

**DECLARATION OF PROTECTIVE COVENANTS**

**OF**

**RED MOUNTAIN RANCH**

THIS DECLARATION AND AGREEMENT is executed the 9<sup>th</sup> day of January, 1996, with an effective date of January 12, 1996, by Billy Joe Lacy, Trustee, hereafter termed "Declarant".

**ARTICLE 1.**

**STATEMENT OF PURPOSE OF DECLARATION**

**Section 1. Ownership of Property.** Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado described on attached Exhibit A.

**Section 2. Declaration of Covenants.** Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall affect the Property. This Declaration of Protective Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Lots, tracts or parts thereof, their heirs, successors and assigns and their tenants, employees, guests and invitees and shall inure to and be for the benefit of each Owner of a Lot within the Property.

**Section 3. Statement of Purpose.** This Declaration of Protective Covenants is imposed for the benefit of all Owners and future owners of Lots, parcels and areas located within the Property and to provide for the preservation of values of the Property and to provide and to establish the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Owners of Lots.

**Section 4. Enlargement of Property.** Declarant hereby reserves the right to enlarge the Property by the addition of additional real property owned by Declarant or by any other person, by the recording in the records of Gunnison County, Colorado of a certificate or certificates setting forth the legal description or descriptions of the real property so added to the Property together with a plat of such additional Property. Such certificate may be incorporated into the plat of such additional Property. Such certificate may also set forth any specific provisions that pertain only to the additional real property. The recording of the certificate or certificates shall subject the Property, as so enlarged, to all of the terms and conditions of these Protective Covenants, except only as may be modified by such certificate or certificates.

Section 5. Common Interest Community. Declarant further declares the Property to be a Planned Community under the Colorado Common Interest Ownership Act.

## ARTICLE 2.

### DEFINITIONS

The following terms and words shall have the following definitions:

Section 1. "Association" shall mean the Red Mountain Ranch of Gunnison, Inc., a Colorado non-profit corporation, or any successor thereof charged with the duties and obligations set forth herein.

Section 2. "Association Documents" shall mean this Declaration of Protective Covenants, the Articles of Incorporation and Bylaws of the Association, any amendments thereto, and any future design guidelines, rules and regulations or policies adopted by the Association.

Section 3. "Assessments" shall mean annual, periodic, special or default assessments levied pursuant to this Declaration to provide the funds required to meet the obligations of the Association.

Section 4. "Barn" shall mean an accessory building designed to enclosed livestock and to store agricultural products, feed, supplies and agricultural and livestock equipment and property and any incidental use associated therewith.

Section 5. "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association.

Section 6. "Building" shall mean a building or structure, or any similar type of improvement situate and located on a lot or parcel of land within the Property.

Section 7. "Building Site" shall mean the envelope or area within a lot or tract where a building or other improvement shall be located, always subject to the prior written approval of the Board of Directors. The location of a Building Site constitutes no warranty or assurance that the Building Site contains water or is free of constraints.

Section 8. "Common Area" shall mean all real property in which the Association owns any interest or has a leasehold interest for the common use and enjoyment of its members, as

designated on the recorded plat. Such interest may include, without limitation, estates in fee, estates for a term of years, leasehold estates, or easements. Each and every Common Area may have a restricted use or enjoyment and may be designated for a specific use for such Common Area.

**Section 9.** "Family Residence" shall mean the primary residence on any Lot designed for occupancy by the owner of the Lot.

**Section 10.** "Garage" shall mean an accessory building or an accessory portion of a residence designed for the storage of one or more motor vehicles.

**Section 11.** "Guest House" shall mean a separate residence, either attached or detached from the family residence, designed for occupancy either by the owner of the Lot or the owner's guests or caretaker.

**Section 12.** "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior color or shape, excavation, and all other site work including without limitation grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement constructed or completed on the Property.

**Section 13.** "Lot" shall mean a tract or lot as shown on the plat of Red Mountain Ranch and any subsequent plat, but not including common areas.

**Section 14.** "Maintenance Fund" shall mean the fund created by assessments and fees levied pursuant to this Declaration to provide the Association with funds it requires to carry out its duties hereunder.

**Section 15.** "Member" shall mean any person holding membership in the Association whose land is subject to all of the terms and provisions of this Declaration. "Associate Member" shall mean any person whose land is subject to some, but not all, of the terms and provisions of this Declaration.

**Section 16.** "Mortgage" shall mean any mortgage, deed of trust or other document pledging a lot or interest therein as security for the payment of any indebtedness. "First Mortgage" shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.

**Section 17.** "Open Space" shall mean all of the Lot except for any building or structure located thereon and shall include, but is not limited to, lawns, gardens, walkways, sidewalks, parking areas, driveways and outdoor living or recreational space.

**Section 18.** "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot and, where appropriate, the record owner of any other land which is subject to all or some of the provisions of this Declaration; provided, however, that prior to the first conveyance of any Lot for value after this declaration, the Owner shall mean the Declarant.

**Section 19.** "Plat" shall mean the plat of Red Mountain Ranch and all subsequent plats as filed in the records of Gunnison County, Colorado, which are subject to these Protective Covenants, and as the same may be amended, enlarged or revised from time to time and affecting the Property.

**Section 20.** "Property" shall mean and include all of the Property subject to this Declaration.

### ARTICLE 3.

#### USE OF LOTS

**Section 1.** Residential Use. All Lots shall be used exclusively for residential purposes. Each Lot shall have no more than one Family Residence, one attached or detached Guest House, one attached or detached Garage and one Barn. Such Family Residence Guest House, Garage and Barn shall be contained in no more than three (3) buildings. No additional Buildings shall be permitted. No more than one water well shall be installed on any Lot. No time-sharing shall be allowed.

**Section 2.** Building Site. The Family Residence, Guest House, Garage and Barn shall be located entirely within the designated Building Site of the Lot. On condition that the Owners of all adjacent Lots consent in writing, upon the prior written approval of the Board, the Building Site may be relocated by Declarant or by the Owner of the Lot. A Lot separated only by a road shall be deemed adjacent for purposes of this provision.

**Section 3.** Guest House. One Guest House, either attached or detached from the Family Residence, and containing not more than 1,500 square feet of gross residential floor area (GRFA) shall be allowed on each Lot.

The Guest House shall at all times be owned by the Owner of the Family Residence and the Lot upon which it is situate and



neither the Guest House nor the Family Residence shall be commercially rented or leased separate and apart from a rental or lease of the entire Lot, except that the Guest House may be rented to a caretaker of the Family Residence and Lot. At no time shall a Guest House be used as the primary residence of a person or family other than the Owner of the Lot and the family of the Owner or a caretaker and the family of a caretaker employed by the Owner of the Lot.

Any detached Guest House shall only be served by and connected to the same water and sanitation facilities designed for and serving the Family Residence on the Lot and access to the Guest House shall only be by the same access driveway as provides access to the Family Residence.

The Gunnison County Land Use Resolution requires a Land Use Permit to construct a Guest House upon any Lot.

**Section 4. Barn.** One barn with an appropriately fenced corral or corrals shall be allowed on each Lot. All barns throughout the Property shall have uniform exterior siding and color as approved by the Board. All corrals throughout the Property shall be constructed of wood or other materials approved by the Board in a uniform style as approved by the Board. No wire fences shall be allowed.

**Section 5. Approval of Use.** No Improvement shall be constructed on any Lot except only as approved by the Board of Directors.

**Section 6. No Commercial Use.** No commercial or business enterprise of any nature shall be allowed or permitted on any Lot; provided, however, that the Owner of the Lot may be permitted to rent or lease the Family Residence and/or Guest House (subject to the restrictions set forth in Article 3, Section 3) and to conduct a home occupation, artistic or literary activity on any Lot upon the prior approval by the Board as to such occupation or activity. No such home occupation or artistic or literary activity shall diminish the residential character of the subdivision. No home occupation involving client or customer visits to a Lot shall be allowed.

**Section 7. Rules and Regulations.** The Board of Directors shall have the authority to promulgate and enforce Rules and Regulations and/or design guidelines regarding the Property and its use on condition that such rules and regulations and/or design guidelines are not inconsistent with this Declaration.

#### ARTICLE 4.

##### **ARCHITECTURAL REVIEW AND APPROVAL**

**Section 1. Architectural Review Board.** The Board of Directors of the Association shall be the Architectural Review Board.

**Section 2. Review and Approval.** No Family Residence, Guest House, Garage, Barn, Building or other Improvement shall be commenced, constructed, erected, altered, taken apart or maintained upon any Lot, nor shall any landscaping, excavation or tree clearing be done, nor shall any exterior addition, change, painting, decoration or alteration be made, until the plans and specifications thereof have been submitted to and approved in writing by the Board in the manner hereafter set forth.

**Section 3. Submittal Procedure.** Prior to the commencement of any such work, complete plans shall be submitted to the Architectural Review Board for approval. The Board shall determine when a submission is complete. The submittal for approval shall include, at a minimum, the following documents:

3.1 A plot plan showing the location of any Building(s) or Improvement, landscaping, corrals, fences, access driveway, parking area and any terrain or structure features, such as large rocks, trees, ponds, patios, fences, utility lines, storage areas or decks.

3.2 Complete plans and specifications for the Building(s), and including a roof plan, in sufficient detail to verify and confirm the size, type and dimensions of the Building(s), mass and height of the Building(s), all design features thereof, all exterior elevations showing all sides of the Building(s), all floor plans and the types of construction and materials. All foundations shall be designed by a licensed engineer or architect.

3.3 Samples of the exterior materials and color schemes for the Building(s).

3.4 A detailed landscape, drainage and grading plan, including topography and contour lines.

**Section 4. Purpose of Review.** The Board shall consider the suitability of the proposed Building(s) and in particular the harmony of the Building(s) with the environment, the effect of the Building(s) on the utilization and view of the Lot and surrounding Lots and property and the placement of the Building(s) with respect to topography, drainage, snow removal, ground elevations, existing natural and terrain features and the visibility of any structure from Colorado Highway 135.

**Section 5. Hearing.** The Board shall, within sixty days of receiving an application for approval with all accompanying data, hold a hearing on such request, subject to Section 10 of Article 4. The Board may approve, disapprove or approve with conditions any request submitted to it. The decision of the Board shall be in writing. In the event that the Board fails to take action within ten days after the date of the hearing, or fails to hold such hearing within sixty days after receiving an application, the application shall be deemed to have been approved.

**Section 6. Notice of Hearing.** The Applicant, and any person on his behalf, may attend the hearing on the application for approval and submit information in support of the application. Notice of the hearing shall be given in writing to all members of the Association and all members shall have the right to be present at the hearing or to submit written comments.

**Section 7. Quorum.** A majority of the Board shall constitute a quorum and all decisions of the Board shall be by a majority vote of the directors present.

**Section 8. Final Decision.** The decision of the Board shall be final, subject only to the right of judicial review as provided by the laws of the State of Colorado. The Board shall indicate in the event of denial, the reasons why the application was denied and grant to the applicant an opportunity to resubmit with the revisions and corrections that would bring the application into conformity with the requirements of the Board and Association Documents.

**Section 9. Rules and Regulations.** The Board may adopt such design guidelines and rules and regulations which are consistent with this Declaration as it deems appropriate to govern its proceedings and the use of Lots.

**Section 10. Application Fee.** A reasonable application fee will be required for any approval request. If the Board deems it appropriate to incur any professional or other expense in connection with an application, the Owner of the Lot to which the application pertains shall be obligated to pay such expense prior to the Board's decision on the Owner's application.

**Section 11. Building and Other Permits.** In addition to the requirement for approval by the Board, each owner is responsible for obtaining all approvals, licenses and permits as may be required by Gunnison County, Colorado and any other entity or district having jurisdiction over the Lot prior to the commencement of construction. A Gunnison County Land Use Change Permit may be required for improvements to be constructed on Lots within Red Mountain Ranch.

## ARTICLE 5.

### **DESIGN REQUIREMENTS**

**Section 1. Design Requirements.** Any Family Residence, Guest House, Garage, Barn, Building or Improvement on any Lot shall comply with the design requirements of this Article and of all design guidelines which may be adopted by the Board.

**Section 2. Building Site.** Any Building or Improvement shall be constructed entirely within the designated Building Site for the Lot.

**Section 3. Setback.** Except as otherwise approved by the Board, Buildings shall be set back from any Lot line at least 150 feet, unless any part of a Building Site is closer than 150 feet from a Lot line, in which event construction within the Building Site shall be allowed. The Board shall have discretion to increase or decrease the setback for good cause.

**Section 4. Uniform Building Code.** All Buildings and Improvements shall meet all of the requirements, including fire protection standards, of the Uniform Building Code, and all other applicable codes, rules and regulations.

**Section 5. Minimum Floor Area.** The gross residential floor area (GRFA), determined in the manner provided by the Uniform Building Code, shall be not less than 1,500 square feet for any Family Residence, unless otherwise approved by the Board of Directors. The Board shall have the discretion to require a higher quality of materials and finish for any Family Residence with a gross residential floor area of less than 2,000 square feet.

**Section 6. Maximum Floor Area.** The maximum gross floor area of all Buildings on a Lot, determined in the manner provided by the Uniform Building Code, shall not exceed 7,500 square feet in the aggregate. Floor area of each building shall be limited to the following:

<u>Building Type</u>	<u>Maximum Floor area of Building</u>
Family Residence	5,000 square feet
Guest House	1,500 square feet
Garage	1,000 square feet
Barn	1,500 square feet

**Section 7. Height.** No Building shall be higher than 2 stories above grade. The maximum height of any Building shall be 35 feet. The height of a Building for the purpose of this Section shall be measured from the lowest point where grade meets the foundation to the highest point of the roof, as determined by the Board.

**Section 8. Roofs.** Roof material and design shall be approved by the Board. Any metal roof must have a dark, non-reflective color finish approved by the Board.

**Section 9. Exterior Building Material and Style.** All Buildings shall be built in an exterior style and with colors and materials harmonious to the area and similar in style, color and materials to like kind Buildings in existence in the surrounding areas. No exterior walls shall consist of sheet metal, metal material, T-111 or any similar material, composition shingles or unplastered cement or similar block. All colors of exterior walls and roofs shall be natural or earth tone colors to blend with the natural surroundings, except that colored trim may be allowed upon approval of the Board.

**Section 10. Service or Utility Areas.** All service or utility areas or yards and including garbage cans and trash storage areas shall be screened from view on all sides and protected from bears, wildlife and other animals.

**Section 11. Exterior Lighting.** All exterior lighting shall be designed and directed in a manner approved by the Board. All exterior lighting or illumination on any Lot shall be so located, placed, shielded and designed to be architecturally and aesthetically keeping with the Buildings and surroundings and to have minimum visual impact on any other Lot or any nearby land. No unsheathed exterior lighting shall be allowed. No mercury vapor or similar lighting shall be allowed.

**Section 12. Antennae.** No exterior radio, television, microwave or other antennae or antennae dish or signal capture or distribution device shall be permitted or installed on any Lot unless it is entirely screened from view on all sides and such screening shall be in keeping with the terrain and environment.

**Section 13. Wood Burning Devices.** The maximum number of woodburning devices per Lot shall be two. Such wood burning devices shall be designed to reduce polluting emissions and shall comply with all applicable rules and regulations of Gunnison County. All stoves shall comply with Colorado Regulation No. 4 of the Colorado Air Quality Control Commission. All fireplaces shall be Rumford masonry fireplaces, or equivalent.



**Section 14. Water Sprinkler Systems.** It is recommended, but not required, that all residential Buildings situate upon the Property have installed and maintained water or chemical sprinkler systems of a type and design, including water capacity and water pressure, sufficient for fire protection of the Building.

**Section 15. Wildfire Safety.** In the design and location of any Building within the Building Site, a wildfire safety zone will be utilized following the recommendation of the Colorado State Forest Service as contained in the "Wildfire Safety Guidelines for Rural Homeowners" by J. Bruce Coulter, Colorado State Forest Service, Colorado state University, 1980, or any later edition then in effect.

**Section 16. Stock Drive Easements.** No Building or other Improvement shall be constructed within any stock drive easement.

#### **ARTICLE 6.**

#### **CONSTRUCTION AND MAINTENANCE REQUIREMENTS**

**Section 1. Excavation.** No excavation shall be made on any Lot, except in connection with a building approved in accordance with this Declaration of Protective Covenants.

**Section 2. Electrical and Telephone Service.** All electrical and telephone service shall be installed underground.

**Section 3. Water and Sewage Disposal Systems.** All Buildings designed for human occupancy shall be connected with individual water and sanitation facilities. All individual water systems and sewage disposal systems shall be constructed, installed and maintained within the Building Site in compliance with all applicable rules and regulations of any governmental entity having jurisdiction over the Property. All sewage disposal systems shall comply with all applicable rules and regulations of Gunnison County and the State of Colorado.

**Section 4. Signs.** No sign of any kind shall be displayed on any Lot, except only a sign not to exceed four square feet identifying the Owner and/or address of the Lot or a sign, not to exceed four square feet, advertising the property for sale. For Sale signs shall be of uniform design as approved by the Architectural Review Board.

**Section 5. Drainage.** No Owner shall do or permit any work, construct any improvements or do any landscaping which shall alter or interfere with the natural drainage for the Property, except to the extent the same is approved by the Architectural Review Board and as authorized by any surface water discharge easement.

**Section 6. Temporary Structures.** No temporary structure, mobile home, modular home, trailer house, travel trailer or R.V. vehicle shall be permitted on any Lot, except only as may be determined to be necessary during the period of construction of the Family Residence and as specifically approved by the Board. Provided, however, a single motorhome, travel trailer or similar vehicle of any Owner or an Owner's guest or a tent for camping shall be permitted within the Building Site of a Lot for a period of time which shall not to exceed 30 days per year.

**Section 7. Continuity of Construction.** All construction, reconstruction, alterations or improvements shall be prosecuted diligently to completion and shall be completed within twelve months of the commencement thereof, unless an exception is granted by the Board for good cause.

**Section 8. Landscaping.** The Lot and all landscaping thereon shall be maintained in its natural condition to the extent possible. Lawns and artificial landscaping shall be minimal and in no event shall an irrigated lawn and garden exceed 1,000 square feet. No trees shall be cut or removed from any Lot except only (1) as required to permit ingress and egress to and from the Building Site, (2) to clear the actual construction site for any Family Residence, Guest House, Garage or Barn, (3) to remove any diseased or dead trees, (4) to remove any tree that poses a danger to any Building, (5) as required for Wildfire Safety and (6) for any recreational or other easement.

**Section 9. Trash.** No trash, ashes, garbage or other refuse shall be allowed to accumulate or placed on any Lot or area within the Property. 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 the public view and from the wind and protected from bears, wildlife and other animals and other disturbance. All Lots 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.

**Section 10. Abandoned or Inoperable Vehicles.** Abandoned or inoperable automobiles or motor vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any Lot, except in a fully enclosed garage. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own power for a period of one (1) month or longer, excluding vehicles parked by Owners while away from the Lot. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such

vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner.

**Section 11. Noise.** No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the improvements on any Lot, shall be placed or used on any Lot. Except for a brief warning bark when a person approaches the Lot, no dogs shall be allowed to bark, whine or otherwise make noise which disturbs those on nearby Lots.

**Section 12. Nuisance.** No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted upon the Property which is offensive or detrimental to any other part of the Property or its Owners or occupants; provided, however, that this Section shall not apply to any reasonable, usual noise or other activity involving construction of any improvements approved by the Board of Directors.

**Section 13. Hazardous Activities.** No activities shall be allowed or conducted on the Property which are or might be unsafe or hazardous to any person or property. Such hazardous activities include, but are not limited to hunting, setting off fireworks and discharging firearms, bows and arrows, explosives, air or pellet guns or any similar devices. No outside open fires shall be permitted on any Lot unless contained within a cooking or barbecue unit or grill.

**Section 14. Fences.** No fences, walls or barriers shall be constructed, erected or maintained on any Lot except for corrals within the Building Site approved by the Architectural Review Board. The Association shall be responsible for the expense of maintaining that part of the perimeter fencing around the Property not maintained by the owner(s) of adjacent land. In no event shall the Association's share be less than 50% of such fence maintenance expense.

**Section 15. Snowmobiles.** Snowmobiles, snowcats, snowtractors or other similar motorized vehicles for travel over snow shall not be allowed, maintained or operated upon the Property except only:

15.1 To set and maintain cross country ski courses.

15.2 For access to and from a residence during the winter months, not for use on a Lot (except on a driveway for access).

15.3 To access an area off the Property where snowmobiles are permitted.

15.4 Between 7 A.M. and 10 P.M.

**Section 16. Motorcycles and All Terrain Vehicles.** Motorcycles, all terrain vehicles and other similar or noisy vehicles shall be used only:

16.1 For access to and from a residence.

16.2 On roads, not on Lots (except on driveways for access).

16.3 Between 7 A.M. and 10 P.M.

**Section 17. Parking.** All motor vehicle parking shall be in designated parking areas approved by the Architectural Review Board. Tractors, snowmobiles, motorcycles, recreational vehicles, trailers and other similar vehicles shall be parked and/or stored within a fully enclosed garage at all times.

**Section 18. Use of Roads.** Any person using a road within the Property must be accompanied by a Member or Associate Member at all times, except to travel between Colorado Highway 135 and a Lot. No Member or Associate Member of the Association shall grant permission to use a road within the Property in violation of the provisions of this paragraph.

## **ARTICLE 7.**

### **ANIMALS**

**Section 1. Domestic Household Pets.** Not more than two domesticated household pets of the same species shall be allowed, kept or maintained on any Lot.

**Section 2. Confinement of Animals.** All animals shall be kept confined to the Owner's Lot or attached to a leash or other suitable control device at all times. The Owner of any animal and/or the Owner of any Lot which the animal is visiting or staying on shall at all times be personally liable and responsible for all actions of such animal and any damage caused by such animal.

**Section 3. Horses.** Up to four (4) horses shall be allowed on any Lot so long as such horses are kept within a fenced or enclosed area and such area is kept in a clean and sanitary condition at all times. Horses shall be kept only in a barn or corral. Barn stalls and corrals must be cleaned daily.



**Section 4. Rules and Regulations.** The Board of Directors may adopt suitable rules and regulations regarding animals and may in particular circumstances, for good cause, approve variances as to the number and type of animals to be allowed, kept or maintained on any Lot.

**Section 5. Impoundment of Dogs.** The Association is specifically empowered to impound any dog or cat running at large within the Property. Upon impoundment, the owner of the dog or cat, if known, shall be notified and the animal shall be taken to the nearest facility which accepts impounded dogs or cats. It is the duty of the owner of such dog or cat to recover the dog or cat from such facility and if the dog or cat is not recovered by the owner in accordance with the rules and regulations of such facility, the facility may destroy the dog or cat without liability.

## **ARTICLE 8.**

### **RED MOUNTAIN RANCH ASSOCIATION, INC.**

**Section 1. Government of Association.** Red Mountain Ranch of Gunnison, Inc., a Colorado non-profit corporation, shall be governed by and shall exercise all of the duties, privileges and obligations set forth in this Declaration, and the Articles of Incorporation and Bylaws of the Association.

**Section 2. Members.** Each Owner shall be a Member of the Association. No owner, whether one or more persons or entities, shall have more than one membership per Lot owned by such Owner, but all persons owning each Lot shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Lot.

**Section 3. Termination of Membership.** The right of membership in the Association and the status as a Member shall terminate upon the termination of ownership of a Lot or land which is subject to this Declaration. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for assessments levied from and after the date of such sale or conveyance; provided, however, that no such sale or conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

**Section 4. Voting Rights.** All Owners shall be Members or Associate Members of the Association. The Owner of each Lot shall be entitled to one vote in the Association. The one vote for each Lot shall be exercised by the Owner and, when more than one person or entity holds an interest in a Lot, the vote for the Lot shall be exercised as the Owners may determine among



themselves, but the vote for the Lot shall be cast by only one person. Each Associate Member shall have the right to vote regarding matters in which such Associate Member has an interest, including elections to the Board of Directors of the Association.

**Section 5. Compliance with Association Documents.** Each Owner shall abide by and have the benefit of the provisions, covenants, conditions and restrictions contained in the Association Documents.

**Section 6. Rules and Regulations.** The Association shall from time to time adopt, amend and repeal rules and regulations not inconsistent with this Declaration governing, among other things, and without limitation:

6.1 The use of any private road or street.

6.2 The use of any easements within the Property.

6.3 Standards for the care and maintenance of all improvements, grounds and landscaping within the Property, including private roads and streets.

6.4 The use, maintenance and enjoyment of any real property, private road, street or easement conveyed or dedicated to the Association.

6.5 Any other matter relating to Red Mountain Ranch or the use of any Lot, land subject to this Declaration or the Property not inconsistent with this Declaration.

**Section 7. Grant of Utility Easements.** The Declarant hereby authorizes and empowers the Association as its attorney in fact, to give and grant a utility easement for the installation, construction and maintenance of underground utilities over and across any road easement designated on the Plat. The Owner of each Lot, by virtue of such ownership, hereby authorizes and empowers the Association, as its attorney in fact, to give and grant a utility easement and right of way on each Lot 20 feet in width adjacent to the exterior boundary line of each Lot for the installation, construction and maintenance of underground utilities.

**Section 8. Road Maintenance and Dust Control.** All roads within the Property shall be constructed in accordance with the road permits 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:

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

8.2 Provide dust control not less than once a year on any road following the commencement of construction of any Building on a Lot served by such road and at any time that the use of any road within the Property is the cause of dust pollution, to provide dust control in the form of the use of magnesium chloride, oil treatment or other suitable dust retardant.

8.3 Plow snow from the roads during the winter months as required for access to any Lot.

## ARTICLE 9.

### **ASSESSMENTS**

**Section 1. Creation of Lien.** Each Owner of any Lot, or any land subject to this Declaration by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Association all regular, special and default assessments or charges, all of which shall be fixed, established and collected as determined by the Association. The annual, special and default assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot or land against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot or land at the time when the assessment became due.

All such assessments shall be adopted and assessed in the manner set forth in this Article 9.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used for the following:

2.1 The improvement, maintenance and repair of and snow removal from any road serving the Property.

2.2 The maintenance, repair or other improvement required to be made by any Owner to any Improvement on any Lot which the Owner fails to do.

2.3 The operation of the Association in the performance of its duties.

2.4 Any other purpose approved by a majority vote of the members of the Association or by a two-thirds vote of the Board.

**Section 3. Types of Assessments.** The Board of Directors shall have the authority to levy the following types of assessments for the Association:

3.1 **Regular Assessments.** Assessments for the business and operation of the Association pertaining to all members of the Association and to be apportioned and allocated equally among all Lots.

3.2 **Special Assessments.** Special assessments for the purpose of construction, improvement, repair, replacement, enlargement or other special purposes pertaining to a specific or special matter. Special assessments shall be apportioned and allocated equally among all Lots, unless such special assessment benefits substantially fewer than all Lots, in which event such special assessment shall be levied against only the Lots so benefited. The Board shall have reasonable discretion in apportioning responsibility to pay special assessments.

3.3 **Road Assessments.** Assessments for the purpose of construction, improvement, repair, replacement of and/or snow removal from roads serving the Property.

**Section 4. Regular Assessments.** Prior to the beginning of each fiscal year of the Association, the Board of Directors shall prepare and adopt a budget and determine, levy and assess the Association's regular and road assessments for the following year.

**Section 5. Special Assessments.** In addition to the regular assessments set forth in Section 4 above, the Board of Directors may levy in any fiscal year one or more special assessments. Notice of the amount and due dates for such special assessments shall be sent to each owner at least thirty days prior to the due date.

**Section 6. Assessment for Each Lot.** All regular assessments shall be apportioned and allocated equally among all Lots. All special assessments shall be apportioned and allocated equally among all Lots unless such special assessment benefits substantially fewer than all Lots, in which event such special assessment shall be levied against only the Lots so benefited. All road assessments shall be apportioned equally among all Lots and (on a per homesite basis) other land whose Owners have the right to use the roads serving the Property.

**Section 7. Default Assessments.** Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of or because of an Owner, shall be a default assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least thirty days prior to the due date.

**Section 8. Nonpayment of Assessments.** Any assessment, whether regular, special, road or default assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any assessment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

8.1 Assess a late charge of at least 10% of the amount due and owing per delinquency.

8.2 Assess an interest rate charge from the date of delinquency at 18% per year, or such other rate not contrary to law as shall be established by the Board of Directors.

8.3 Suspend the voting rights of the Owner during any period of delinquency.

8.4 Bring an action against any Owner personally obligated to pay the delinquent assessment.

8.5 File a Statement of Lien with respect to the Lot and foreclose such lien in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and Recorder of Gunnison County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent assessments then owing, which Statement shall be signed and acknowledged by the President, Vice President, Secretary, attorney, manager or other representative of the Association and which shall be sent by certified mail, postage prepaid, to the Owner of the Lot at such address as the Association may have in its records as to the Owner. Ten days following the mailing of such Notice, the Association may proceed to record and foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such Statement of Lien shall secure all assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same has been satisfied and released, together with the Association's attorneys' fees and costs incurred in the preparation and

recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such assessment, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.

8.6 The Statement of Lien shall be superior to all other liens (except government tax liens) and encumbrances on such Lot, including, for one year's regular assessment, the lien of any Mortgage.

8.7 The provisions of this Section 8 shall also apply to the land owned by any Associate Member of the Association.

Section 9. Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot to pay all assessments and the Association's lien on a Lot for such assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid assessments, interest, costs, expenses and attorneys' fees against such Lot. This provision shall also apply to the land owned by any Associate Member of the Association.

## ARTICLE 10.

### WATER RIGHTS

Section 1. Water Augmentation Plan. The Association shall be responsible for compliance with the terms of any decree and any plan of augmentation regarding water rights, if any, owned or obtained by the Association, the maintenance of all records and other reporting requirements imposed by any decree and the maintenance, repair and replacement of all ditches, pipes, flumes, dams, outlet works, and other physical components required for the proper implementation of any plan of augmentation.

Section 2. Enforcement of Water Rights. Any owner of a Lot in the Property shall have the right, in the event of the failure or inability of the Association to preserve and administer any water system and water rights within the Property, to undertake such action as was required of the Association but not performed, and to charge all costs and expenses thereof to the Association, including the maintenance of litigation for the recovery of all costs and expenses so incurred, including such owner's attorneys' fees and costs.

Section 3. Lawn and Garden Irrigation. Except as provided in Section 8 of Article 6, the owner or occupant of any Lot within the Property shall not irrigate, by sprinkler, flood



irrigation or otherwise, any lawn or garden on any Lot; nor shall any owner or occupant of any Lot take any action which contravenes the provisions and limitations contained in any decree of the Water Court in any case affecting water rights, if any, owned or obtained by the Association.

## ARTICLE 11.

### ENFORCEMENT OF COVENANTS

**Section 1. Violations Deemed a Nuisance.** Every violation of this Declaration of Protective Covenants, the Articles and Bylaws of the Association or any rules and regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

**Section 2. Failure to Comply.** The failure to comply herewith shall be grounds for an action to recover damages, for injunctive relief and/or for specific performance. Reasonable notice and an opportunity for a hearing shall be provided by the Association to any delinquent Owner prior to commencing any legal proceedings, except where the safety of persons or property is threatened.

**Section 3. Who May Enforce.** Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

3.1 By the Association.

3.2 By the Owner of any Lot.

3.3 By any Member or Associate Member of the Association.

**Section 4. No Waiver.** The failure of the Board, the Association or any Lot Owner to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

## ARTICLE 12.

### DURATION OF COVENANTS

**Section 1. Term.** The term of this Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2020. Thereafter, this Declaration of Protective Covenants shall be automatically

extended for five successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

**Section 2. Amendment.** This Declaration of Protective Covenants, or any provision thereof, may only be terminated, extended, modified or amended as to the Property subject to the Protective Covenants, or any portion thereof, upon the written consent by the Owners of 66% or more of the Lots in the Property. Any such amendment shall be by an instrument or instruments duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots within the Property. Each Associate Member shall have the right to vote on any amendment affecting such Associate Member.

**Section 3 Amendment by Declarant.** Notwithstanding the provisions of Section 2 of Article 12, above, the Declarant reserves the right and power to modify or amend this Declaration and/or the Plat in any respect by executing and recording such amendment in the records of Gunnison County, Colorado. This right to modify or amend this Declaration or the Plat in whole or in part, at any time and from time to time, shall be effective until one-half of all Lots within the Property have been conveyed by a recorded instrument of conveyance to a person or persons other than the Declarant.

**Section 4 Mortgage Holder Approval Not Required.** The Declaration and/or Plat may be amended as set forth in Sections 2 and 3, Article 12 of this Declaration and such amendment shall be effective against the holders of Mortgages encumbering Lots in the subdivision notwithstanding the fact that such holders of Mortgages have not approved such amendment.

### **ARTICLE 13.**

#### **PRINCIPLES OF INTERPRETATION**

**Section 1. Severability.** This Declaration of Protective Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration of Protective Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

**Section 2. Construction.** In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

**Section 3. Headings.** The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration of Protective Covenants.

**Section 4. Written Notice.** All notices required under this Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery of five days after mailing by certified or registered mail, return receipt requested, to the address of such Owner on file in the records of the Association at the time of such mailing.

**Section 5. Limitation of Liability.** Neither the Association nor any officer or director, shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under this Declaration if the action or failure to act was made in good faith. The Association shall indemnify all officers and directors with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association.

**Section 6. Attorneys' Fees.** The Association shall be entitled to reasonable attorneys' fees, as well as its reasonable costs and expenses, incurred by it in any proceeding or action to interpret or enforce any provision of the Association documents.

**Section 7. Applicable Law.** The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association documents shall be the County Court or District Court of Gunnison County, Colorado, unless otherwise chosen by the Association.

**Section 8. Interest.** Any sums, amounts or monies due and owing to the Association under the Association documents shall bear interest at 18% per year from the date due until paid.

**Section 9. Partition of Lots.** No part of a Lot may be partitioned, separated or subdivided from any other part thereof.

#### **ARTICLE 14.**

#### **RIGHTS RESERVED TO DECLARANT**

**Section 1 - Development Rights and Special Declarant Rights.** The Declarant specifically reserves the right to exercise in any order all Development Rights and Special Declarant Rights as set forth in the Colorado Common Interest Ownership Act and this Declaration for the maximum time limit allowed by law, including, without limitation, the following:

A. The right to amend the Declaration or Plat as set forth in Sections 2, 3 and 4 of Article 12.

B. The right to appoint or remove any officer of the Association or any Director of the Association during the Declarant Control Period.

C. The right to complete or make any Improvements as set forth on the Plat, the Association Documents or as required by Gunnison County.

D. The right to add additional land and/or Lots to the subdivision as provided in Section 4, Article 1 of this Declaration.

E. The right to maintain signs to advertise the subdivision.

F. The right to dedicate a future public or private easement as shown on the Plat.

G. The right to create Associate Memberships in the Association by subjecting land outside of the Property to some or all provisions of this Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Protective Covenants the day and year first above written.

Lacy and Dow LLC, a Colorado  
limited liability company

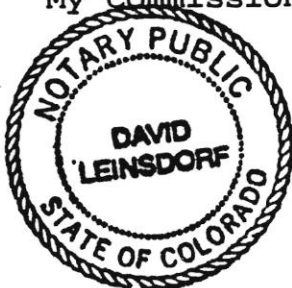
By: Billy Joe Lacy  
Billy Joe Lacy, Member and  
Attorney-in-fact

STATE OF COLORADO )  
 ) ss.  
COUNTY OF GUNNISON )

The above and foregoing Declaration of Protective Covenants was acknowledged before me this 9th day of January, 1996 by Billy Joe Lacy, Member and attorney-in-fact of Lacy and Dow LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission expires: 09/13/96



[Signature]  
Notary Public

EXHIBIT A

Township 14 South, Range 85 West, 6th P.M.

Section 28: SW1/4SW1/4

Section 29: S1/2S1/2  
NW1/4SW1/4

Section 31: SE1/4

Section 32: All

EXCEPTING the following described tract:

A tract of land with the SW1/4 of Section 32 and the SE1/4SE1/4 of Section 31, Township 14 South, Range 85 West, Sixth Principal Meridian, Gunnison County, Colorado, said tract being more particularly described as follows:

Commencing at the South quarter corner of said Section 32, (as marked by a BLM aluminum cap monument); thence westerly along the south boundary of said Section 32 a distance of 215.00 feet to a point, said point being the POINT OF BEGINNING for the herein described tract; thence the following courses around said tract:

1. Westerly along the south boundary of sections 32 and 31 for a distance of 3200.00 feet;
2. NORTH 1000.00 feet;
3. EAST 3200.00 feet;
4. SOUTH 1000.00 feet more or less to the POINT OF BEGINNING for the herein described tract.

Section 33: W1/2W1/2,

Township 15 South, Range 85 West, 6th P.M.

Section 6: E1/2NE1/4

County of Gunnison,  
State of Colorado.