

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS
For Fox Fire Ridge,
A Residential Subdivision**

THIS DECLARATION, made on the date hereinafter set forth by **TRUNETTE PROPERTY AND CONSTRUCTION COMPANY, LLC, a Colorado Limited Liability Company**, hereinafter referred to as “Declarant.”

WITNESSETH:

WHEREAS, Declarant intends these Covenants, Conditions, Restrictions and Easements to be applicable to that certain property in the County of La Plata, State of Colorado, which is more particularly described as shown on the attached legal description Exhibit A which is incorporated herein and which is the subject of a residential subdivision filing and plats associated therewith known as Fox Fire Ridge; and

WHEREAS, by their execution of said residential subdivision plat filing containing four (4) Lots and the related plats and agreements, Owners of the property Lots 1, 2, 3, and 4 of Fox Fire Ridge Subdivision have adopted, affirmed and ratified this Declaration and the Covenants, Conditions, Restrictions and Easements herein contained applicable to Lots 1, 2, 3, and 4, Fox Fire Ridge Subdivision.

NOW THEREFORE, Declarant hereby declares that all of the Properties above described as Lots 1, 2, 3, and 4 of Fox Fire Ridge Subdivision shall be held, sold and conveyed subject to the following Easements, Restrictions, Covenants, and Conditions, which are for the purpose of establishing a general plan and of protecting and maintaining the value and desirability of the Subdivision as a high-quality residential development, which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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**ARTICLE 1
DEFINITIONS**

1.1 “**Declarant**” shall mean and refer to David T. Shepard and his successors and assigns.

1.2 “**Owners**” shall mean and refer to the record Owner, whether one or more persons or entities, or a fee simple title to any Lot which is a part of the Properties, including contract sellers, and those having such interest merely as security for the performance of an obligation.

1.3 “**Properties**” shall mean and refer to that certain real property hereinabove described, *i.e.*, Lots 1, 2, 3 and 4 of the Fox Fire Ridge Subdivision, and such additions thereto as may hereafter be annexed pursuant to the terms of this Declaration..

1.4 “**Lot**” shall mean and refer to any residential plot of land shown upon the final plat map of the Properties whether or not all phases and filings have received final approval. Declarant as the Owner of certain tracts of land has received Final Plat approval from the La Plata County Board of County Commissioners for developing four (4) single family residential Lots.

1.5 “**Subdivision**” refers to the developmental project commonly known as Fox Fire Ridge as shown on the Final Plat filing and plat so titled.

1.6 “**ARC**” refers to the Architectural Review Committee and its members.

1.7 **Dominant and Servient Estates.** To the extent that any of the properties described herein are burdened by an easement, such property is also referred to as the "Servient Estate" and to the extent that any of the properties are benefited by an easement, such property is also referred to as the “Dominant Estate” and singularly, but without distinction between Dominant or Servient, as “Lot”.

1.8 **Unit.** For purposes of this Declaration, a "Unit" shall be a portion of the Property which may be independently owned and is intended for development, use and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon.

1.9 **Subdivision Road and Subdivision Road Easement.** The access road to the Subdivision commencing at the North right of way line of U.S. Highway 160 to the point of termination at the South boundary line of Lot 4, consisting of its currently improved surface, shoulders and drainage facilities, is referred to herein as the “Subdivision Road” and, including its full legal easement dimension, as the “Subdivision Road Easement”.

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ARTICLE 2 SUBDIVISION ROAD

2.1 **Declaration of Subdivision Road Easement.** Declarant hereby declares that the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the burdens and together with the benefits of the Subdivision Road Easement and all other Easements shown and set forth on the Plat, subject to the terms, conditions, provisions, limitations and restrictions of this Declaration, including but not limited to:

2.1.1 Benefit and Burden of Subdivision Road Easement. The Subdivision Road Easement is reserved for the benefit of the Property without restriction as to burden of use and future development.

2.1.2 Gating. The costs of maintenance, repair, replacement and operation of the electronic gate located on the Subdivision Road just to the east of the Ditch (the “Subdivision Gate”) shall be a Common Expense and managed in the same manner as Subdivision Road Common Expenses. With the exception of the

Subdivision Gate no Owner shall be permitted to install gating on the Subdivision Road.

2.1.3 Subdivision Sign. The costs of maintenance, repair, replacement and operation of a sign located on Lot 1 at the intersection of Road J and Fox Fire Ridge Road advising of the private nature of Fox Fire Ridge Road (the "Subdivision Sign") shall be a Common Expense and managed in the same manner as Subdivision Road Common Expenses.

2.1.4 Damage to Roadway Due to Extraordinary Event. In the event an Owner uses the Subdivision Road for the purpose of construction of improvements to his/her Lot or for any other extraordinary use which would cause accelerated deterioration of the Subdivision Road improvements or is singularly responsible for damage to the Subdivision Road arising out of a negligent event or conduct not in the ordinary course of use of the Subdivision Road (hereinafter, "Extraordinary Event"), upon the conclusion of such Extraordinary Event, the Owner responsible therefore shall return the Subdivision Road to the condition immediately preceding such its original construction at his/her sole expense. Upon the failure of such Owner to comply with the provisions of this paragraph, the other Owners shall have the right to so do in the same manner and subject to the same enforcement mechanisms set forth herein.

2.1.5 Non-exclusive. The Subdivision Road Easement shall be non-exclusive. The Owners of Servient Estate, their heirs, successors and assigns, shall have the right to use the land subject to the Subdivision Road Easement except as such may unreasonably interfere with the enjoyment of the rights and easements herein granted. Except as may be otherwise set forth herein, the Owners of the Servient Estate will not construct or permit structures, plant trees, drill water, oil or gas wells, excavate or fill within the Subdivision Road Easement above described, without the prior written consent of the Owners of the Dominant Estates which consent shall not be unreasonably withheld.

2.2 **Common Expenses.** For purposes of this Declaration, the term "Common Expenses" shall include:

2.2.1 Subdivision Road Expenses – The costs of insurance, signage, maintenance, repair, resurfacing, sealing and resealing, snow removal and all others expenses of operation of the Subdivision Road undertaken for purposes of maintaining its "Baseline Condition" (as defined below) and all others expenses of exercise of any rights under or the operation of any aspect of the Subdivision Road described by this Declaration for which there is a shared use and common benefit, including, but not limited to the Subdivision Gate and any Subdivision Signs. Subdivision Road Expenses shall be subject to Adjustment for Development as set forth below. A portion of the Subdivision Road Easement is currently maintained by a third party as a gas well access road which contribution is recognized as a credit against Subdivision Road Expenses otherwise allocable to the Owners.

2.2.2 Other Users. The Subdivision Road also serves as access to other properties (the “Other Users”). All Subdivision Road Expenses shall be Common Expenses notwithstanding the obligation of Other Users of the Subdivision Road to contribute to Subdivision Road Expenses by operation of the relative use benefit doctrine in Colorado or any other agreement or legal authority (the “Other Users’ Contribution Obligation”). Default in the Other Users’ Contribution Obligation shall not be a defense to any Assessment for Right of Contribution made by an Initiating Owner under the terms of this Declaration. Any Owner shall be permitted, but not obligated, to undertake and prosecute collection proceedings to the extent required to enforce the Other Users’ Contribution Obligation and all expenses of such proceedings shall be Common Expenses subject to administration under this Declaration.

2.2.3 Baseline Condition. The Baseline Condition of the Subdivision Road shall be its condition existing at the time of recording of this instrument and as such may be improved hereafter according to the terms of this Declaration.

2.3 **Allocation - Assessment.**

2.3.1 Allocation Formula. The Common Expenses shall be shared or assessed in direct proportion to the number of Units actually utilizing the Subdivision Road Easement, and limited solely to the extent of the Subdivision Road so utilized as defined by the furthest point of intersection of the Subdivision Road with a driveway access of an Owner of a Lot as measured from U.S. Highway 160 (hereinafter referred to as the “Assessment” or "Right of Contribution").

2.3.2 Improvements. Improvement of the Subdivision Road beyond its current Baseline Condition shall not entitle the Owner making such improvement to any Right of Contribution and shall be undertaken at the sole expense of such Owner. Once the improvement is completed the Baseline Condition of the Subdivision Road shall be amended to represent the improved condition and the operation costs to maintain such improved condition shall be subject to the Right of Contribution and enforcement mechanism provided by the terms and conditions of this Declaration.

2.3.3 Exemption from Assessment. Notwithstanding anything herein to the contrary, the owner of a Lot shall not be subject to any Assessment for Common Expenses until such time as a building permit has been issued with respect to the construction of a Unit upon such Lot.

2.4 **Administration of Common Expenses.**

2.4.1 Right of Contribution. Upon establishment of an obligation of repayment by the act of an Owner incurring a Common Expense under the terms of this Declaration, the Owner incurring such Common Expenses shall be entitled to

recovery of such indebtedness from the Owner(s) responsible for contributing thereto (the "Right of Contribution").

2.4.2 Initiating Owner. Any operation incurring Common Expenses subject to the Right of Contribution may be undertaken and completed by any Lot Owner (hereinafter referred to as the "Initiating Owner"), which undertaking shall be subject to the terms and conditions hereof and shall entitle the Initiating Owner to the Right of Contribution set forth herein.

2.4.3 Account Administrator. Notwithstanding anything herein to the contrary, in the event that an Owner volunteers and is accepted by the other Owners to establish, maintain, operate and otherwise administer a common fund and account for the payment of a specified Common Expense (said position being hereafter referred to as the "Account Administrator") each Lot Owner shall contribute an amount mutually agreed upon by the Owners from time to time each month (or other periodic term) for deposit into to such common fund (the "Common Account"). Records of the Common Account shall be maintained by the Account Administrator and available for inspection by the Owners at all reasonable times. The Common Account funds shall be applied by the Account Administrator to the payment of the specified Common Expense with all excess funds being maintained for application to other Common Expenses. It is anticipated that the Common Expenses handled in this manner will be in the nature of reasonably predictable recurring costs not requiring Bid Acquisition, such as insurance premiums. It is also anticipated that an administrative fee will be established as a Common Expense to compensate any Owner undertaking the responsibility of an Account Administrator for any specified Common Expense. Management of Common Expenses in this manner shall be entitling the Account Administrator (as and Initiating Owner) to a Right of Contribution and the enforcement mechanisms provided by the terms and conditions of this Declaration.

2.4.4 Bid Acquisition. Unless otherwise agreed among the Owners or as otherwise provided by the terms of this Declaration, the Initiating Owner shall obtain not less than two bona fide bids from independent third parties qualified to perform such work required and shall deliver notice thereof to the other Lot Owners from whom contribution may be sought (hereinafter referred to as the "Benefited Owner") in person or in the manner hereinafter set forth. Such Benefited Owner(s) shall have twenty days (20) subsequent to delivery or deposit in the mail of said notice within which to provide any additional responsible bid(s) or otherwise object to the notice of the other Lot Owners. At the expiration of said 20 day period without the receipt of any objection, such Initiating Owner may, but shall not be required, to proceed with the lowest, responsible bid whether same is provided by such Initiating Owner or such Benefited Owner(s). Timely objection made by any Lot Owner to such Initiating Owner shall serve as notice of a dispute as contemplated by the arbitration provisions hereof.

2.4.5 Billing. Upon receipt of a bill, or the requirement of an advance payment with respect to work authorized to be performed in accordance herewith, the

Initiating Owner shall provide notice to the Benefited Owner(s) setting forth the amount of contribution required and such contribution shall be made by such Initiating Owner and such Benefited Owner(s) direct to the person or entity performing the work within TEN (10) days of the date of receipt of said notice. In the event of non-payment by a Lot Owner within said ten days, any other Lot Owner may contribute the delinquent amount which amount shall thereafter bear interest from the date of payment by such Lot Owner at 18.0% per annum and shall be subject to the collection enforcement provisions of this instrument.

2.4.6 Arbitration. In the event of any dispute arising concerning the necessity and/or manner of maintenance or contribution with respect to a Common Expense arising among the Owners, each Owner subject to the Common Expense shall choose an arbitrator, the appointment of arbitrators to be made within 20 days after notice by an Owner to the other Owner that a dispute exists. Upon the failure of an Owner to appoint an arbitrator, the arbitrators appointed by the other Owner shall appoint a third arbitrator and if only one Owner timely appoints an arbitrator, then such appointed arbitrator shall be the sole arbitrator for resolution of the dispute. Arbitration shall thereafter be conducted in accordance with the Uniform Arbitration Act of the State of Colorado, C.R.S. § 13-22-201, *et seq.* The prevailing party in any such arbitration shall be awarded all costs and reasonable attorneys' fees incurred in connection with said arbitration and any and all damages suffered as a consequence of any wrongful non-payment, including, but not limited to, such expenses as may be suffered by reason of the filing of a mechanic's lien including attorneys' fees incurred in connection therewith.

2.4.7 Lien. Upon confirmation of the arbitration award pursuant to C.R.S. § 13-22-213 or upon payment by an Owner of another Owner's contribution obligation (hereinafter referred to as the "Contribution Delinquency") without the initiation of the arbitration pursuant to the terms hereof, the amount of the arbitration award or the amount of the Contribution Delinquency, together with interest thereon at the legal rate, shall be a charge against the Lot of the losing party in arbitration or the non-contributing Owner and shall be a continuing lien thereon. The amount of said arbitration award or the contribution delinquency shall also be the personal obligation of the losing party in arbitration or the non-contributing Owner. In addition to all remedies available under the law of Colorado for the collection of judgments, the prevailing or contributing party shall be entitled to file a Statement of Lien with respect to the property of the other Owner, setting forth the name of said owner, the legal description of the property, and the amount of the award or sum then owing, which statement shall be duly signed and acknowledged by the prevailing or contributing party and which shall be served upon the losing or non-contributing party by certified mail, return receipt requested, mailed to the address of said party. Thereafter, the prevailing or contributing party may proceed to foreclose the lien against the property of the losing or non-contributing party in the same manner as provided for the foreclosure of mortgages on real property under the statutes of the State of Colorado. In either a personal or foreclosure action, the prevailing or contributing party shall be entitled to recover as part of the action, delinquent interest, costs and reasonable attorneys' fees.

Notwithstanding anything herein to the contrary any lien hereunder shall be subordinate to all prior recorded liens and encumbrances.

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ARTICLE 3 ARCHITECTURAL CONTROL

3.1 **Architectural Review Committee (the "ARC").** As long as any Lot shall remain unimproved by a residential dwelling, and unless voluntarily relinquished at an earlier date, the Declarant, or any assignee of Declarant, shall have the exclusive right to determine the number and identity of the members of the ARC together with full discretion to removal and reappoint. At such time as all Lots have been improved by a residential dwelling, the function of the ARC shall be exercised by the Lot Owners through the application of this Declaration. Unless otherwise agreed by the Lot Owners, upon succession of the Lot Owners to control of the ARC, it shall consist of at least one (1) member appointed by the majority of Lot Owners, which member shall have experience as an architect, land planner, engineer, or building contractor. The vote of a majority of the members shall constitute the action of the ARC.

3.2 **Approval.** No building, fence or other structure or improvement of any kind including home identification devices shall be commenced, erected or maintained upon the Properties, nor shall any exterior repair, replacement, addition to or change or alteration therein be made until detailed and legible plans and specifications showing the nature, kind, color, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surroundings structures, and topography and finish grade elevation by the ARC. Evidence of submission of such materials shall be issued by said ARC showing the date of each submission. In the event the ARC fails to approve or request additional information or disapprove with recommendations or disapprove entirely such design and location in writing within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with. Approval of such plans and specifications shall not be arbitrarily or unreasonably withheld. A reasonable fee may be charged to any Lot Owner for each plan review. Owners must comply with all applicable governmental regulations including but not limited to open space requirements and to the visual impact regulations respectively of the La Plata County Land Use Code as amended from time to time.

3.3 **Scenic Corridor.** Any structure constructed within the scenic corridor shall use only material that compliments the existing flora and fauna within the Subdivision.

3.4 **Lot Owner Consent.** Neither the Declarant nor ARC nor their respective successors or assigns shall be liable for damages to anyone submitting plans and specifications for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the approving body or Declarant to recover any such damages. Approval of plans and specifications

shall not be deemed to constitute compliance with the requirements of any local building codes or land use regulations, and it shall be the responsibility of the Owner or other person submitting plans and specifications to comply therewith.

3.5 Standards and Specifications. The ARC shall promulgate architectural standards and specifications consistent with this Declaration (the “Architectural Guidelines”). Such standards and specifications, subject to amendment by the adopting entity, shall govern all structures, improvements, commercial signs and home identification devices proposed for any Lot.

3.6 Architectural Guidelines. The Architectural Guidelines shall apply to construction of improvements on all Lots within the Property, and subject to such further restrictions contained in the Declaration. These Guidelines are established for the purpose of defining certain aesthetic guidelines, architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials, and similar features designed to maintain harmony with surrounding structures and prevent the construction of improvements which may be detrimental to the Property and the surrounding area. These Guidelines may not be amended except by the direction of the ARC and are meant to insure overall compatibility within the Property for the benefit of all Lot Owners.

3.7 Building Quality, Style and Occupancy. All building structures must be of a permanent nature constructed on site affixed to permanent foundations, concrete slabs or piers. No modular home, trailer house, or mobile home shall be set upon any Lot within said Subdivision. All dwellings must be of workmanlike quality using new materials and shall be completely finished before occupancy. All residence, garages, outbuildings and barns on a particular Lot must be of a common theme and style of architecture. Acceptable styles of residence architecture and types include: log homes, ranch style, southwest/Santa Fe style and farm/Victorian. Completion must occur within one (1) year of issuance a building permit.

3.8 Residence Size and Height. Each residence structure shall contain at least 1,800 square feet of living space, of which not less than 1,600 square feet shall be above the ground-level main floor. Square footage is to be determined by exterior wall measurement. The height restriction for any single-family dwelling unit shall be two stories, not exceeding a total height of thirty two (32) feet from the first floor grade to the highest most ridgeline of the residence. An exception to the two story limit shall be made for day-lighted (walk-out) basements within a residence.

3.9 Garages and Guest Quarters. Each residence must also construct one two-car or three-car garage with doors, attached to or within thirty (30) feet of the residence. Garage must be constructed of suitable material and design so as to be aesthetically compatible with the residence. So long as all other restrictions and conditions herein are met, said guest quarters shall be allowed to be constructed as part of said garage.

3.10 Outbuildings and Livestock Barns. Outbuildings and livestock barns must be affixed to permanent foundations, concrete slabs or piers. Outbuildings and livestock barns must be constructed of suitable wood or steel material and designed so as to be

aesthetically compatible with the residence. The location of Outbuildings and livestock barns must not create a visual intrusion on the neighborhood.

Particular attention by the ARC will be given to the planned use for the structure, the location to the main residence, the architectural character proposed and the relationship of the main residence with other structures planned within the approved building envelope. No Outbuildings or livestock barns shall be erected without having first been approved by the ARC. No plastic Green houses will be allowed.

3.11 Preservation of Significant Views. All views are important to the Property including, but not necessarily limited to: views from Lots to the mountains and to significant features beyond and views from surrounding Lots through the subject Lot to the mountains and to significant features beyond. Views shall be preserved. The objective is to create as many opportunities for views as possible, within the constraints posed by the building envelope and the Lot.

3.12 Exterior Lighting. In general, light sources should be shielded and directional. All exterior lights must be approved by the ARC. No “mercury vapor light” or similar lighting shall be allowed. All exterior lights shall be down lighted and incandescent.

3.13 Residence and Garage Roofs.

3.13.1 *Slopes.* Roof slopes should be between 4:12 and 12:12

3.13.2 *Shapes.* In general, flat roof and geodesic dome structures will not be approved.

3.13.3 *Overhang.* Roofs should overhang walls a minimum of 24”. Roof overhangs less than 24” shall require Committee approval.

3.13.4 *Surfacing Material.* In general, roofing materials must be of a non-combustible/non-reflective material. All roof flashing must be of a color harmonious with roof and upper wall surfacing unless approved by the ARC. Other roof material to reflect new technology may be used if approved by the ARC.

3.13.5 *Appurtenances.* Skylights higher than one (1) foot above the roof plane or placed at an angle to the roof plane are not permitted. Skylights should extend to the eave line. Wood, stucco, concrete, and masonry-finished flues are permitted. Solar designs, collectors, and windmills shall be approved or disapproved on a case-by-case basis by the Committee.

3.13.6 *Chimney vents.* All chimney vents shall have an approved spark arrester screen.

3.14 Residence and Garage Building Exteriors.

3.14.1 *Number of Exterior Wall Materials.* Exterior walls can be surfaced with up to three (3) different materials, unless otherwise approved by the ARC.

3.14.2 *Color of Exterior Walls.* The color of the exterior walls should be earth tones. Bright and dramatic colors can be used for accent on exterior wall areas hidden from general view.

3.14.3 *Windows.* Windows must be constructed of wood or of wood covered with color-fast vinyl or anodized aluminum. Metal or metal colored windows must be coated with an approved finish.

3.14.4 *Appurtenances.* No wall decoration, painted, other than trimmed design work, is recommended. Where it occurs, it should be confined to wall surfaces that are not in public view.

3.14.5 *Siding Materials.* Materials permitted as siding shall be: redwood, cedar, rock, log, brick, stucco and cultured stone. Brick finished fireplace flues are permitted. Materials not permitted are: vinyl siding, metal siding, concrete block, log-like siding, and texture T-111 siding.

3.14.6 All front elevations shall have breaks or similar dimensional relief so that a flat appearance is eliminated.

3.15 **Retainer Walls.** All retaining walls are subject to ARC approval. All foundation walls or retaining walls with more than 12" visible above grade shall have a surface treatment on the surface above the finish grade, as approved by ARC.

3.16 **Fencing.** No fencing shall be erected without having first been approved by the ARC

3.17 **Landscaping.** Landscaping on individual Lots should blend with the natural character of the Property. The use of native trees and native shrubs and grasses is preferred; all requests to disturb vegetation will be reviewed and approved on an individual basis. Central pivots and wheel lines will not be allowed. Landscaping shall be designed and installed so as to reduce or eliminate the blocking or potential blocking of solar access and scenic view of adjacent property. Landscaping shall be implemented within One (1) year after substantial completion of an Owner's residence. - The ARC may establish a reasonable start date upon written notice submitted to the Owner.

3.18 **Driveways.** All driveways and roads shall be located within approved driveway corridors and shall be constructed of an approved surface material. Decomposed granite, asphalt, concrete, bricks, or masonry pavers are acceptable, and gravel, if maintained, is also acceptable.

3.19 **Dog Runs.** All dog runs must be within approved building envelopes.

3.20 **Signs.** Unless otherwise prohibited by law, no signs of any kind shall be displayed to the public view without approval of the-ARC except as may be used by Declarant for sale of Lots. Any "For Sale" or "For Lease" signs not more than 18" or 24" shall not require ARC approval. Design standard of signs may be established by the ARC in the Guidelines from time to time.

3.21 **Temporary Construction Facilities and Site Maintenance.** Temporary construction items required to be on-site within the approved building envelope prior to the beginning of construction shall include: water, electric, toilet and dumpster. The general contractor shall maintain the construction site in an orderly condition, and all

construction materials shall be located within the building envelope during the construction process.

3.22 Financial Responsibility. The ARC may, as a condition of approval of any construction on any Lot, require proof of the applicant's financial ability to pay for the entire cost of proposed work.

3.23 No Waiver of Future Approvals. The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Declarant, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently of additionally submitted for approval or consent.

3.24 Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them for the performance of their duties hereunder

3.25 Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows.

3.25.1 The ARC or its representatives may at any time inspect any improvement for which approval of plans is required under this Declaration provided, however, that the ARC'S right of inspection of improvements for which plans have been submitted and approved shall terminate sixty (60) days after such work of improvement shall have been completed and the respective Owner shall have give written notice to the ARC of such completion. The ARC rights of inspections shall not terminate pursuant to this paragraph in the event that plans for the work of improvement have not previously been submitted to and approved by the ARC. If, as a result of such inspection, the ARC finds that such improvement was done without obtaining approval of the plans therefore or was not done in compliance with the plans approved by the ARC, it shall notify the Owner in writing of failure to comply, specifying the particulars of noncompliance. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

3.25.2 If upon the expiration of the sixty (60) days from the date of such notification the Owner shall have failed to remedy such noncompliance, upon notice and hearing, the ARC shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost correction or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the ARC ruling is given to the Owner. If the Owner does not comply with the ARC ruling within such period, the ARC, at it's option, may record a Notice of Noncompliance in the office of the La Plata County Clerk and Recorder and may thereafter peacefully remove the non complying improvement or otherwise peacefully remedy the noncompliance, and the Owner shall reimburse the ARC,

upon demand, for all expenses, including reasonable attorneys' fees incurred in connection therewith. If such removal or remedy may not peacefully be accomplished, the ARC may take such legal action as may be required to accomplish the acts herein authorized. If expenses are not promptly repaid by the Owner to the ARC or, in any event, if the ARC is required to take Court action, the ARC shall levy an assessment against such Owner for reimbursement as authorized in this Declaration for Common Expenses. The ARC shall have all remedies and rights in such proceedings as are otherwise granted to it in this Declaration.

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ARTICLE 4 LOT OWNER CONTROLS

4.1 **Weed Control.** In order to comply with the Weed Control Statutes of the State of Colorado, it shall be the duty of the Owners to adopt and implement any recommendations that are made by the La Plata County Weed Control Officers pursuant to the Weed Control Statutes of the State of Colorado to control and eradicate Canadian thistle or other noxious weeds which may subsequently be identified on the Property.

4.2 **Fire Control.** Each individual Owner will be required to meet the home fire protection guidelines as determined by the Colorado State Forest Service. Any individual owner who fails to reasonably meet these guidelines grants authority to the ARC to undertake any and all work necessary to meet such guidelines. Owner further agrees to make payment to the ARC at completion of work. Failure to pay when work is completed shall create lien rights with costs and attorneys' fees in favor of the ARC.

4.3 **Tree and Bush Preservation Control.** Except for fire hazards, maintaining or improving plant health and vigor or for removal of insect or disease-affected vegetation, for approved driveways or for construction of approved structures, no indigenous trees or perennial bushes may be cut or removed.

4.4 **View Control.** No vegetation or other obstruction shall be planted or maintained upon any Lot outside of the Building Envelope in such location or of such height as to unreasonably obstruct the view from any other Lot in the vicinity thereof

4.5 **Utility Lines Control.** Electric, telephone, television, radio and other utility lines shall be placed underground when extended from the street or Lot line to any structure on a Lot. All trenching routes shall be approved by ARC to avoid damage to trees and plants, and all trenches shall be fully compacted and shall contain not less than four (4) inches of indigenous topsoil placed in the top of the trench to the end that the prior natural state of the area trench is replicated. Each Owner shall be responsible for supplying power, electrical service, telephone hook-up and/or cable television from their Lot line to their individual dwelling house at the Owner's sole expense.

4.6 **Drainage and Grading Control.** No action affecting drainage direction or affecting other property and no grading of the land surface shall be done within the Subdivision except upon variance as hereafter authorized. (See Section 6.6) Application

for such variance shall be accompanied by such drawings, plans or photographs as may be reasonably required to show the nature of the proposed cutting, removal or grading. It is desirable to preserve the natural character of the area as therefore to limit cutting, removal and grading to that which is necessary to the reasonable use and enjoyment of the Property within the Subdivision. Approval of the applications for variances within the contemplation of this Section may be conditioned upon installation of appropriate drainage facilities to be installed at the applicant's expense.

4.7 **Address Control.** House numbers shall be posted by the Owner so as to be readily visible from the road as prescribed by the ARC.

4.8 **Thompson-Epperson Ditch Water Control.** Lots 1 and 2 each have a ditch that provides for irrigation water delivery and are referred to collectively as the "Water Lots". Lot 1 is allocated 0.3 shares and Lot 2 is allocated 0.3 shares in the Thompson-Epperson Ditch Company. Lot 1 has a feeder ditch and head gate that provides for irrigation water delivery to the southwest corner of Lot 1 continuing off Lot 1 to adjacent properties. The ditch, along with the feeder ditch on Lot 1, has a 20-foot easement for operation and maintenance. Thompson-Epperson Ditch Company employees, as well as the owner of the adjacent properties supplied by the feeder ditch, has the right to use the easement as needed for ditch and water maintenance. Owners cannot obstruct or change the ditch right-of-way. Any fence construction must provide adequate gates for entry onto the ditch easement.

Concurrent with the Thompson-Epperson Ditch Company, Water Lot Owners can install head gates to provide water to the Water Lots. No water may be taken directly from the ditch. With approval from the Thompson-Epperson Ditch Company, irrigation water may be pumped from a small pond. Both Lots 1 and 2 have an underground utility pipe that runs under the ditch easement for water delivery above the ditch. Utility lines and piping for water pumps must be underground and follow La Plata County code requirements. Water pumps must be concealed from view. Each Water Lot Owner is responsible for maintaining the ponds, underground utilities and pumps in a workmanlike manner. Control of the irrigation water from the head gates is the responsibility of the Water Lot Owners. Any irrigation water damage to other property Owners, road and utility easements or the Thompson-Epperson Ditch are the responsibility of Water Lot Owners.

Irrigation water rights are controlled by the Thompson-Epperson Ditch Company. Lot 1 and 2 Owners are responsible for Thompson-Epperson Ditch water shares, water dues and assessments. The availability of the water supply is determined by the Thompson-Epperson Ditch Company

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ARTICLE 5 RESTRICTIONS

5.1 **Commercial Activity Prohibited.** Except for sales offices and activities of Declarant related to the property, no business or commercial uses may be made on the premises of any residential Lot provided, however, that permission to operate home businesses such as are generally defined as "cottage industries" exemplified by sewing

goods, Tupperware sales, craft objects, carvings, stained glass, photography, paintings, woodworking, specialty advertising sales, and professional home offices may be granted upon request by the Declarant upon an express finding that such home business activity will not unreasonably interfere with the peace and quiet of the neighborhood, significantly increase traffic or create a safety hazard. These Covenants shall preclude use of residential Lots as a base of operations for businesses that store inventories or goods outside of the residence. Example of businesses that might fall in this category are contractors who store supplies for future use such as building contractors storing scaffolding, ladders, lumber, sheet-rock, etc., and other goods which would create visual intrusion on the neighborhood.

5.2 **Setback.** On residential Lots, no structure of any kind shall be placed outside the building envelope set forth in the recorded plat for this Subdivision. Notwithstanding the setback designations herein specified, the ARC may, at the time of initial plan review, impose greater or allow lesser setback requirements in the event of circumstances unique to individual situations if required for safety or aesthetic or other reasons.

5.3 **Residential Use.** Each residential Lot shall be used for one single-family private dwelling only per Lot, designed for the occupancy of and by one family except that guest quarters and separate living quarters occupied only by persons not paying rent to Owners may be constructed upon approval by the ARC.

5.4 **Temporary Structures.** Without written consent of the ARC, no structures of a temporary character, tent, yurt, shack, basement, trailer, barn, garage or other outbuilding shall be used on any part of said Subdivision, either temporarily or permanently. Notwithstanding anything herein to the contrary, any Owner who keeps livestock on his Lot shall be allowed to construct a barn to house such livestock subject, however, to all of the terms and conditions and restriction set forth herein.

5.5 **Repairs.** Any building or improvement which has been damaged by fire, or other casualty the same to be unsightly, shall be repaired or removed within six (6) months from the date of such casualty. All structures, buildings and improvements erected on Lots within the Subdivision shall at all times be kept in good repair and attractive.

5.6 **Abandoned Vehicles, Vehicle Screening and Parking.**

5.6.1 No abandoned vehicles shall be permitted on any Lot. A vehicle shall be considered abandoned if it remains non-operative for a period of thirty (30) days. In such instance, the ARC shall send a letter requiring removal of the vehicle within thirty (30) days from the receipt of the letter, and if the Owner does not comply within that period of time, the ARC may have the vehicle towed away and stored at the violator's expense.

5.6.2 Parking of vehicles on the roads and streets within the subdivision is prohibited. Further, other than automobiles, all vehicles, including but not limited to recreational vehicles, cycles, campers, motor homes, horse trailers, and snowmobiles, shall be parked in a garage or carport attached to the garage or

screened from view from streets, roads, open space, and neighboring property by approved structures, natural vegetation or terrain.

5.6.3 Motor homes, recreational vehicles and campers may be hooked up to an Owner's water or sewer system, and they may be occupied by Owner's guests on a temporary basis and in any event for not more than 21 days in any calendar month or as approved by the ARC.

5.7 **Burning and Trash Disposal.** Trash or garbage shall not be permitted to accumulate upon any Lot except in properly covered containers which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting therefore. Solid waste disposal is the responsibility of the individual Lot Owner or occupant. Open burning of trash shall not be permitted. This covenant shall not be construed to prohibit fireplaces or barbecue pits or open cooking on Lots. The Association may contract with a trash removal service within the Subdivision; however, the expense for such service will be the responsibility of each Owner who elects to participate in the service. Use of coal, other than in the event of a National Energy Emergency, as a heat source in fireplaces, furnaces and stoves is prohibited.

5.8 **Livestock and Pets.**

5.8.1 Horses, domestic cattle and household pets are permitted with restrictions. Owners may keep not exceeding five (5) horses and five (5) domestic cattle and generally recognized house or yard pets. No business or commercial activity related to horses, domestic cattle and household pets shall be undertaken for any purpose. 4H and FFA horse and domestic cattle projects are permitted providing they are within the restrictions.

5.8.2 All horses, domestic cattle and household pets must be fenced in and kept within the Owner's control, both on and off the Owner's Lot. Within the Owner's control shall mean on a leash when not on the Owner's Property and an animal shall not be allowed to disturb neighbors or harass wildlife by barking, whining or making other noises. Except for bird feeders, Owners and their guests shall not provide feed and/or water to wildlife except such as is naturally available within the Subdivision.

5.8.3 No business or commercial activity related to agriculture shall be undertaken for any purpose.

5.9 **Hunting, Shooting and Target Practice.** No hunting, shooting or target practice shall be conducted on the Properties whether by use of guns, bow and arrow, slingshot or otherwise except as may be approved and permitted by the ARC which may promulgate reasonable rules and regulations in connection therewith.

5.10 **Mining and Drilling Activities Prohibited.** Any use of the surface of any Lot within the Subdivision for water, oil, gas, mineral, geothermal or oil shale exploration,

development, mining or drilling activities of any kind whatsoever is expressly and absolutely prohibited.

5.11 **Offensive Activity.** No noxious or offensive activity or odors shall be permitted or carried on at any Lot nor shall anything be done or placed therein which may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the enjoyment of their Lots or in the property of the Association. No lights shall be emitted from any Unit which are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Unit which is noxious or offensive to others. C.R.S. 25-12-101 governs noise abatement.

5.12 **Antenna Prohibited.** Radio antenna, television antenna and small satellite dishes may be installed with the consent of the Declarant. Any other antennae are prohibited.

5.13 **Exterior Clothes Lines Prohibited.** No exterior clothes lines or dryers shall be erected, installed or maintained on any Lot or on any structure thereon.

5.14 **Exterior Tanks / Cisterns Prohibited.** All large gas, propane, and butane tanks or water storage cisterns must be permanently installed underground. Installations must comply with applicable county, state, or federal regulatory requirements.

5.15 **Sewage Disposal.** No sewage collection system or sewage disposal shall be installed or used on any Lot unless and until such system is designed, constructed, and located in conformity with the then existing standards, regulations and criteria employed by the La Plata County Sanitarian acting under the direction and within the regulations of the State of Colorado. No construction of any such system shall be undertaken until the plans, specifications and design therefore have received such approval, and no such system shall be placed in use until the completed construction has received final governmental approval. If and when community sewage disposal is feasible and installed, the Owners shall immediately connect to the community system and pay all applicable fees and costs. Notwithstanding anything herein to the contrary, absolutely no lagoons are to be used for sewage purposed.

5.16 **Insurance Rates.** Nothing shall be done or kept in the Properties which will increase the rate of insurance maintained as a Common Expenses without the approval of the ARC, nor shall anything be done or kept in the Properties which would result in the cancellation of such insurance or which would be in violation of any law.

5.17 **No Further Subdivision.** No Lot may be further subdivided nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the consent of the original Owners to the Property, the Declarant, which consent shall be the absolute right of said original Owners, their successor, heirs or assigns.

5.18 **Declarant's Rights.** Nothing in this Declaration shall be construed to limit or interfere with the Declarant's development of the Property, construction of the amenities or the construction of utilities or other facilities.

ARTICLE 6 GENERAL PROVISIONS

6.1 **Enforcement.** These covenants, conditions and restrictions may be enforced by separate action by any individual Owner. In the event that any covenant shall be violated, the offending party shall be notified in writing by certified mail, return receipt request, by any enforcing party as defined above. Except as otherwise expressly set forth herein, such notification shall identify the covenant which has been violated and shall notify the offending party that he shall have a maximum of five (15) days to remedy such violation, or alternatively, in the event such violation cannot be remedied within five (5) days, he shall have a period of five (5) days within which to initiate procedures reasonably calculated to remedy such violation, and shall thereafter be required to diligently pursue such action until the violation has been remedied. In the event the violation continues and no action is taken to remedy such violation within the aforementioned five (5) day period, enforcement may be by any proceeding at law or in equity, and may seek an order to restrain the violation or recover damages, inclusive of reasonable attorney's fees. Failure by any Owner or Member to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

6.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

6.3 **Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years. This Declaration may be amended during the first six (6) years after recording by an instrument signed and notarized by not less than fifty percent (50%) of the Lot Owners, thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. For purposes of this Section, Declarant and its assigns and successors are considered Lot Owners as to Lots held by Declarant, whether for development, investment or resale. Notwithstanding the foregoing provisions permitting amendment of this Declaration, it is recognized and acknowledged that amendments may be precluded, codependent, and/or superseded by current county, state, or federal regulatory requirements or water districts and utility municipalities

6.4 **Assignment of Rights to Association and Annexation.** Additional property may be annexed to the Properties by Declarant or its successor or assigns. Any group of Owners may assign the benefits of these rights to an association or special district representing the interests of said Owners whereupon the assigning Owners shall be released of any and all personal liability under this instrument.

6.5 **Rules, Regulations and Compliance Sanctions.** The Declarant shall have authority to adopt reasonable rules and regulations for the purposes of ensuring compliance with this Declaration and interpreting any of the provisions hereof.

Compliance sanctions may also include the imposition of fines to penalize infractions of such rules and regulations.

6.6 **Variations.** The Declarant shall have the authority to grant variations from the terms and conditions contained in this Declaration, to the extent permissible under the law so long as such variations do not result in conditions which are inconsistent with the general concept, harmony and values within the Subdivision.

6.7 **Plat Amendment.** Declarant or its successors or assigns reserves the absolute right to amend or add to the plat filings from time to time as may be authorized by the applicable governmental entity.

6.8 **Easements.** Easements for the installation and maintenance of utilities and drainage facilities over the ten (10) feet adjacent to the boundaries of each Lot as set forth on the Plat, are hereby reserved by Declarant for itself and its assignees. No conveyance of a Lot by Declarant shall be deemed to be a conveyance or release of the foregoing easement in the absence of a specific expression in writing and properly acknowledged of intent to do so. Declarant expressly reserves for the benefit of all Properties reciprocal easements for access, ingress and egress for all Owners and Declarant to and from their respective Lots for the purpose of installation and repair of utility services, drainage of water over, across and on adjacent Lots resulting from the normal use of adjoining Lots and for necessary maintenance and repair of any improvement. Such easement may be used by the Declarant, its successors, assigns, and all Owners, their guests, tenants and invitees.

6.9 **No Representations.** Except as expressly set forth herein, Declarant makes no representations regarding use of the Property or within the Subdivision and the restrictions placed thereon by these Covenants or by the County of La Plata or by other governmental authorities. Further, Declarant makes no representations as to the existence, preservations or permanence of any view from any Lot.

6.10 **Notices.** Each Lot Owner shall register his mailing address with all other Lot Owners immediately upon acquisition of an ownership interest or a change in ownership in any Lot. Any notice required or permitted under this Declaration shall be deemed sufficiently given or served if sent by the U.S. mail, postage prepaid, to the other Lot Owners at the last know address unless otherwise provided for herein. Any Lot Owner may, by like written notice at anytime, establish a different address for notice purposes.

6.11 **Singular and Plural.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

6.12 **Cumulative Remedies.** Each remedy provided herein is cumulative and not exclusive.

