison County, Colorado. Upon the recording of that instrument, Declarant's rights and obligations under this Declaration will terminate to the extent provided in such instrument.
- 18.7 Amendment by Declarant. Declarant declares and reserves the right to amend this Declaration, or the Plat, Articles of Incorporation or Bylaws, without the consent of Owners or Mortgagees, any time within ten (10) years from the date this Declaration is recorded, or before Declarant conveys the last Lot to a purchaser other than Declarant or a successor Declarant, whichever first occurs, as follows:
- A. To make nonmaterial changes, such as the correction of a technical, clerical, grammatical or typographical error or clarification of a statement.
  - B. To exercise any Development Right or Special Declarant Right permitted herein or by the Act.
  - C. To comply with any requirements of the Act or amendments thereto.

D. To adjust Parcel boundaries to enable the drilling of one exempt water well on each Parcel, on condition that no Homestead shall be altered without the consent of the Parcel Owner.

#### ARTICLE 19 — GENERAL PROVISIONS

19.1 Disclaimer of Representations by Declarant. Anything to the contrary in this Declaration notwithstanding, and except as otherwise set forth on a Plat or other instrument recorded in the office of the Clerk and Recorder for Gunnison County, Colorado, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Reserve can or will be carried out.

Further, Declarant makes no warranties, express or implied, with respect to the Common Areas and any Improvements constructed or installed by Declarant on the Common Areas, except the warranties of title expressed in any instrument conveying such Common Areas and Improvements to the transaction.

19.2 Severability. This Declaration, to the extent possible, will 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 will be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

19.3 Construction. In interpreting words in this Declaration, unless the context otherwise provides or requires, the singular will include the plural, the plural will include the singular, and the use of any gender will include all genders.

19.4 Headings. The headings are included only for purposes of convenient reference, and they will not affect the meaning or interpretation of this Declaration.

19.5 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 will operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

19.6 Limitation of Liability. Neither the Association nor any officer or member of the Board will 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





## EXHIBIT A

## LEGAL DESCRIPTION OF RESERVE PROPERTY SUBJECT TO THE DECLARATION

A tract of land located in Section 2, 3, 4, 10, and 11, Township 15 South, Range 85 West, of the 6th Principal Meridian, Gunnison County, Colorado, being more particularly described as follows:

Commencing at the northwest corner of said Section 3;

Thence South  $45^{\circ}04'56''$  East a distance of 1,156.74 feet to the POINT OF BEGINNING; Thence South  $30^{\circ}59'58''$  East a distance of 2,850.55 feet; Thence South  $24^{\circ}03'13''$  West a distance of 535.54 feet; Thence South  $35^{\circ}26'33''$  East a distance of 827.96 feet; Thence South  $00^{\circ}02'37''$  West a distance of 772.01 feet; Thence South  $66^{\circ}17'47''$  West a distance of 1,173.14 feet; Thence South  $74^{\circ}22'47''$  West a distance of 992.22 feet; Thence South  $40^{\circ}45'04''$  East a distance of 1,347.62 feet; Thence North  $67^{\circ}20'54''$  East a distance of 1,097.33 feet; Thence North  $90^{\circ}00'00''$  East a distance of 1,052.20 feet; Thence North  $06^{\circ}58'13''$  East a distance of 2,659.02 feet; Thence North  $00^{\circ}00'00''$  East a distance of 205.11 feet; Thence North  $70^{\circ}35'38''$  West a distance of 433.35 feet; Thence North  $20^{\circ}00'00''$  West a distance of 221.08 feet; Thence North  $90^{\circ}00'00''$  East a distance of 172.42 feet; Thence North  $00^{\circ}00'00''$  East a distance of 793.85 feet; Thence North  $90^{\circ}00'00''$  East a distance of 461.78 feet; Thence South  $17^{\circ}06'08''$  West a distance of 148.79 feet; Thence South  $43^{\circ}39'38''$  East a distance of 337.77 feet; Thence North  $57^{\circ}22'31''$  East a distance of 327.83 feet; Thence North  $90^{\circ}00'00''$  East a distance of 496.82 feet to a point on the easterly right-of-way of State Highway 135; Thence along said Highway the following three courses: 1) South  $15^{\circ}21'19''$  East a distance of 1,313.86 feet; 2) North  $01^{\circ}56'22''$  East a distance of 336.37 feet; 3) South  $15^{\circ}21'19''$  East a distance of 4,979.01 feet to a point on the easterly line of the tract described in Book 245, Page 493, Gunnison County; thence along the boundary of said tract the following five courses: 1) North  $75^{\circ}04'39''$  West a distance of 34.74 feet; 2) North  $15^{\circ}21'19''$  West a distance of 113.27 feet; 3) South  $74^{\circ}38'41''$  West a distance of 213.44 feet; 4) South  $13^{\circ}55'58''$  East a distance of 70.89 feet; 5) South  $03^{\circ}55'51''$  East a distance of 62.86 feet to a point on the south line of the northwest quarter of said Section 11, said south line also being the northerly line of the Danni Ranch; thence along the northerly line of the said Danni Ranch the following eight courses: 1) South  $89^{\circ}39'52''$  West a distance of 1,091.93 feet; 2) South  $89^{\circ}34'34''$  West a distance of 1,319.83 feet; 3) North  $01^{\circ}06'31''$  West a distance of 1,315.36 feet; 4) South  $89^{\circ}58'35''$  West a distance of 1,318.30 feet; 5) South  $88^{\circ}42'19''$  West a distance of 1,314.12 feet; 6) North  $01^{\circ}04'05''$  West a distance of 270.00 feet; 7) North  $40^{\circ}45'04''$  West a distance of 1,325.41 feet; 8) South  $87^{\circ}50'14''$  West a distance of 470.00 feet to the northwest corner of Section 10; Thence North  $89^{\circ}58'27''$  West along the south line of said Section 4 a distance of 3,734.93 feet; Thence North  $00^{\circ}03'33''$  West a distance of 908.84 feet; Thence South  $90^{\circ}00'00''$  West a distance of 64.29 feet; Thence North  $00^{\circ}00'00''$  East a distance of 1,931.41 feet; Thence North  $63^{\circ}14'04''$  East a distance of 5,264.48 feet to the POINT OF BEGINNING.

Containing 38,180,384 square feet or 876.501 acres, more or less.

9/20/04

## EXHIBIT B

## RECORDED EASEMENTS AND LICENSES AND OTHER MATTERS AFFECTING TITLE

1. All minerals, oil, gas and hydro-carbon substances as reserved in Book 294 at Page 392, Book 294 at Page 420 and Book 49 at Page 133.
2. Easement for electrical transmission line to Colorado-Ute Electric Association, Inc. recorded in Book 391 at Page 193.
3. All the coal and other minerals together with the right to prospect for, mine and remove the same as reserved in United States Patents recorded in Book 278 at Page 485 and Book 184 at Page 403.
4. The right of the proprietor of a vein or lode to extract and remove his ore and a right of way for ditches or canals constructed by the authority of the United States as reserved by the United States in United States Patents of record.
5. Stock driveway and all appurtenances thereto, and the right of the United States, its officers, agents or employees to maintain, operate, repair or improve the same as long as needed or used for or by the United States as excepted by the United States in the United States Patent recorded in Book 321 at Page 370.
6. Any rights, interest or easements in favor of the United States, State of Colorado or the public which exist or are claimed to exist in and over present and past bed, banks and water of the East River.
7. A 30-foot-wide non-exclusive access easement for ingress and egress and to construct, install and maintain utility services, and including the right to construct or enlarge a road as granted to White Buffalo Trading Company in Book 762 at Page 516.
8. Terms and conditions in Memorandum of Agreement between Terra Alta Ranch Joint Venture and White Buffalo Trading Company recorded in Book 776 at Page 376.
9. Right of Way Easements to The Gunnison County Electric Association, Inc., its successors and assigns, recorded as Reception Nos. 509168, 509170, 509171, 509182 and 509184.
10. Agreement between Gunnison County Electric Association, Inc. and Cockrell Investment Partners, L.P., recorded as Reception No. 524511.

- II. Development Improvements Agreement between the Board of County Commissioners of Gunnison County, Colorado and United Companies of Mesa County, recorded as Reception No. 530416.
12. Findings and conditions in Certificate of Minor Impact Approval, Certification No. 10, Series 2003, by Gunnison County, Colorado, recorded as Reception No. 533190.
13. Agreement between Cockrell Investment Partners, L.P. and Candace Smiley and Margaret Towner as Trustees of the Joseph Anders Trust, recorded as Reception No. 535339.
14. Development Improvements Agreement between the Board of County Commissioners of Gunnison County, Colorado and Cockrell Investment Partners, L.P. recorded as Reception No. 542960 and Addendum to Development Improvements Agreement recorded as Reception No. 547015.
15. Findings and conditions in Certificate of Minor Impact Approval, Certification No. 7, Series 2004 by Gunnison County, Colorado, recorded as Reception No. 543042.
16. Agreement between Cockrell Investment Partners, L.P. and Virgil & Lee Spann Ranches, Inc. recorded as Reception No. 543395.
17. Board of County Commissioners of Gunnison County Resolution No. 36, Series 2004, recorded as Reception No. 543497.
18. Water rights, claims or title to water, whether or not shown by the public records.
19. Map of Utility Easements recorded as Reception No. 545974 and Grants of Utilities Easements recorded as Reception Nos. 545975, 545976 and 545977.
20. Easements, terms, conditions, provisions and notes on the Plat of The Reserve on the East River recorded as Reception No. \_\_\_\_\_.
21. Terms, conditions, provisions, limitations, restrictions, charges and obligations in Declaration for The Reserve on the East River recorded as Reception No. \_\_\_\_\_.

## EXHIBIT C: BUILDING ENVELOPE DATA FOR THE RESERVE ON THE EAST RIVER

LOT NUMBER	PARCEL	MINIMUM ENVELOPE AREA	GRADE POINT LOCATION	ELEVATION ON GRADE	ELEVATION OF MAX. AVG. PRIMARY ROOF RIDGELINE	MAX. AVG. HEIGHT OF PRIMARY ROOF RIDGELINE IN FEET
24	A	10,000	High Point	10,047	10,071	24
			Low point	10,040	10,071	31
	B alternate	10,000	High Point	10,052	10,076	24
			Low point	10,047	10,076	29
C alternate	10,000	High Point	10,049	10,073	24	
		Low point	10,040	10,073	33*	
D alternate	10,000	10,000	High Point	10,052	10,076	24
			Low point	10,045	10,076	31
23	A	10,000	High Point	10,107	10,131	24
			Low point	10,090	10,131	41*
	B alternate	10,000	High Point	10,106	10,130	24
			Low point	10,092	10,130	38*
C alternate	10,000	High Point	10,116	10,140	24	
		Low point	10,112	10,140	28	
D alternate	10,000	10,000	High Point	10,118	10,142	24
			Low point	10,108	10,142	34*
22	A	10,000	High Point	9,880	9,904	24
			Low point	9,872	9,904	32*
	B alternate	10,000	High Point	9,882	9,906	24
Low point			9,868	9,906	38*	
C alternate	10,000	High Point	9,896	9,920	24	
		Low point	9,882	9,920	38*	
21	A	10,000	High Point	9,960	9,976	16*
			Low point	9,940	9,976	36*
	B	10,000	High Point	9,960	9,976	16*
Low point			9,940	9,976	36*	
C	10,000	High Point	9,958	9,982	24	
		Low point	9,940	9,982	42*	

\* The maximum building elevation is 32 feet measured from the average height of the "primary roof" ridgeline that is most parallel to existing grade immediately beneath the house. This measurement would be achieved by dropping a plumb bob from the average height point along the ridgeline directly to grade.

\*\* Home owner will be required to construct a landscape berm of sufficient height adequate to screen all structures from view of Highway 135 in the vicinity of the main entrance into The Reserve property.

\*\*\* These home sites have more restrictive height limitations.

## DECLARATION FOR THE RESERVE ON THE EAST RIVER

20	A	10,000	High Point Low point	9,892 9,876	9,916 9,916	24 40*
	B alternate	10,000	High Point Low point	9,895 9,873	9,919 9,919	24 46*
	C alternate	10,000	High Point Low point	9,878 9,860	9,902 9,902	24 42*
19	A	10,000	High Point Low point	9,856 9,838	9,880 9,880	24 42*
	B alternate	10,000	High Point Low point	9,844 9,828	9,868 9,868	24 40*
	C alternate	10,000	High Point Low point	9,834 9,820	9,858 9,858	24 38*
	D alternate	10,000	High Point Low point	9,848 9,834	9,872 9,872	24 38*
18	A	10,000	High Point Low point	9,683 9,678	9,707 9,707	24 29
	B alternate	10,000	High Point Low point	9,700 9,690	9,720 9,720	20** 30
	C alternate	10,000	High Point Low point	9,685 9,670	9,701 9,701	16** 31
17	A	22,000	High Point Low point	9,655 9,630	9,667 9,667	12** 37*
16	A	10,000	High Point Low point	9,696 9,688	9,720 9,720	24 32
	B alternate	10,000	High Point Low point	9,700 9,680	9,724 9,724	24 44*
15	A	10,000	High Point Low point	9,560 9,540	9,576 9,576	16** 36*
14	A	10,000	High Point Low point	9,396 9,384	9,420 9,420	24 36*
	B alternate	10,000	High Point Low point	9,390 9,378	9,414 9,414	24 36*
	C alternate	10,000	High Point Low point	9,414 9,398	9,438 9,438	24 40*

## DECLARATION FOR THE RESERVE ON THE EAST RIVER

13	A	10,000	High Point Low point	9.482 9.458	9.494 9.494	12*** 36*
	B alternate	10,000	High Point Low point	9.458 9.442	9.482 9.482	24 40*
12	A	10,000	High Point Low point	9.440 9.424	9.464 9.464	24 40*
	B alternate	10,000	High Point Low point	9.430 9.410	9.454 9.454	24 44*
11	A	10,000	High Point Low point	9.235 9.218	9.259 9.259	24 41*
10	A	10,000	High Point Low point	9.155 9.140	9.179 9.179	24 39
9**	A	10,000	High Point Low point	9.082 9.070	9.102 9.102	20*** 32
	B alternate	10,000	High Point Low point	9.078 9.067	9.094 9.094	16*** 27
	C alternate	7,700	High Point Low point	9.069 9.060	9.085 9.085	16*** 25
	D alternate	7,700	High Point Low point	9.060 9.050	9.074 9.074	14 24
8	A	19,000	High Point Low point	8.429 8.429	8.453 8.453	24*** 24
7	A	21,878	High Point Low point	8.422 8.422	8.446 8.446	24*** 24
6	A	27,018	High Point Low point	8.416 8.416	8.440 8.440	24*** 24
5	A	19,800	High Point Low point	8.411 8.411	8.435 8.435	24*** 24
4	A	13,000	High Point Low point	8.398 8.398	8.422 8.422	24*** 24
3	A	11,811	High Point Low point	8.394 8.394	8.418 8.418	24*** 27
2	A	19,800	High Point Low point	8.386 8.386	8.410 8.410	24*** 24
1	A	24,000	High Point Low point	8.388 8.388	8.412 8.412	24*** 24

## EXHIBIT D

## EXPANSION PROPERTY

1. The Northeast Quarter of the Northeast Quarter (NE1/4NE1/4) of Section 3, Township 15 South, Range 85 West of the Sixth Principal Meridian, County of Gunnison, State of Colorado.

2. A tract of land located in the south half of Section 34, Township 14 South, Range 85 West and in Section 3, 4 and 10, Township 15 South, Range 85 West, of the 6th Principal Meridian, Gunnison County, Colorado, being more particularly described as follows:

Commencing at the northwest corner of said Section 3; Thence North  $73^{\circ}29'22''$  East along the southerly boundary of the replat of Red Mountain Ranch, Phase 2, and the White Buffalo Trading Company parcel a distance of 4,035.61 feet to a point on the westerly right-of-way of State Highway 135; Thence along said westerly right-of-way the following three courses: 1) South  $23^{\circ}27'29''$  East a distance of 220.46 feet; 2) Southerly 405.14 feet along a curve to the right, said curve having a radius of 2,864.93 feet, a central angle of  $08^{\circ}06'09''$ , a chord distance of 404.81 feet, and a chord bearing of South  $19^{\circ}24'25''$  East; 3) South  $15^{\circ}21'19''$  East a distance of 769.56 feet to a point on the north line of said Section 3; Thence North  $87^{\circ}36'37''$  West along the north line of said Section 3 a distance of 267.03 feet to the northwest corner of Lot 1 of said Section 3; Thence South  $01^{\circ}35'59''$  West along the westerly line of said Lot 1 a distance of 1,432.37 feet to the southwest corner of said Lot 1; Thence South  $88^{\circ}32'25''$  East along the southerly line of said Lot 1 a distance of 597.59 feet to a point on the westerly right-of-way of State Highway 135; Thence South  $15^{\circ}21'19''$  East along said right-of-way a distance of 1,179.51 feet; Thence South  $90^{\circ}00'00''$  West a distance of 496.82 feet; Thence South  $57^{\circ}22'31''$  West a distance of 327.83 feet; Thence North  $43^{\circ}39'38''$  West a distance of 337.77 feet; Thence North  $17^{\circ}06'08''$  East a distance of 148.79 feet; Thence South  $90^{\circ}00'00''$  West a distance of 461.78 feet; Thence South  $00^{\circ}00'00''$  East a distance of 793.85 feet; Thence South  $90^{\circ}00'00''$  West a distance of 172.42 feet; Thence South  $20^{\circ}00'00''$  East a distance of 221.08 feet; Thence South  $70^{\circ}35'38''$  East a distance of 433.35 feet; Thence South  $00^{\circ}00'00''$  East a distance of 205.11 feet; Thence South  $06^{\circ}58'13''$  West a distance of 2,659.02 feet; Thence South  $90^{\circ}00'00''$  West a distance of 1,052.20 feet; Thence South  $67^{\circ}20'54''$  West a distance of 1,097.33 feet; Thence North  $40^{\circ}45'04''$  West a distance of 1,347.62 feet; Thence North  $74^{\circ}22'47''$  East a distance of 992.22 feet; Thence North  $66^{\circ}17'47''$  East a distance of 1,173.14 feet; Thence North  $00^{\circ}02'37''$  East a distance of 772.01 feet; Thence North  $35^{\circ}26'33''$  West a distance of 827.96 feet; Thence North  $24^{\circ}03'13''$  East a distance of 535.54 feet; Thence North  $30^{\circ}59'58''$  West a distance of 2,850.55 feet; Thence South  $63^{\circ}14'04''$  West a distance of 5,264.48 feet; Thence South  $00^{\circ}00'00''$  East a distance of 1,931.41 feet; Thence North  $90^{\circ}00'00''$  East a distance of 64.29 feet; Thence South  $00^{\circ}03'33''$  East a distance of 908.84 feet to a point on the southerly line of said Section 4; Thence North  $89^{\circ}58'27''$  West along said southerly line of said Section 4 a distance of 1,551.63 feet to the southwest corner of said Section 4; Thence North  $00^{\circ}01'36''$  West along the westerly line of said Section 4 a distance of 2,950.00 feet; Thence North  $46^{\circ}26'46''$  East a distance of 2,232.40 feet; Thence South  $07^{\circ}05'54''$  East a distance of 988.07 feet; Thence North  $55^{\circ}14'41''$  East a distance of 1,255.74 feet; Thence North  $41^{\circ}21'48''$  East a distance of 1,799.89 feet; Thence North  $72^{\circ}10'40''$  East a distance of 1,478.98 feet to the POINT OF BEGINNING.

Containing 28,022,987 square feet or 643.319 acres, more or less.

9/21/04

3. Any property contiguous, now or in the future, to The Reserve on the East River.