

DECLARATION OF PROTECTIVE COVENANTS

FOR

WHETSTONE VISTA

THIS DECLARATION is made with an effective date of the ____ day of _____, 2000 by Whetstone Vista LLC, a Colorado limited liability company ("Declarant").

ARTICLE 1.

STATEMENT OF PURPOSE

Section 1.1 - Ownership of Property. Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado as set forth on attached **Exhibit A** which is incorporated herein by reference.

Section 1.2 - Subdivision of Property. The Property shall be subdivided and platted as shown on the Plat of Whetstone Vista.

Section 1.3 - Declaration of Covenants. Declarant hereby makes, declares and establishes the covenants, restrictions and easements set forth herein 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 part 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 Whetstone Vista.

Section 1.4 - Common Interest Community. Declarant further declares the Property to be a Planned Community under the Colorado Common Interest Ownership Act.

Section 1.5 - Statement of Purpose. This Declaration of Protective Covenants is imposed for the benefit of all Owners and future Owners of Lots located within Whetstone Vista and to provide for the preservation of values of Whetstone Vista, and to preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property and the Owners of Lots.

ARTICLE 2.

DEFINITIONS

The following terms and words shall have the definitions set forth in this Article 2:

Section 2.1 - "Assessments" shall mean regular monthly, quarterly or annual assessments, special assessments or default assessments levied pursuant to the Association Documents to provide funds for the Association and other common purposes.

Section 2.2 - "Association" shall mean Whetstone Vista Association, Inc., a Colorado non-profit corporation, or any successor thereof charged with the powers, duties and obligations set forth herein.

Section 2.3 - "Association Documents" shall mean this Declaration of Protective Covenants, the Plat, the Articles of Incorporation and Bylaws of the Association, the Design Guidelines and any procedures, rules, regulations or policies adopted thereunder by the Association or the Design Review Board.

Section 2.4 - "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. The Board of Directors is also defined as an Executive Board by Colorado Common Interest Ownership Act.

Section 2.5 - "Building" shall mean anything constructed or erected with a fixed location on the ground and having a roof supported by columns or walls.

Section 2.6 - "Building Envelope" shall mean the area within a Whetstone Vista Lot shown on the Plat where a building or other improvement shall be located, subject to the prior written approval of the Design Review Board. The location of a Building Envelope shall be changed only after approval in writing by Gunnison County and the Declarant or the Design Review Board.

Section 2.7 - "Colorado Common Interest Ownership Act" or "Act" shall mean the "Colorado Common Interest Ownership Act of the State of Colorado, Section 38-33.3-101 et. seq., Colorado Revised Statutes".

Section 2.8 - "Common Interest Community" shall have the definition set forth in the Colorado Common Interest Ownership Act.

Section 2.9 - "Declarant" shall mean Whetstone Vista LLC, a Colorado limited liability company, its representatives, successors and assigns.

Section 2.10 - "Declaration" or "Declaration of Protective Covenants" shall mean this Declaration of Protective Covenants for Whetstone Vista and as this Declaration may be hereafter amended, modified or extended.

Section 2.11 - "Design Guidelines" shall mean those guidelines, rules and regulations published from time to time by the Design Review Board. All Design Guidelines shall be consistent with the provisions of this Declaration and the Covenants.

Section 2.12 - "Design Review Board" shall mean the Board of Directors of the Association.

Section 2.13 - "Garage" shall mean an accessory Building or an accessory portion of a Single Family Residence designed for the storage of one or more motor vehicles and for incidental uses.

Section 2.14 - "Home Occupation" shall mean a use conducted entirely within a dwelling which is incidental and secondary to the use of the dwelling for dwelling purposes and which does not change the residential character thereof. Any noise or activity related to such incidental and secondary use of the dwelling shall not interfere with the quiet and dignity of the neighborhood and no persons other than the primary dwelling occupants and one employee shall be employed in such use.

Section 2.15 - "Improvements" shall mean all Buildings, structures, parking areas, loading areas, fences, walls, driveways, signs, changes in exterior color or shape, excavation, site work, grading, landscaping, road construction, utilities and any other construction or facility installed on or under a Lot or other part of the Property.

Section 2.16 - "Landscaping" shall mean planted areas and plant materials, including trees, shrubs, lawns, flower beds and ground cover.

Section 2.17 - "Living Area" shall mean the floor area of a residence having a ceiling height in excess of five feet designed for interior occupancy and use by the inhabitants, but excluding basements, garages, porches, decks, patios and breezeways.

Section 2.18 - "Lot" shall mean the Lots shown on the Plat of Whetstone Vista as originally filed and/or as amended.

Section 2.19 - "Maintenance Fund" shall mean the fund created by assessments and fees levied pursuant to this Declaration to provide the Association with funds to carry out its duties and exercise its powers hereunder.

Section 2.20 - "Member" shall mean any person holding membership in the Association.

Section 2.21 - "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 2.22 - "Open Space" shall mean all of a Lot excepting the Building Envelope. Although Open Space is for the Lot Owner's exclusive use, improvements are prohibited, except for Landscaping, driveways and parking areas approved by the Design Review Board. "**Common Open Space**" shall mean that part of the Property reserved on the Plat for the exclusive use of the Owners and their tenants, guests and invitees. No improvements shall be constructed upon Common Open Space except for recreational facilities and amenities.

Section 2.23 - "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot after the recording of this Declaration, Owner shall mean Declarant unless Declarant has designated a successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.24 - "Person" shall mean a person, corporation, partnership, joint venture, association, fiduciary or any other type of entity or designation by which title to any Lot is held.

Section 2.25 - "Plat" shall mean the Plat of Whetstone Vista affecting the Property dedicated by Declarant as filed in the records of Gunnison County, Colorado, and as such Plat may be amended, enlarged or revised from time to time.

Section 2.26 - "Property" shall mean and include the Property described on attached Exhibit A which is subject to this Declaration. In the event that Whetstone Vista is enlarged through one or more subsequent filings as provided in this Declaration, "Property" shall include all land made subject to this Declaration.

Section 2.27 - "Single Family Residence" shall mean a detached building designed for or used as a dwelling exclusively by one family as an independent housekeeping unit.

Section 2.28 - "Subdivision" shall mean all of the Property subdivided and platted by the Plat, including amendments thereto, filed in the records of Gunnison County, Colorado pertaining to Whetstone Vista.

ARTICLE 3.

USE OF LOTS

Section 3.1 - Use of Whetstone Vista Lots. Whetstone Vista Lots shall be used only for the following Buildings:

- A. One Single Family Residence containing Living Area of no less than 1,500 square feet and no more than 5,000 square feet; and/or
- B. One Garage;
- C. Aggregate square footage shall not exceed 6,200 square feet.

Section 3.2 - Partition of Lots. No Lot may be partitioned, separated or subdivided from any other part thereof.

Section 3.3 - Building Envelope. No Building or other improvement of any kind shall be constructed on a Whetstone Vista Lot except within the Building Envelope. Declarant retains the right, subject to approval by Gunnison County, to alter and/or relocate any Building Envelope on any Lot prior to Declarant's conveyance of such Lot to a third party. In the event that

an Owner owns two adjoining Lots and desires to change the location of the Building Envelopes for both Lots to reflect a single Building Envelope for the combined usage of both Lots, the Owner may do so subject to compliance with the following conditions:

A. By appropriate land covenant or other recorded document, the Owner shall commit, agree and covenant that both Lots shall be treated as a single Lot for the purpose of compliance with the Declaration of Protective Covenants, except as to Association voting and assessments, and shall thereafter remain in common ownership by the same Owner.

B. The Owner shall apply for and obtain written approval from the Design Review Board for the change of the Building Envelope.

C. The Owner shall apply for and obtain written approval from Gunnison County for a replat changing the Building Envelope.

Section 3.4 - Approval by Design Review Board and Gunnison County. No Building or Improvement shall be constructed on any Lot nor shall any Building or Improvement be altered or demolished except as approved by the Design Review Board and Gunnison County.

Section 3.5 - Design Guidelines. All Buildings and Improvements shall comply with the terms, conditions, definitions and objectives as set forth in the Design Guidelines.

Section 3.6 - Building Location. All Buildings on Lots shall be located entirely within the Building Envelope of such Lot as designated on the Plat, except for Buildings on combined Lots, which may be located in a revised Building Envelope approved by Gunnison County and the Design Review Board. No buildings or improvements shall be located or constructed in a manner which adversely impacts wetlands.

Section 3.7 - Animals. No animals shall be kept or maintained within the Subdivision except usual domestic household pets. Such household pets shall be confined to the Owner's Lot or controlled on a leash. All cats shall be confined indoors. No barking or vicious dogs shall be permitted within the Subdivision. No more than two dogs and/or two cats shall be kept or harbored on any Whetstone Vista Lot. The Association shall have the authority and responsibility to enforce the provisions of this Section 3.7 by all reasonable means, including the impoundment of animals running at large or otherwise in violation hereof. The Association shall levy sufficient assessments to finance such enforcement.

Section 3.8 - Parking and Storage. Parking of vehicles on a Lot is permitted only within parking spaces constructed pursuant to approval by the Design Review Board, except that vehicles may be parked in other areas while being loaded and unloaded. Except for automobiles, station-wagons, four wheel drive vehicles, sport utility vehicles, minivans, pick-up trucks and bicycles, all other vehicles and all implements, including without limitation, trailers of all types, trucks (except for pick-up trucks), boats, tractors, campers not mounted on pickup trucks, snow removal equipment, motorcycles, snowmobiles, all-terrain vehicles, motor homes or other recreational vehicles, inoperable vehicles and maintenance equipment shall be parked or stored only in an approved enclosed structure. No more than two motor vehicles shall be stored outside on any Lot. No abandoned vehicles shall be stored outside on any Lot.

Section 3.9 - Hazardous Activities. No activities shall be conducted on any Lot and no Improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms, archery equipment, or fireworks shall be discharged within the Subdivision. No open fires shall be lighted or permitted except in a contained pit or other barbecue unit while attended and in use for cooking purposes or except in a safe and well-designed interior fireplace or stove. In order to protect against contamination of springs and other local water supplies, the use, transportation and storage of hazardous materials is prohibited within Whetstone Vista.

Section 3.10 - Occupancy. No portion of any Lot shall be used for residence, living, or sleeping purposes other than rooms designed for such purposes in a completed structure.

Section 3.11 - Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring, exploring for, or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

Section 3.12 - Signs. No signs or advertising devices of any nature shall be erected or maintained within the Subdivision except as necessary to identify the ownership of the particular Lot and its address, or as necessary or desirable to give directions, advise of rules and regulations, or caution or warn of danger, to advertise a Lot for sale, or as may otherwise be necessitated by law. Any signs which are permitted under the foregoing restrictions shall be erected or maintained only in compliance with the Gunnison County Sign Code with prior written approval by the Design Review Board. Approval shall be

given only if such signs are of attractive design and are as small in size as is reasonably possible. Signs shall be placed or located as directed and approved by the Design Review Board.

Section 3.13 - Light, Sounds and Odors. No exterior lighting shall be allowed except for lighting required by the Uniform Building Code or other applicable codes. All exterior lighting shall be designed and directed as approved by the Design Review Board. No light shall be omitted from any Lot which is unreasonably bright or causes unreasonable glare. All exterior lights shall be shielded and directed downward to reduce to the extent practicable visibility of such exterior lights from adjacent property. No mercury vapor lights shall be permitted. Other outdoor lighting that creates a glare or glow causing visual discomfort to other Lot owners shall be permitted only for brief, limited periods. No sound shall be emitted on any Lot which is unreasonably loud or annoying, and no odor shall be emitted on any Lot which is noxious or offensive to others. No coal shall be burned within the Subdivision.

Section 3.14 - Refuse. Lots shall be maintained in a neat and tidy condition at all times. No refuse, including without limitation trash, garbage, lumber, construction materials, grass clippings, shrub clippings or tree clippings, plant waste, compost, ashes, metals, bulk materials, or scrap materials shall be allowed to accumulate on any Lot. Each Owner shall provide suitable Colorado Division of Wildlife recommended covered, noiseless, animal-proof receptacles for the collection of refuse in preparation for regularly scheduled periodic pickup. Refuse shall be stored for such pickup in such containers which shall, in turn, be enclosed in an approved structure so as to be screened from public view and protected from disturbance. No refuse may be thrown or dumped on any part of the Subdivision. The burning of refuse out of doors shall not be permitted. No incinerators or other devices for the burning of refuse indoors shall be constructed, installed, or used within the Subdivision.

Section 3.15 - Continuity of Construction. All construction, alteration and demolition shall be completed within twelve months of commencement, unless extended by the Design Review Board for good and sufficient cause.

Section 3.16 - Mobile Homes. No mobile home or temporary structure shall be permitted within the Subdivision, except on a temporary basis for use as a construction office, as permitted by the Design Review Board or for use by Declarant as a sales office. Such uses shall comply with all applicable regulations of Gunnison County.

Section 3.17 - Fences. Lots shall not be fenced, except that fences approved by the Design Review Board shall be permitted around the Buildings and a reasonably sized yard. No fence shall exceed 6 feet in height. The subdivision perimeter shall not be fenced.

Section 3.18 - Drainage. No Owner shall alter the natural drainage of any Lot more than the minimum necessary as approved by the Design Review Board or in a manner which damages any Building, Improvement or other Lot within the Subdivision.

Section 3.19 - Foundations. No Building shall be approved or constructed within the Subdivision unless the foundation for such Building has been designed, based on site specific geotechnical data, by a Colorado licensed engineer or architect who has affixed his seal to the foundation plans.

Section 3.20 - Utilities. All utilities shall be installed underground. A ten (10) foot wide utilities easement contiguous to all Lot lines is reserved for the nonexclusive use of Declarant, the East River Regional Sanitation District, utilities, the Association and/or their assignees on all Lots. No improvements, except for utilities, shall be constructed within such utilities easements.

Section 3.21 - Clotheslines. All outdoor clotheslines shall be shielded from view as approved by the Design Review Board.

Section 3.22 - Motor Vehicle Repair. No motor vehicles shall be repaired within the Subdivision except within a fully enclosed garage.

Section 3.23 - Camping. All camping within the Subdivision shall be subject to such rules and regulations as the Association may promulgate from time to time.

Section 3.24 - Nuisance. No obnoxious or offensive activity shall be carried on within the Subdivision, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate within the Subdivision so as to be detrimental to any part of the Subdivision or offensive to its occupants.

Section 3.25 - Leasing. The Owner of a Lot shall have the right to lease the Single Family Residence thereon but only subject to all of the following conditions:

A. Every lease shall be in writing and shall provide that any failure of lessee to comply with any provision in the Association Documents shall be a default under the lease.

B. The Owner shall be responsible for any violation of any provision in the Association Documents by Owner's lessee.

C. A copy of every lease having a term in excess of one month shall be filed with the Association on or before the effective date of such lease.

Section 3.26 - Wood Burning Devices. The maximum number of woodburning devices per Lot shall be one. Such wood burning device shall be designed to reduce polluting emissions from such wood burning device 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 low emission Rumford masonry fireplaces that do not generate higher emissions than 6.0 grams per kilogram as established by EPA approved testing laboratories or comparably low emission devices that do not generate higher emissions than 6.0 grams per kilogram as established by EPA approved testing laboratories.

Section 3.27 - Protection Against Wildfires. In order to minimize wildfire hazards:

A. All grass shall be mowed to a maximum height of 6 inches within 50 feet from any Building;

B. The area within 3 feet of all Buildings (5 feet on the downhill side) shall be kept free of all vegetation;

C. All firewood shall be stacked uphill of all Buildings; and

D. All vegetative residue, slashings, branches, limbs, stumps, roots and other flammable lot-clearing debris shall be disposed of from the Building Site by chipping or removal prior to occupancy.

E. Lot owners who build on Lots 4 and 5 within 100 feet of timber may be required to mitigate forest fuels.

Section 3.28 - Weed Control and Revegetation.

A. Following construction of roads, driveways, houses and other improvements, weeds shall be controlled and disturbed ground shall be revegetated in accordance with the plans approved by the Design Review Board and the reasonable recommendations of Gunnison County's Weed Control Specialist.

B. The Association shall have authority and responsibility to enforce the provisions of this Section 3.28.

Section 3.29 - Irrigation. No more than 1,500 square feet of lawn and/or landscaping per lot shall be irrigated.

Section 3.30 - Home Occupations. One home occupation may be conducted on each Lot. No other commercial activity shall be allowed.

Section 3.31 - Reclamation Permit. A Gunnison County Reclamation Permit is required for each Lot prior to construction.

Section 3.32 - Landscape Buffer. No buildings may be constructed within 20 feet of Buckhorn Ranch. Areas on platted Whetstone Vista Lots within 20 feet of Buckhorn Ranch shall be landscaped with trees and shrubs.

Section 3.33 - Water Augmentation Plan.

A. All Lot Owners shall abide by the terms and provisions of the augmentation plan described in Case No. 96CW298, Water Division No. 4, including specifically the irrigation limitation of 1500 square feet per residence. To the extent that any improvements to the augmentation facilities (such as new measuring devices, headgates, pipelines, etc.) are necessary, such expenses shall be borne proportionally by all Lots benefited by the augmentation plan.

B. Lot Owners are prohibited from appropriating water rights, building ditches, ponds or pipelines, or drilling wells within Whetstone Vista without the written consent the Association and the Brush Creek Estates Association, Inc.

C. The Association shall have the right to install, operate, maintain, repair and replace collection systems, division boxes, storage tanks, pumps, distribution pipelines, and other associated equipment, within the easement areas for water structures/utilities depicted on the Plat.

ARTICLE 4.

DESIGN REVIEW AND APPROVAL

Section 4.1 - Design Review Board. The Board of Directors of the Association shall constitute the Design Review Board.

Section 4.2 - Review and Approval. No Building or Improvement shall be commenced, constructed, erected or maintained on any Lot, nor shall any landscaping be done, nor shall any exterior painting, addition, change, alteration or demolition be made, until the plans and specifications therefor have been submitted to and approved in writing by the Design Review Board in the manner hereafter set forth.

Section 4.3 - General Requirements.

A. All Buildings shall have unobtrusive, primarily earth tone, colors, and materials that blend with the surrounding natural terrain and environment. No exterior walls shall consist of sheet metal, metal material, T-111 or any similar material, composition shingles or unplastered cement or similar block. No bright colors or other construction techniques which would unnecessarily call attention to the Building shall be permitted. A-frames or geodesic domes shall not be permitted. At least 15% of the exterior material, excluding the windows and roof, on all Buildings on Whetstone Vista Lots shall be an architecturally appropriate material different from the primary exterior material. Metal roofs shall be non-reflective.

B. No part of a Building shall be higher than 30 feet above the natural grade directly below that part of the Building. No part of a Building constructed between the foot and the crest of a slope shall be higher than 30 feet above the natural slope of the hill directly below that part of the Building. On Lots 2 and 3, no roofline shall exceed the height of the highest point on the hill east of the Building Envelopes (8988' MSL). On Lots 4, 5, 6, 7, 8 and 9 only, cupolas, chimneys and similar architectural features not useable as habitable floor area may extend above the height limit not more than 25% of the height of the Building. Buildings on hillsides shall be designed to minimize apparent height and bulk. Building masses shall be stepped down the hillside. Hillsides shall not be adapted to a Building designed for a flat site.

Section 4.4 - Submittal Procedure. Prior to the commencement of any work requiring the approval of the Design Review Board as above set forth, the plans for any such Building or Improvement shall be submitted to the Design Review Board for approval. The submittal for approval shall include, at a minimum, all documents required by the Design Guidelines.

Section 4.5 - Purpose of Review. The Design Review Board shall consider the suitability of the proposed Building or Improvement and in particular the harmony of the Building or Improvement with the environment, the effect of the Building or Improvement on the utilization and view of the Lot and surrounding Lots and Property and the placement of the Building or Improvement with respect to topography, drainage, snow removal, ground elevations and existing natural and terrain features and compliance with the Design Guidelines.

Section 4.6 - Hearing. The Design Review Board shall, within thirty-five days after receipt of a complete application with all accompanying data, hold a hearing on such application. The Design Review Board may approve, disapprove or approve with conditions any application submitted to it. The decision of the Design Review Board shall be in writing. In the event that the Design Review Board fails to take action within thirty-five days after the date of the hearing, or fails to hold such hearing within thirty-five days after receipt of a complete application, the application shall be deemed to have been approved.

Section 4.7 - Notice of Hearing. The applicant, or any person on applicant's behalf and any Owner or an Owner's representative may attend the hearing and submit information pertaining to the application. Written notice of the hearing shall be posted on the Lot by the Owner.

Section 4.8 - Quorum. A majority of the Design Review Board shall constitute a quorum and all decisions of the Design Review Board shall be by majority vote of the board members present and shall be in writing.

Section 4.9 - Final Decision. The decision of the Design Review Board shall be final, subject only to the right of judicial review as provided by the laws of the State of Colorado. In the event of disapproval, the Design Review Board shall indicate to the applicant the reasons why the application was disapproved and grant to the applicant an opportunity to resubmit with revisions and corrections that would secure approval by the Design Review Board.

Section 4.10 - Expenses. The Design Review Board may adopt a schedule of reasonable fees to be charged for each application submitted to the Design Review Board for review and approval. Such fees shall be paid by the applicant upon submittal of the application.

Section 4.11 - Limitation of Liability. The Design Review Board shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it for review and approval. Neither the Design Review Board, nor any individual member thereof, shall be liable to any Person for any act of the Design Review Board in connection with any application, except only to the extent that the Design Review Board, or any individual member thereof, acted with malice or wrongful intent.

Section 4.12 - Building and Other Permits. Compliance with the design review process is not a substitute for compliance with Gunnison County building regulations. Each Owner is responsible for obtaining all approvals, licenses and permits as may be required by Gunnison County and any special district providing services to the Lot prior to starting construction, alteration or demolition of any Building or Improvement, including, without limitation, a Gunnison County Reclamation Permit. A driveway access permit is required for all lots with direct access onto the Brush Creek County Road (County Road 738).

Section 4.13 - Design Guidelines. The Declarant and/or the Design Review Board shall adopt Design Guidelines which shall include all design requirements for the construction of any Building or Improvement upon any Lot within the Subdivision. Such Design Guidelines may be altered, amended, revised, and changed from time to time as determined by the Design Review Board.

Section 4.14 - Rules and Regulations. The Design Review Board may adopt such rules and regulations as are appropriate to govern its proceedings or the implementation of its responsibilities.

ARTICLE 5.

WHETSTONE VISTA ASSOCIATION, INC.

Section 5.1 - Establishment of Association.

A. Whetstone Vista Association, Inc., a Colorado non-profit corporation, shall have all powers vested in subdivision property owners associations under Colorado law and shall be governed by and shall exercise all of the duties, privileges, obligations and powers set forth in this Declaration, the Design Guidelines, the Act and the Articles of Incorporation and Bylaws of the Association.

B. The Association shall, among other responsibilities, own, operate and maintain a central water system serving Whetstone Vista and shall monitor such system as required by the Colorado Drinking Water Standards for noncommunity systems.

C. The Association shall hire a Colorado licensed sewage treatment plant operator to maintain the solid waste holding tanks and pumps on the Property and to report at least annually to Gunnison County.

D. The Association shall have primary responsibility to monitor and enforce compliance with deed restrictions and other provisions regarding the use and occupancy of Lots and compliance with the Gunnison County noxious weed control program.

Section 5.2 - 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 5.3 - Termination of Membership. The right of membership in the Association and the status as a member shall terminate upon the termination of status as an Owner. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for assessments 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 5.4 - Voting Rights. All Owners within the Subdivision shall be members of the Association. The Owner of each Lot shall be entitled to one vote in the Association. The 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.

Section 5.5 - Compliance with Documents. Each Owner shall abide by and have the benefit from the provisions, covenants, conditions and restrictions contained in the Association Documents.

Section 5.6 - Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as the "Whetstone Vista Rules and Regulations" governing, among other things, and without limitation:

A. The use of any property owned or controlled by the Association, including, without limitation, the domestic water system.

B. The use of all easements shown on the Plat.

C. Repair, maintenance and upkeep of all property owned by the Association and any property under the jurisdiction of the Association.

D. Standards for the repair, maintenance, upkeep and use of all Lots and all Improvements, Buildings, grounds and landscaping situate upon such Lots within the Subdivision.

E. Any other matter relating to Whetstone Vista not prohibited by law or the Association Documents.

ARTICLE 6.

MAINTENANCE ASSESSMENTS

Section 6.1 - Creation of Lien. Each Owner of any Lot 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: (1) All regular Assessments or charges; and (2) any special Assessments or charges; and (3) any 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 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 at the time when the Assessment became due.

Section 6.2 - Purpose of Assessments. The Assessments levied by the Association shall be used for the following:

A. Any costs and expenses pertaining to the operation of the Association in the performance of its duties and the exercise of its powers, including operation of the domestic water system.

B. Acquisition, rental, maintenance, operation and improvement of any real or personal property or other facility for the use or benefit of the Owners.

C. Any maintenance, repair or improvement required to be made by any Owner to any Improvement or any Lot which the Owner fails to do.

D. Any other purpose not inconsistent with the Association Documents approved by the Association's board of directors or by the Owners holding a majority of the votes in the Association.

Section 6.3 - Regular Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and prior to the commencement of each fiscal year, the Board shall adopt a budget and shall determine, levy and assess the Association's regular Assessments for the following year.

Section 6.4 - Special Assessments.

A. In addition to the regular Assessments set forth in Section 6.3, above, the Board of Directors may levy in any fiscal year one or more special Assessments for the purpose of defraying, in whole or in part, any expense which was not anticipated at the time the budget was adopted. 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.

B. When Gunnison County determines that the growth in traffic generated by additional development using County Road 738 reasonably requires improving and/or paving County Road 738, for traffic safety and/or other purposes, Gunnison County shall provide the Association with written notice to that effect, accompanied by a description of proposed improvements to County Road 738 and the estimated cost of such proposed improvements ("Notice"). Within six months following receipt of the Notice, the Association shall levy and all Owners shall be obligated to pay one or more special assessments to finance Whetstone Vista's proportional share, in relation to other developments using County Road 738, based on documented traffic impacts, of improving and/or paving County Road 738 from Whetstone Vista to Colorado Highway 135. Whetstone Vista's share of the cost of such improvements shall be paid to Gunnison County as such improvements are constructed and paid for by Gunnison County.

Section 6.5 - Assessment for Each Lot. All regular and special Assessments shall be allocated equally among all Lots.

Section 6.6 - Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the 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 6.7 - Nonpayment of Assessments. Any Assessment, whether regular, special 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 one or more of the following actions:

- A. Assess a late charge of at least 10% of the amount due and owing per delinquency.
- B. Assess an interest rate charge from the date of delinquency at the rate of eighteen percent per annum or at such other rate as the Board shall set.
- C. Suspend the voting rights of the Owner during any period of delinquency.
- D. Bring an action against any Owner personally obligated to pay the delinquent Assessment.
- E. 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 an officer, manager, attorney or other representative of the Association and which shall be sent by certified mail, postage prepaid, to the Owner at such address as the Association may have in its records. Thirty days following the mailing of such Notice, the Association may proceed to foreclose the Statement of Lien in the same

manner as provided for the foreclosure of mortgages or in any other manner authorized by the law 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 connection with such delinquency, including 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 all reasonable attorneys fees with respect to the delinquency and action.

The Statement of Lien shall be superior to all other liens and encumbrances (including a Mortgage or First Mortgage) on such Lot, except only any tax and assessment liens levied by any governmental entity.

Section 6.8 - Successor's Liability for Assessment. In addition to the personal obligation of each Owner 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.

ARTICLE 7.

ENFORCEMENT OF COVENANTS

Section 7.1 - 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 7.2 - Failure to Comply. The failure to comply herewith shall be grounds for an action to recover damages, for injunctive relief, for specific performance, or for any other relief available in law or at equity. Thirty days notice and an opportunity to be heard shall be provided by the Association to any delinquent Owner prior to commencing any legal proceedings, except proceedings pertaining to a threat to the safety of persons or property.

Section 7.3 - Who May Enforce. Any action to enforce any provision of the Association Documents, or any other covenant or restriction regarding the use of Lots or the occupancy of any Buildings, may be brought by the Declarant, by the Association in the name of the Association on behalf of the Association and/or the individual Owners, by any Owner or by Gunnison County. In addition, the owner of either Lot in Brush Creek Estates, a two lot subdivision adjacent to Whetstone Vista, shall have the right to enforce those provisions in this Declaration which are comparable to those in the Declaration of Protective Covenants for Brush Creek Estates which are enforceable by Whetstone Vista Association, Inc.

Section 7.4 - No Waiver. The failure of the Board, the Association, or any other 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.

Section 7.5 - Attorneys' Fees. In the event of any legal action or arbitration to enforce any of the provisions of the Association Documents, or for damages, or to restrain the violation of the Association Documents, whether judicial, non-judicial or administrative, the prevailing party shall be entitled to recover all costs, fees and expenses incurred by it in such action, including all reasonable attorneys fees that it may incur. The Association shall be entitled to recover reasonable attorneys' fees for any legal assistance given to the Association as above provided whether or not legal proceedings are actually filed in court.

ARTICLE 8.

DURATION OF COVENANTS

Section 8.1 - 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 September 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. Notwithstanding the provisions of this Section 8.1, the prohibitions shall be perpetual in Section 2.22 against constructing improvements (a) in Common Open Space, except for recreational facilities or amenities, and (b) in Open Space.

Section 8.2 - Amendment. This Declaration and/or the Plat may be terminated, extended, modified or amended upon the written consent by the Owners holding 67% of the votes in the Association, subject to approval by Gunnison County. Any such amendment shall be by an instrument duly executed and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and by the Board of County Commissioners of Gunnison County 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 Subdivision.

Section 8.3 - Amendment by Declarant. Notwithstanding the provisions of Section 8.2, above, the Declarant reserves the right and power to modify or amend this Declaration and/or the Plat in any respect, subject to approval by Gunnison County, 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 more than 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 8.4 - Mortgage Holder Approval Not Required. The Declaration and/or Plat may be amended as set forth in Sections 3.3, 8.2 and 8.3 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 9.

PRINCIPLES OF INTERPRETATION

Section 9.1 - Severability. This Declaration, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration 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 9.2 - 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 9.3 - 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.

Section 9.4 - 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 or 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 9.5 - 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 Association Documents.

Section 9.6 - Applicable Law. The exclusive 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 9.7 - Interest. Any sums, amounts or monies due and owing to the Association under the Association Documents shall bear interest at 1.5% per month (18% per year) or at such other rate of interest as the Board shall set from the date due until paid.

Section 9.8 - Assignment. Declarant may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property and/or to the Association, in whole or in part. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Clerk and Recorder of Gunnison County, Colorado.

ARTICLE 10.

RIGHTS RESERVED TO DECLARANT

Section 10.1 - 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 3.3 and 8.3.
- 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 maintain signs to advertise the Subdivision.
- E. The right to dedicate a future public or private easement as shown on the Plat.
- F. The right to dedicate a sewer line easement across Whetstone Vista connecting Brush Creek Estates subdivision with the central Whetstone Vista sewer line.
- G. The right to allow the owners of lots in Brush Creek Estates to utilize the Whetstone Vista central water system on condition that such Brush Creek Estates lot owners shall (i) pay a proportional share of the cost of operating and maintaining such central water system and (ii) convey to the Association 4.2857 gallons per minute of water from either Lacy Springs No. 4, Vieh Springs and Pipeline No. 1 and/or Vieh Spring and Pipeline No. 6, or a combination thereof, pursuant to water rights to be adjudicated in Case No. 96CW298, as provided in that certain SETTLEMENT AGREEMENT by and between Declarant and William J. Lacy, Jr., dated May 10, 1999, hereinafter referred to as the "Water Rights".

Section 10.2 - Lacy Waterline Easements. Declarant hereby dedicates to William J. Lacy, Jr., his heirs, representatives, successors and assigns, an easement for the use of springs on Whetstone Vista in the current location of the springs, ditches pipelines, which easement shall extend within a twenty-five foot radius of each spring and twenty-five (25) feet on either side of existing ditches or pipelines measured from the centerline of such ditch or pipeline as such structures are shown on the Plat for Whetstone Vista. Such easement shall be located exclusively as set forth on the plat for the Whetstone Vista and Lacy shall have no right to alternate access. William J. Lacy, Jr. shall also have an easement across Whetstone Vista to collect water from Ruland Spring and Pipeline No. 1 (which is located upon lands owned by the U.S. Department of Agriculture) so long as water is delivered via the westernmost natural drainage or gulch on Whetstone Vista and within the utility easement along the western edge of the Whetstone Vista as such drainage and utility easements are shown on the final Plat for Whetstone Vista. While William J. Lacy, Jr. may build a pipeline to obtain water from Ruland Spring and Pipeline No. 1, such pipeline must be located within such natural drainage on the western edge of the Whetstone Vista and within the fifteen foot utility easement along the western edge of the Whetstone Vista as set forth on the final Plat for Whetstone Vista. Except as otherwise set forth in this paragraph, William J. Lacy, Jr. shall not be entitled to route new pipelines or ditches through the Whetstone Vista in order to collect water from Ruland Spring or Pipeline No. 1 or any other springs located within the Whetstone Vista or on adjacent property owned by the U.S. Department of Agriculture.

ARTICLE 11.

SPECIAL NOTICES

Section 11.1 - Black Bear Habitat. In accordance with requirements of Gunnison County, notice is hereby given that black bear habitat is located within Whetstone Vista.

Section 11.2 - County Building Permits. Gunnison County reserves the right not to permit construction of any residential Building in Whetstone Vista prior to completion of all roads, water and sewer lines, electrical lines and telephone lines to serve Whetstone Vista.

Section 11.3 - Avigation Easement. Notice is hereby given that Whetstone Vista is located adjacent to an airport and under the flight and approach paths associated with that airport. Lots 2 and 3 are located directly on or adjacent to the extended centerline of such airport's runway on the

departure path from Runway 29 and the approach path to Runway 11. Declarant hereby gives and grants an avigation easement for flight over Whetstone Vista as necessary and appropriate for aeronautical operations at such airport on condition that all such operations are conducted safely and in compliance with all applicable Federal Aviation Regulations. Notice is hereby given that such aeronautical operations may cause noise or otherwise disturb the occupants of Whetstone Vista.

Section 11.4 - Trail Use. Public trails within the Property shall be used exclusively for walking, running, cross-country skiing and biking. No motorized conveyances of any kind and no animals of any kind shall be allowed on such trails.

Section 11.5 - Feeding Wildlife Prohibited. As recommended by the Colorado Division of Wildlife, feeding of wildlife, including hummingbirds, is prohibited.

Section 11.6 - Brush Creek Estates Sewer Line. The owners of lots in Brush Creek Estates shall have the right to connect their respective sewer lines to the central sewer line within Whetstone Vista, at such location and pursuant to such plans and specifications as Declarant shall reasonably approve in writing. Such central sewer line shall be connected to the East River Regional Sanitation District Sewer Plant.

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

Ron L. Young, Managing Member
of Whetstone Vista LLC, a Colorado
limited liability company

STATE OF COLORADO)
) ss.
COUNTY OF GUNNISON)

The above and foregoing Declaration of Protective Covenants for Whetstone Vista was acknowledged before me this ____ day of _____, 2000, by Ron L. Young, Managing Member of Whetstone Vista LLC, a Colorado limited liability company.

Witness my hand and official seal. My commission expires:

Notary Public