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DECLARATION OF PROTECTIVE COVENANTS

OF

WHETSTONE MOUNTAIN RANCH

THIS DECLARATION AND AGREEMENT is executed the 26th day of April, 2001, by Smith Ranch, L.L.C., hereafter termed "Declarant".

ARTICLE 1

STATEMENT OF PURPOSE OF DECLARATION

Section 1. Ownership of Property. Declarant is the owner of the real property ("Property") situated in Gunnison County, Colorado described as follows:

WHETSTONE MOUNTAIN RANCH, according to the Plat thereof filed the 30th day of April, 2001, and bearing Reception No. 510276 of the records of Gunnison County, Colorado, as more particularly 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 Ranches, tracts or parts thereof, their heirs, successors and assigns and their tenants, employees, guests and invitees except as specifically set forth or excluded herein and shall inure to and be for the benefit of each Owner of the Ranch 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 Ranches, parcels and areas located within Whetstone Mountain Ranch and to provide for the preservation of values and enjoyment of the Owners of the Property and to provide and preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of Whetstone Mountain Ranch.

In construing the purposes of these Protective covenants primary consideration shall be given to assure the continued recreational and ranching usage of Whetstone Mountain Ranch in harmony with the residential usage of the Building Envelopes. It is intended that the easements provided to the Whetstone Mountain Ranch Homeowners Association by each Ranch Owner, to be known as the Common Areas, shall be used and enjoyed by all Ranch Owners, Whetstone Mountain Ranch and its lessee(s) and will provide a recreational, ranching and expanded benefit to all.



Section 4. 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 Whetstone Mountain Ranch Homeowners Association, 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 rules 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. "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 5. "Building" shall mean a structure having a roof supported by walls or any similar type of improvement.

Section 6. "Building Envelope" shall mean the area or envelope within a Ranch where a Building or other Improvement shall be located, as shown on the Plat, not to exceed five (5) acres and distinct from yet included in the Fenced Area of a Ranch. Buildings or Improvements shall be located so as not to interfere with any easements. This and the Fenced Area are the only portions of each Ranch from which other Owners, their family members and accompanied guests, and agents or lessees of Whetstone Mountain Ranch may be excluded. No Owner shall exclude any member of the Board or its agents from entering a Building Envelope or Fenced Area for Association purposes.

Section 7. "Common Area(s)" shall mean all real property including driveways (to any Building Envelope) in which the Association owns any interest, has a leasehold interest or an easement for the common use and enjoyment of its members, as designated on the recorded plat or through recorded deeds and/or easements. Such interest may include, without limitation, estates in fee, estate for a term of years, leasehold estates, or easements. As part of each and every deed transferring an ownership interest in a Ranch from the Developer to an Owner, there shall be granted back to Whetstone Mountain Ranch Homeowners Association from the Owner an easement for all areas outside the building envelope and fenced area of each ranch. All of these easements taken together from each Ranch shall help to create the Common



Areas of Whetstone Mountain Ranch. Each and every Common Area may have a restricted use or enjoyment and may be designated for a specific use by the Board. All Common Areas shall be accessible and open to use by each Ranch Owner, his family members, and accompanied guests, subject only to regulation by the Board.

Section 8. “Developer” or “Declarant” The Developer or Declarant are otherwise known as Smith Ranch LLC and is the entity that is undertaking the planning and creation of Whetstone Mountain Ranch.

Section 9. “Fenced Area” The Fenced Area shall be up to a five acre area of each ranch as approved by the Homeowners Association, including the entire Building Envelope of each Ranch, in which each Owner shall be allowed to fence out others and livestock and retain for private use only. All fences shall be located so as to not interfere with any easements. All areas of each ranch not approved as a Fenced Area by the Homeowners Association shall be Common Areas. No Owner shall exclude any member of the Board or its agents from entering a Fenced Area for Association purposes.

Section 10. “Garage” shall mean an accessory building or an accessory portion of a residence primarily designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Section 11. “Home Occupation” shall mean any commercial use carried on within a dwelling which is:

- 11.1 Customarily conducted entirely within a dwelling by the occupants of the dwelling;
- 11.2 Incidental and secondary to the use of the subject Ranch for residential purposes;
- 11.3 Conducted in such a fashion that the manner or character of use of the dwelling and nature of Whetstone Mountain Ranch is not changed;
- 11.4 Conducted in such a fashion that any noises and activities do not interfere with the quiet of the neighborhood; and
- 11.5 Conducted without the employment of individuals other than the occupants of the dwelling.

Section 12. “Homestead ” shall mean the original and currently existing area, outbuildings, and home that currently exist and function as a working ranch. Homestead shall also mean any renovated building or new structure built in this area of Whetstone Mountain Ranch that is to be operated either by the Association or a Lessee for the benefit of the Ranch Owner’s as a ranching/horse boarding operation.

Section 13. "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 14. "Lessee" shall mean any person(s) or entity approved by either the Board or the Declarant to lease/rent and operate a ranching/horse boarding or other operation on Whetstone Mountain Ranch in compliance with those Rules and Regulations as established by the Board from time to time.

Section 15. "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 16. "Member" shall mean any person holding membership in the Association.

Section 17. "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Ranch 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 18. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Ranch; provided, however, that prior to the first conveyance of any Ranch for value under this Declaration, the Owner shall mean the Declarant.

Section 19. "Permittee" shall mean a person or persons who have been granted permission by the Board or its agent to access and use the Common Areas. The Board shall promulgate rules and regulations regarding the application process and issuance of such permits.

Section 20. "Plat" shall mean the plat of Whetstone 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 or revised from time to time and affecting the Property.

Section 21. "Property" or "Whetstone Mountain Ranch" shall mean and include all of the Property subject to this Declaration, consisting of approximately 296 acres as described on attached Exhibit A.

Section 22. "Ranch" shall mean a tract or parcel as shown on the plat of Whetstone Mountain Ranch and any subsequent plat, but not including the Homestead.



ARTICLE 3

USE OF RANCHES

Section 1. Residential Use. The Building Envelope of each Ranch shall be used exclusively for a single family residence and guest house, one attached or detached garage and a barn, and the easements specifically authorized by these Protective Covenants. No timesharing or other additional uses shall be permitted. **Ranch Owners hereby acknowledge that the Gunnison County Land Use Regulations may require a land use change to build upon any Ranch.**

Section 2. Building Site. All buildings shall be situated within the designated Building Envelope of each Ranch as set forth on the Plat or as adjusted by the Board.

Section 3. Approval of Improvements. No improvement shall be constructed on any Ranch, except only as approved by the Board of Directors.

Section 4. No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Ranch except for Home Occupations upon prior approval by the Board of Directors, which approval shall be subject to annual review and approval by the Board. Further, all such Home Occupations may, at the Board's discretion, be subject to immediate review upon receipt of a written complaint by the Board. If the Board reviews any such Home Occupation and finds such occupation inappropriate given its nature or operation, said Home Occupation shall be disallowed or modified as determined by the Board.

Section 5. Exemption of Homestead. The Homestead shall not be subject to this Article of these covenants and shall be allowed to continue as a working agricultural/ranching operation which may include, but not limited to: uses of ranching, raising of livestock, grazing of livestock, horse boarding, production of hay, bailing and storage of hay, and the control of predatory animals and varmints in accordance with applicable laws. Ranch Owners acknowledge that Whetstone Mountain Ranch, its Members and/or its lessee shall be entitled to access and use all Common Areas in the continuation of Ranching and Horse-boarding operations, in accordance with Rules and Regulations that may be established by the Board from time to time.

Section 6 Non-Interference with Ranching Activities. No Ranch Owner shall interfere with the work or activities related to the Homestead as set forth in Section 5 above.



Section 7. Use of Common Areas. The intent of the Common Areas is to provide each Ranch Owner, Whetstone Mountain Ranch and its agents or lessees with the full use of all areas within Whetstone Mountain Ranch other than each Owner's specifically designated Building Envelopes and Fenced Areas.

No Ranch Owner shall attempt to disallow or interfere in any way with the use of Common Areas by other Owners, family members of Owners and their accompanied guests, and/or agents, lessees or permittees of Whetstone Mountain Ranch. By these covenants each Ranch Owner acknowledges and accepts that he/she is entitled to fence and exclude others from his/her Building Envelope and/or Fenced Area only and that all other portions of his/her Ranch are Common Areas for the use and enjoyment of all those entitled to said use under these covenants. These Common Areas shall be used in accordance with all applicable sections of these covenants and in compliance with all applicable rules and regulations as established by the Board.

Section 8. 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, Common Areas, and their use, provided that such rules and regulations and/or design guidelines are not inconsistent with this Declaration.

Section 9. Common Area Lease. The Association shall have the right to use portions of the Common Areas of each Ranch to operate a ranching/horse boarding or similar operation, either directly or by entering into a contract with a Lessee acceptable to the Association. The ranching/horse boarding operation shall be required to comply with those Rules and Regulations established by the Board from time to time. Any income generated by said lease shall accrue to the benefit of the Association.

ARTICLE 4

ARCHITECTURAL REVIEW AND APPROVAL

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

Section 2. Review and Approval. No single-family residence, garage, barn, building or improvement shall be commenced, constructed, erected or maintained upon any Ranch, nor shall any landscaping in conflict with existing association rules or guidelines be done, nor shall any exterior addition, change or alteration be made, until the plans and specifications therefor 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 construction, the plans for the proposed building or improvement shall be submitted to the

Architectural Review Board for approval. The submittal for approval shall include at a minimum, the following documents prepared by a licensed architect and, where appropriate, by a licensed engineer.

- 3.1 A plot plan showing the location of any building or improvement, 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 The plans and specifications for the building, including a roof plan, in sufficient detail to verify and confirm the size, type and dimensions of the building, mass and height of the building, all design features thereof, all exterior elevations showing all sides of the building, all floor plans and the types of construction and materials.
- 3.3 Samples of the exterior materials and color schemes for the building.
- 3.4 A landscape, drainage and grading plan.

Section 4. Purpose of Review. The Board shall consider compliance with this Declaration, the harmony of the building with the environment, the effect of the building on the utilization and view of the Ranch and surrounding Ranches and property and the placement of the building with respect to topography, drainage, snow removal, ground elevations and existing natural and terrain features. In the event of substantial hardship caused by Ranch topography, configuration or other similar factor, the Board shall have the right, but not the obligation, to grant a variance as to any requirement set forth in this Declaration, except for density under sections 5 and 6 of Article 5, which shall not be varied.

Section 5. Hearing. The Board shall, within twenty-one (21) days of receipt (as acknowledged by the Board or established by the applicant) of a submittal for approval request with all accompanying data, hold a hearing on such request. 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 five (5) working days after the date of the hearing, or fails to hold such hearing within twenty-one (21) days after receipt of a complete submittal for approval request, the application shall be deemed to have been approved.

Section 6. Notice of Hearing. The Applicant, and up to three (3) people on his behalf (including legal counsel), may attend the hearing on the application for approval and submit information. Notice of the hearing shall be given by the Board in writing to all members of the Association and members shall have the right to be present at the hearing or to submit written comments. Written notice of said hearing shall be mailed by the Board to the members no later than seven (7) days prior to the date of the scheduled hearing.



Section 7. Quorum. A majority of the Board of Directors 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 of Directors 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 to any Applicant in the event of disapproval, the reasons why the request was rejected and grant to the Applicant an opportunity to resubmit with revisions and corrections.

Section 9. Rules and Regulations. The Board may adopt such rules and regulations as are appropriate to govern its proceedings as an Architectural Review Board.

Section 10. No Application Fee. No application fee will be required for any approval request. However, the applicant shall compensate the Association for all reasonable expenses incurred, including professional fees, reproduction and mailing costs in reviewing the application.

Section 11. Building Permit. In addition to securing approval from the Board of Directors, each owner is responsible for obtaining all approvals, licenses and permits required by Gunnison County, Colorado and any entity or district having jurisdiction over each Ranch prior to the commencement of construction. These entities may have requirements that are more stringent than those contained herein. **A land use change or further governmental requirements may need to be met in order to receive a permit to build.**

ARTICLE 5

DESIGN REQUIREMENTS

Section 1. Design Requirements. Any residence, garage, barn, building or improvement situate within any Building Envelope shall comply with the design requirements of this Article.

Section 2. Building Site. Any building or improvement shall be constructed entirely within the designated Building Envelope for the Ranch.

Section 3. Uniform Building Code. All buildings and improvements shall meet all of the requirements, including fire protection standards, of the Uniform Building Code, and any other building code or fire code of Gunnison County, Colorado then in effect. All building foundations shall be designed or approved by the stamp of a Colorado registered engineer or architect.

Section 4. Density. The allowable gross floor area, determined in the manner provided by the Uniform Building Code, shall be not less than 2,500 square feet for any family



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residence, with at least 1,500 square feet on one level, unless otherwise approved by the Board of Directors.

Section 5. Maximum Density. The maximum gross floor area of all Buildings, determined in the manner provided by the Uniform Building Code, constructed upon any Ranch shall not exceed 7,500 square feet in the aggregate, including garages, but excluding barns. Should a guesthouse be built, this limit shall be increased by 2,000 square feet. Barns shall not exceed a footprint of 1,300 square feet. (County regulations may be more restrictive).

Section 6. Height. The maximum height of any Building other than a barn shall be 35 feet. The maximum height of a barn shall be 35 feet. The height of a building for the purpose of this Section shall be measured and determined in the manner provided by the Uniform Building Code. (County regulations may be more restrictive).

Section 7. Roofs. Any metal roof must be non-reflective and have a finish with no bright colors.

Section 8. Exterior Building Material and Style. All buildings shall be built in an exterior style and with colors and materials harmonious with the area. No exterior walls shall consist of sheet metal, metal material, T-111 or any similar material, composition shingles or unplastered cement or similar type block. Use of stucco type materials should be limited to accents and foundation walls only. The exterior siding, excluding the roof, shall be comprised of at least two different materials. All colors of exterior walls and roofs will be natural or earth tones in color to blend with the natural surroundings, except that colored trim may be allowed upon approval of the Board of Directors. No A-frames, geodesic domes or yurts shall be allowed, even temporarily.

Section 9. 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.

Section 10. Exterior Lighting. All exterior lighting shall be designed and directed in a manner approved by the Board. All exterior lighting or illumination on any Ranch shall be in compliance with applicable Gunnison County regulations and shall be so located, placed, shielded and designed to be architecturally and aesthetically in keeping with the Buildings and surroundings and to have minimum visual pollution or impact on any other Ranch or on Highway 135. All exterior lighting issues may be subject to annual review by the Board. Further, upon complaint of another owner, exterior lighting may be subject to immediate review by the Board. The Board may, upon such review disallow or specify conditions of continued exterior lighting. Lighting is a sensitive issue and shall be subject to further regulation by the Board to include, but not limited to, restrictions on intensity and hours of usage.

Section 11. Antennae. No exterior radio, television, microwave or other antennae or antenna dish or signal capture or distribution device, unless 18 inches in diameter or less, shall be permitted or installed on any Ranch unless it is entirely screened from view on all sides and such screening shall be in keeping with the terrain and environment.

Section 12. Wood Burning Devices. The maximum number of wood burning devices per Ranch shall be two. Such wood burning device shall be designed to reduce polluting emissions from such wood burning. All stoves shall comply with Colorado Regulation No. 4 of the Colorado Air Quality Control Commission. All fireplaces shall be Rumford masonry fireplaces.

Section 13. Fences. Only barbed or non-barbed wire fences constructed within the Fenced Area shall be permitted on any Ranch, except for screening fences approved by the Association. The Association shall have the right to construct and maintain barbed or non-barbed wire fences, with appropriate cattleguards and/or gates on the roads, around the perimeter of the Property and where necessary for ranching purposes. All fences shall meet U.S. Forest Service guidelines for Gunnison County as they relate to wildlife.

Section 14. Lawns. No Ranch shall have an irrigated lawn in excess of 1,000 square feet. Lawns are not required and are discouraged except for small accent areas around the home.

Section 15. Tree Removal. Removal of trees and other foliage shall be strictly limited. No trees or foliage of any type shall be removed from any Ranch area at any time without prior Board approval. Each unauthorized removal of a single tree, shrub, bush, etc... shall be a separate violation of this provision. Each violation shall result in a \$750.00 fine.

Section 16. Water Sprinkler Systems. It is recommended, but not required, that all residential buildings built 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.

ARTICLE 6

CONSTRUCTION AND MAINTENANCE REQUIREMENTS

Section 1. Excavation. No excavation shall be made on any Ranch, except in connection with an improvement approved in accordance with this Declaration of Protective Covenants. All disturbed areas shall be revegetated.

Section 2. Electrical and Telephone Service. All electrical and telephone service serving or within any Ranch shall be underground.

Section 3. Water and Sewage Disposal Systems. All buildings designed for human occupancy shall be connected with water and sanitation facilities. All water systems and sewage disposal systems shall be constructed, installed and maintained in compliance with all applicable rules and regulations of any governmental entity having jurisdiction over



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the Property. All sewage disposal systems shall meet all applicable rules and regulations of Gunnison County and the State.

Section 4. Signs. No sign of any kind shall be displayed to public view on any portion of any Ranch, except only a sign not to exceed three square feet identifying the Owner and/or address of the Ranch or a sign, not to exceed three square feet, advertising a Ranch for sale. Such signs are subject to Board approval and shall be properly maintained.

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 Board and as authorized for any surface water discharge easement.

Section 6. Wetlands. All driveways, buildings, and other improvements shall be located, designated and constructed so as to avoid affecting wetlands to the extent feasible. If it is not feasible to avoid affecting wetlands, the Ranch Owner shall be responsible for designing and constructing all appropriate mitigation measures and for obtaining all required permits, including appropriate permits from the United States Army Corps of Engineers. The Architectural Control Committee shall have broad discretion to reject plans and specifications for any improvements which will impact wetlands.

Section 7. Mobile Homes and Temporary Structures. No mobile home, modular home, trailer house, travel trailer, horse trailer, recreational vehicle, boat, snowmobile, trailer, bicycle, motorcycle or temporary structure shall be permitted on any Ranch unless contained within a fully enclosed garage or barn, or specifically approved by the Board. Provided, however, that a single motorhome, travel trailer, horse trailer, recreational vehicle, boat, snowmobile, bicycle, ATV or motorcycle or tent for camping belonging to an Owner or the guest of an Owner shall be permitted within the Building Envelope of a Ranch for a period of time which shall not exceed 10 days per year.

Section 8. Continuity of Construction. All construction, reconstruction, alterations or improvements shall be prosecuted diligently to completion and shall be completed within eighteen (18) months of the commencement thereof, unless an extension is granted by the Board for good cause.

Section 11. Trash and Outside Storage. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed on any Ranch or area within the Property. There shall be no burning 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 placed within a garage or other building. No personal property of any kind shall be stored outside on any Ranch.

Section 12. Motor Vehicles. No motor vehicles shall be stored outside except for those in periodic use (at least weekly). Motor vehicles not in such periodic use and any non-working motor vehicles shall not be stored or parked within the Property except within a fully



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enclosed garage or barn. A written notice requesting removal of any vehicle not in such periodic use may be personally served upon the Owner or posted on the vehicle; and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the vehicle without liability and the removal expense shall be charged against the Owner of the Ranch.

Section 13. Driveways. To the extent feasible, all driveways shall be located as depicted on the Plat. Notwithstanding any other provision in the Covenants, the Architectural Review Board, to minimize impact on wetlands, avoid building constraints, preserve trees or for other good cause, shall have the right to review and approve the precise location of all driveways and relocate the driveways depicted on the Plat including the right to locate or relocate a driveway on an adjacent Ranch.

Section 14. Noise. No exterior horns, whistles, bells, windchimes or other sound systems or devices, except security devices used exclusively to protect the security of the improvements on any Ranch, shall be placed or used on any Ranch or home.

Section 15. 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 to exist or operate upon Whetstone Mountain Ranch which is offensive or detrimental as determined by the Board on any part of Whetstone Mountain Ranch; provided, however, that this Section shall not apply to any noise or other activity relating to the construction of any improvements approved by the Board. No construction activity shall occur before 7:00 A.M. or after 7:00 P.M. No outdoor parties or gatherings creating obnoxious, offensive or overly loud behavior shall occur before 9:00 A.M. or after 10:00 P.M.

Section 16. Hazardous Activities. No activities shall be allowed or conducted on Whetstone Mountain Ranch which are unsafe or hazardous.

Section 17. Snowmobiles/Motorcycles/ATVs. No snowmobiles, snowcats, snowtractors, motorcycles, ATVs or similar motorized vehicles for travel over snow, mud or trails shall be allowed, maintained or operated within the Property except as expressly set forth herein:

- 17.1 Snowmobile, off-road motorcycle and ATV use only shall be permitted to and from a residence directly to the nearest area where such activity is permitted.
- 17.2 Snowmobile, off-road motorcycle and ATV use only shall be allowed in the Common Areas of Whetstone Mountain Ranch Subdivision, only in areas to be specifically designated by the Board. All recreational users shall be responsible for knowing these areas.



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- 17.3 Snowmobile, off-road motorcycle or ATV use shall not occur before 9:00 A.M. or after 8:00 P.M. without prior Board approval.
- 17.4 No use of any motorized recreational vehicles other than snowmobiles, off-road motorcycles and ATVs shall be permitted within the perimeter of Whetstone Mountain Ranch without prior written approval of the Board.

Section 18. Wildfire Hazard

- 18.1 Adjacent to any building with combustible siding, a decorative rock or gravel area free of vegetation is recommended for the area three to five feet immediately adjacent to the building. If the building has noncombustible siding, widely spaced foundation plantings of low growing shrubs are acceptable, provided they are not planted directly below windows or next to foundation vents. Firewood or other combustibles shall not be stored adjacent to the building. The area under decks shall not be used for storage.
- 18.2 Sage brush denser than 20 feet between plants should be thinned or eliminated completely by cutting and disposal outward from the graveled zone a minimum of 20 feet from the building. A graveled zone is highly recommended. Grass in this area should be mowed to a height no greater than 6 inches, especially in the spring and fall.

Section 19. Use of Roads. A member must accompany any person using a road or driveway within the property at all times, except for guests and invitees of a member traveling between Colorado 135 and a Building Envelope. No member shall grant any person permission to use the roads within the property in violation of this provision.

Section 20. Limitations on Recreational Access and Use. All Ranch Owners, their family members, permittees and long term tenants (90days or more) are entitled to enjoy the Common Areas for hiking, fishing, riding etc.. Any other person who wishes to use the Common Areas must be accompanied by a Ranch Owner, family member or permittee at all times.

No authorized user shall grant any person permission to use the Common Areas of Whetstone Mountain Ranch in violation of this provision.



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ARTICLE 7

ANIMALS

Section 1. Domestic Household Pets. Not more than two domesticated household pets shall be allowed, kept or maintained on any Ranch. No exotic animals shall be permitted.

Section 2. Confinement of Pets. All pets shall be kept confined to the Owner's Building Envelope or Fenced Area or attached to a leash or other suitable control device. The Owner of any Ranch shall at all times be personally liable and responsible for all actions of such pet and any damage caused by pets which are allowed on such Owner's Ranch.

Section 3. Livestock. No livestock shall be allowed upon the property except those maintained by the Association or a Lessee within the Common Areas or as otherwise specifically set forth within these Covenants. (See generally Article 3, Section 5 and Article 7, Section 4).

Section 4. Horses. Up to 2 horses may be kept on a Ranch for a period not to exceed fourteen (14) days per year, and then only when fenced or otherwise restrained within the Building Envelope or Fenced Area.

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

ARTICLE 8

WHETSTONE MOUNTAIN RANCH OWNERS ASSOCIATION, INC.

Section 1. Government of Association. Whetstone Mountain Ranch Owners Association, 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 Ranch owned by such Owner, but all persons owning each Ranch shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Ranch.



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Section 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 of a Ranch. Upon conveyance of the Owner's interest, the conveying Owner shall be relieved of liability for assessments levied from and after the date of such conveyance; provided, however, that no such conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such conveyance.

Section 4. Voting Rights. All Owners within Whetstone Mountain Ranch Subdivision shall be members of the Association. The Owner(s) of each Ranch shall be entitled to one vote in the Association. The one vote for each Ranch shall be exercised by the Owner and when more than one person or entity holds an interest in a Ranch, the vote for the Ranch shall be exercised as the Owners may determine among themselves, but the vote for the Ranch shall be cast by only one person.

Section 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 6. Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as the "Whetstone Mountain Ranch Rules" governing, among other things, and without limitation:

- 6.1 The use of any private road or street.
- 6.2 The use, creation and location of any easements for utilities or irrigation within any Ranch and its Common Areas.
- 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 or by the Association.
- 6.5 The use and enjoyment of the Common Areas of Whetstone Mountain Ranch.
- 6.6 Any other matter deemed by the Board to be an appropriate subject for a rule or regulation on condition that such rule or regulation shall not be inconsistent with these Protective Covenants or the Association's Articles of Incorporation or Bylaws.

Section 7. Grant of Utility Easements. The Declarant hereby authorizes and empowers, the Association as his or her attorney in fact, to give and grant a utility easement for the installation, construction and maintenance of underground utilities and/or water lines and irrigation ditches along, over and across any road or driveway easement designated on the Plat.



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Additionally, the Owner of each Ranch, by virtue of such ownership, hereby authorizes and empowers the Association, as its attorney in fact, to give and grant:

- 7.1 A utility easement and right of way 20 feet in width on any Ranch where needed for the installation, construction and maintenance of underground utilities; and
- 7.2 A water line and/or ditch easement 20 feet in width across any Ranch.
- 7.3 Existing Easements: Each Owner acknowledges the existence of the existing easements which include, among others, Baxter Gulch, Baxter Ditch, Willow-Ditch, Spann-Netick Ditch, Lodge Pole Lake, Smith Lake, and Trapper's Crossing Access. Each Owner further acknowledges the need to properly maintain and preserve these easements/ditches and hereby grants permission for any such required work or maintenance to include access and a reasonable working area.

Section 8 Road Maintenance and Dust Control. Upon completion of construction of the roads, maintenance, repairs, snow plowing and supervision shall be the duty of and vested in the Association. The Association shall specifically:

- 8.1 At all times keep in good repair all roads within and providing access to the Property, including driveways to within 300 feet of any Building Envelope, and maintain the same in suitable condition for use by the members of the Association and emergency vehicles, including fire trucks.
- 8.2 Provide dust control not less than once a year in the form of the use of magnesium chloride or other suitable dust retardant on the roads.
- 8.3 Plow snow from the roads as required for year round access to any Fenced Area or Building Envelope, whichever is larger. The Association shall have on all Ranches a 10 foot wide easement for snow storage purposes contiguous to all roads.
- 8.4 Driveway maintenance and dust control of driveways within any Ranch's Building Envelope or Fenced Area (whichever is larger) shall be the responsibility of each Ranch Owner.

ARTICLE 9
ASSESSMENTS

Section 1. Creation of Lien. Each Owner of any Ranch, 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 Ranch 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 Ranch 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 limited to and use exclusively for the following:

- 2.1 The maintenance, repair, snow removal and improvement of any private road or street within or providing access to the Property.
- 2.2 The installation, operation, maintenance and repair of an irrigation system and/or domestic water system.
- 2.3 Any maintenance, repair or improvement required to be made by any Owner to any Improvement on any Ranch which the Owner fails to do.
- 2.4 Any costs and expenses pertaining to the operation of the Association in the performance of its duties.
- 2.5 Any other purpose approved by a majority vote of all members of the Association.

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 Ranches.
- 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 among all Ranches benefited.

3.3 **Default Assessments.** Default assessments for the purpose of correcting or remedying an owner's default hereunder.

Section 4. Regular Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and not less than thirty days prior to the commencement of each fiscal year, the Board shall adopt a final budget and shall determine, levy and assess the Association's regular assessments for the following year. The proposed budget for the next fiscal year shall be distributed to the members.

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 for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or construction, repair or replacement or to make up any shortfall in the current year's budget. 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.

Except as hereinafter provided, prior to the board of directors levying a special assessment that exceeds \$12,000.00, the special assessment shall be submitted to and approved by an affirmative vote of the members to be benefited at either a regular meeting of the members or a special meeting of the members called for such purpose.

Section 6. Assessment for Each Ranch. All regular and special assessments shall be apportioned and allocated equally among the Owners of each Ranch regardless of variances in actual Ranch sizes or home sizes.

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 the Owner, shall be a default assessment and shall become a lien against such Owner's Ranch 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 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.



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- 8.2 Assess an interest rate charge from the date of delinquency at 18% per year, or such other higher or lower rate 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 Ranch.
- 8.6 Foreclose such Statement of 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 Ranch, setting forth the name of the Owner, the description of the Ranch, 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 or Manager of the Association and which shall be sent by certified mail, postage prepaid, to the Owner of the Ranch at such address as the Association may have in its records as to the Owner. At any time following 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 under the statutes of the State of Colorado. Such Statement of Lien shall secure all assessments accrued or assessed, including those 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.
- 8.7 The Statement of Lien shall be superior to all other liens and encumbrances on such Ranch, except only any tax and assessment liens levied by any governmental entity.

Section 9. Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Ranch to pay all assessments and the Association's lien on a Ranch for such assessments, all successors to the ownership of a Ranch shall be jointly and severally liable with the prior Owner for any and all unpaid assessments, penalties, interest, costs, expenses and attorneys fees against such Ranch.

ARTICLE 10

WATER RIGHTS

Section 1. Water Augmentation Plan. With respect to the water rights owned by the Association, the Association shall be responsible for compliance with the terms of all Water Court cases and augmentation plans, if any, relating to Whetstone Mountain Ranch, including the maintenance of all records and other reporting requirements imposed by all decrees and the release of water in storage therein as required by the Colorado Division of Water Resources consistent with the terms of such decrees, and the maintenance, repair, and replacement of all ditches, pipes, flumes, dams, outlet works, and other physical components required for the proper implementation of all plans of augmentation.

Section 2. Enforcement of Water Rights. Any Owner of a Ranch in the Property shall have the right, in the event of the failure or inability of the Association to preserve and administer the 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 reasonable costs and expenses so incurred, including such owner's attorneys' fees and costs.

Section 3. Acknowledgement of Water Rights and Easements. The Association and all owners expressly recognize that certain private parties own water rights on the property and have recorded access and use easements regarding those water rights. Neither the Association nor any owner shall interfere with either access or use of such water rights by the then lawful owner of said rights.

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 remedies provided for the abatement thereof.

Section 2. Failure to Comply. The failure to comply herewith or with the Articles Bylaws or rules and regulations shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them. Damages and penalties not directly addressed herein may be established by the Board. Any damages or penalties specified within these covenants or as otherwise established or modified by the Board are deemed reasonable. Reasonable notice and an opportunity for a hearing shall be provided by the Association to any delinquent Owner prior to commencing any legal proceedings.

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

- 3.1 By the Association in the name of the Association and on behalf of the Owners.
- 3.2 By the Owner of any Ranch.

Section 4. No Waiver. The failure of the Board, the Association, or any Ranch 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, 2025. 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 be terminated, extended, modified or amended as to the Property subject to the Protective Covenants, or any portion thereof, upon the written consent of the Owners of 75% or more of the Ranches 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 Ranches within the Property; provided, however, the right of amendment herein granted may not be exercised by the owners of Ranches in the Property without Declarant's approval until either (1) five years have passed from the date of construction of the first improvements on any Ranch or (2) 75% of all Ranches within the Property have been sold or conveyed to third person owners by Declarant, whichever occurs first.

Section 3. Amendment by Declarant. Notwithstanding the provisions of Section 2, the Declarant reserves the exclusive right and power to modify and amend this Declaration of Protective Covenants, and all Plats subject to this Declaration of Protective Covenants, by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in the Declaration of Protective Covenants and/or Plats, (2) any corrections required to comply with the applicable laws, rules and regulations of any governmental entity having jurisdiction over the Property, and (3) any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a residence upon any Ranch. This-right and power of the Declarant to modify or amend this Declaration of Protective Covenants and the Plats, in whole or in part, as set forth



in this Section 3, shall be effective only until (1) five years after the date of construction of the first improvements on the Property or (2) the date that 60% of all Ranches within the property have been sold or conveyed to third person owners by the Declarant, whichever occurs first.

Section 4. Mortgage Holder Approval Not Required. The Declaration and/or Plat may be amended as set forth in Sections 2 and 3 of this Article 12 and such amendment shall be effective against the holders of Mortgages encumbering Ranches in Whetsone Mountain Ranch 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 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 5. Limitation of Liability. Neither the Association nor any officer, director or other representative of the Association 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, directors or other representatives of the Association with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association. Such indemnification shall include repayment of all costs and expenses incurred, including reasonable attorneys' fees.

Section 6. Attorney's Fees. The prevailing party shall be entitled to reasonable attorneys' fees as well as its reasonable costs and expenses, incurred by it in any proceeding or



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action to interpret or enforce any provision of the Association documents, including these Protective Covenants.

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 documents shall bear interest at 18% per year or at such other higher or lower rate as the Board of Directors may establish from the date due until paid.

Section 9. Partition of Ranches. No part of a Ranch may be partitioned, separated or subdivided from any other part thereof with the express exception of the Homestead area.

Section 10. Development Rights and Special Declarant Rights. The Declarant/ Developer 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:

- 10.1 The right to amend the Declaration or Plat as set forth herein.
- 10.2 The right to appoint or remove any officer of the Association or any Director of the Association during the Declarant Control Period.
- 10.3 The right to complete or make any improvements as set forth on the Plat, the Association Documents or as required by Gunnison County, Colorado.
- 10.4 The right and obligation to assign any and all easements received from Ranch Purchasers or Owners to the Whetstone Mountain Ranch Homeowner's Association. This is to provide for and maintain the creation of the Common Areas by the developer and continued existence of these Common Areas for the use and enjoyment by all Ranch Owners as described in the Statement of Purpose of these covenants.

(Schedule A continued)

SHEET

LEGAL DESCRIPTION:



PARCEL A:

Township 14 South, Range 86 West, 6th P.M.

Section 11: NE $\frac{1}{4}$ and N $\frac{1}{4}$ SE $\frac{1}{4}$

Section 12: NW $\frac{1}{4}$ and N $\frac{1}{4}$ SW $\frac{1}{4}$

EXCEPTING THEREFROM the following described parcels:

1. Township 14 South, Range 86 West, 6th P.M.

A portion of the NW $\frac{1}{4}$ of Section 12, more particularly described as follows:

Beginning at the North Quarter (N $\frac{1}{4}$) Corner to said Section Twelve (12); thence South 0°20' East, on Section line, 2420.9 feet to the North right of way line of Colorado State Highway No. 135; thence North 58°30' West, 205.5 feet; thence North 67°57' West, 304.1 feet; thence North 58°30' West, 1360.0 feet; thence North 36°05' West, 286.0 feet; thence North 47°59' West, 170.0 feet; thence North 66°1' West 378.0 feet; thence North 44°50' West, 84.0 feet; thence North 0°14' East 1038.0 feet on Section line to the Northwest corner of said Section Twelve (12); thence East 2640.0 feet, more or less, to the place of beginning,

- and Township 14 South, Range 86 West, 6th P.M.

A portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, more particularly described as follows:

Beginning at the Northeast corner of said Section Eleven (11); thence South 0°14' West 1038.0 feet to the North right of way line of Colorado State Highway No. 135; thence North 52°42' West 800.0 feet; thence North 56°44' West, 840.0 feet, more or less, to the North line of the Northeast Quarter (NE $\frac{1}{4}$) of said Section Eleven (11); thence North 89°37' East, 1332.5 feet, more or less,

NOTE: The above described parcels do not close. The descriptions set forth above represent an attempt to convey lands lying to the north of Colorado Highway 135. It is the intention of the Company not to insure any property lying to the North of the Southerly boundary of the present location of Colorado Highway 135.

(Schedule A continued)

SHEET

LEGAL DESCRIPTION CONTINUED:

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Exceptions to the properties continued:

2. All of the right of way of the Denver and Rio Grande Western Railroad Company for its spur track to the Buikley Mine leading out from the Crested Butte branch of said Railroad Company as formally constructed and operated over and across the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 in Township 14 South, Range 86 West, excepting therefrom all land lying within 100 feet from the center line of the main tract of the Crested Butte branch of said Railroad Company as now operated over and across the S $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12 and other as conveyed to the Colorado Fuel and Iron Corporation by the Denver and Rio Grande Western Railroad Company in Quit Claim Deed recorded May 27, 1950 in Book 284 at page 205 in which the specific location of said right of way is not described.

NOTE: The Denver and Rio Grande Western Railroad Company acquired title to certain railroad easements in Deeds recorded in Book 35 at page 95, page 97, page 98, Book 172 at page 432 and Book 203 at page 343. Subsequently, a disclaimer by the Denver and Rio Grande Western Railroad Company eliminated any interest which said Railroad Company may have in any of the subject property except that conveyed to the Colorado Fuel and Iron Corporation.

3. Beginning at a point on the westerly side of the right of way of the loading track of the D & R G R R Co's spur which leads to second party's property and 12 feet northerly from the center line of the tram line of said Coal Co. Thence South 62°5' West 460 feet to a point; thence South 150.4 feet to the Northeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 11, Township 14 South, Range 86 West; thence S 85° East 1365 feet to a point, thence North 309.2 feet to a point on the South side of said right of way, thence along the southerly boundary of said spur right of way to a point on said boundary line from whence a line projected south 65°5' West will reach the point of beginning, thence along said projected line to the place of beginning. Excepting herefrom that tract of land conveyed to the D & R G R R Co. for a loading track as conveyed to the Crested Butte Coal Company in Warranty Deed recorded in Book 169 at page 303.
4. A strip of land 25 feet on each side of the following described center line; Beginning at a point which is 185 feet north of the W $\frac{1}{4}$ corner of SW $\frac{1}{4}$ Section 12, Township 14 South, Range 86 West, thence South 82°19' East 294.6 feet to a point representing the point of tangent of a 10° curve right, thence by chord deflections on center line of aforesaid curve the following courses and distances to the North line of the S $\frac{1}{4}$ SW $\frac{1}{4}$ Section 12, South 77°19' East 100 feet; South 77°19' East 100 feet; South 67°19' East 100 feet; South 64°49' E 50 feet.

LEGAL DESCRIPTION CONTINUED:

Exceptions to the properties continued:

4. Continued:



A strip of land 25 feet on each side of the following described center line; Beginning at a point which is 185 feet north of the NW $\frac{1}{4}$ corner of the SW $\frac{1}{4}$ Section 12; thence North 82°19' W 105.4 feet to a point representing the point of curve of a 9° curve right; thence by chord deflections on center line of said curve the following courses and distances to the point of tangent of said curve: North 77°49' West 100 feet. North 73°19' West 100 feet. North 68°49' West 100 feet; North 55°19' West 241.75 feet to a point designated as "A" and which point represents the intersection of center line of tiple with centerline of above described right of way for rail road thence North 55°19' West 193.25 feet to a point representing the point of curve of a 10° curve right; thence by chord deflections on center line of said curve the following courses and distances: North 50°19' West 100 feet, North 45°19' West 100 feet; North 40°19' West 100 feet; North 35°19' West 100 feet.

A strip of land 25 feet on each side of the following described center line; Beginning at a point designated in the foregoing description as "A", thence South 35°41' West 1891.77 feet thence South 12°56' West 141.3 feet; thence South 39°56' West 54 feet; thence South 85°26' West 41 feet; thence North 73°11' West 162.3 feet; thence South 81°12' West 65 feet; thence South 55°35' West 143.5 feet.

Beginning at a point 168 feet east of the S $\frac{1}{4}$ Corner Section 11, thence East 250 feet; thence North 100 feet, thence W 250 feet; thence South 100 feet.

As conveyed to the Crested Butte Coal Company in Warranty Deed recorded in Book 213 at page 99.

5. Township 14 South, Range 86 West, 6th P.M.

A parcel of land located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 and NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11 more particularly described as follows:

Beginning at Corner No. 1, whence the West quarter corner of Section 12 bears North 132.9 feet; thence South 37°40' West 923.2 feet to Corner No. 2 a point on the railroad right of way at the tiple; thence South 53°02' East 80.5 feet along said railroad right of way to corner No. 3; thence North 37°40' East 947 feet to corner No. 4; thence North 1632.3 feet to Corner No. 5 a point on the State highway fence east of the east lane fence; thence North 51°26' West 45.5 feet to corner No. 6 the corner of the east lane and highway fences; thence North 32°36' West 82.4 feet to Corner No. 7, the corner of the West lane and highway fence.

LEGAL DESCRIPTION CONTINUED:



Exceptions to the properties continued: 510275 04/30/2001 01:41P 135
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6. Three tracts of land conveyed to the Crested Butte Coal Company in Warranty Deed recorded December 14, 1940 in Book 262 at page 205, more particularly described as follows:

TRACT 1:

Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land lying South of the spur tract railroad right of way and situated in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12 more particularly described as follows:

Beginning at Corner No. 1, a point at the intersection of the West line of Section 12, with the South right of way line of the spur tract to The Crested Butte Coal Company tipple, whence the West quarter corner of Section 12 bears North 00°33' West 1157.44 feet distant; thence following the railroad right of way South 82°31' East 224.00 feet; thence South 78°54' East 97 feet; thence South 71°40' East 97 feet; thence South 64°26' East 77.75 feet; thence South 38°01' East 72.50 feet to a point at the intersection of the railroad right of way South line with the South line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12; thence North 89°13' West 522.00 feet to a point at the intersection of the South line of the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 12, with West line of said Section 12; thence North 00°33' West 162.50 feet on said West section line to the place of beginning.

TRACT 2:

Township 14 South, Range 86 West, 6th P.M.

Section 11: A tract of land located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ more particularly described as follows:

Beginning at corner No. 1, whence the East quarter corner of Section 11 bears North 00°33' West 990.00 feet distant; thence South 00°33' East 330.00 feet; thence North 89°50' West 1309.00 feet; thence North 00°06' West at 325 feet; thence South 89°53' East 326 feet; thence North 00°13' West 493.00 feet; thence South 63°26' East 1098.20 feet to the place of beginning.

TRACT 3:

Township 14 South, Range 86 West, 6th P.M.

Section 11: A tract of land located in the S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ more particularly described as follows:

Beginning at Corner No. 1, whence the East quarter corner of Section 11 bears North 52°37' East 1632.15 feet distant; thence South 00°06' East 326.00 feet; thence North 89°50' West 1309.00 feet; thence North 00°21' East 654.00 feet; thence South 89°56' East 651.00 feet; thence South 63°04' East 732.92 feet to the place of beginning.

(Schedule A continued)

SHEET

LEGAL DESCRIPTION CONTINUED:

Exceptions to the properties continued:



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7. Three tracts of land as conveyed to the County of Gunnison in Right of Way Deed recorded in Book 291 at page 39 as follows:

TRACT 1:

Township 14 South, Range 96 West, 6th P.M.

Section 12: A tract of land located in the NW $\frac{1}{4}$ more particularly described as follows:

Beginning at a point on the East line of the NW $\frac{1}{4}$, Section 12 from which point the N $\frac{1}{4}$ corner of Section 12, Township 14 South, Range 86 West, 6th P.M. bears North 00°20'30" West a distance of 2420.9 feet; thence along the East line of the NW $\frac{1}{4}$, Section 12 North 00°20'30" West a distance of 1117.7 feet; thence North 58°30' West a distance of 20 feet; thence North 67°57'30" West a distance of 304.1 feet; thence North 58°30' West a distance of 1534.5 feet; thence along the arc of a curve to the left with a radius of 686.6 feet a distance of 335.1 feet (the chord of which arc bears North 72°29' West a distance of 331.8 feet); thence North 86°28' West a distance of 23.8 feet to the Northeasterly right of way of the D & R G W RR; thence along the Northeasterly right of way line of the D & R G W RR South 51°28' East a distance of 206.1 feet; thence along the arc of a curve to the right with a radius of 586.6 feet a distance of 139.8 feet (the chord of which arc bears South 65°20' East a distance of 139.5 feet); thence South 58°30' East a distance of 1534.5 feet; thence South 49°02' East a distance of 304.1 feet; thence South 58°30' East a distance of 329.7 feet to the East line of the NW $\frac{1}{4}$, Section 12; thence along the East line of the NW $\frac{1}{4}$, North 00°20'30" West a distance of 117.7 feet, more or less, to the point of beginning.

TRACT 2:

Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land located in the NW $\frac{1}{4}$ more particularly described as follows:

Beginning at a point on the West line of Section 12 from which point the NW corner of Section 12, Township 14 South, Range 86 West, 6th P.M. bears North 00°14' East a distance of 1038.0 feet; thence along the West line of Section 12 South 00°14' West a distance of 62.7 feet; thence South 52°36' East a distance of 90.5 feet; thence along the arc of a curve to the left with a radius of 766.3 feet a distance of 452.8 feet (the chord of which arc bears South 69°32' East a distance of 446.4 feet); thence South 86°28' East a distance of 36.1 feet to the Southwesterly right of way line of the D & R G W RR; thence along the Southwesterly right of way line of the D & R G W RR North 51°28' West a distance of 195.0 feet; thence along the Southwesterly right of way line of the D & R G W RR along the arc of

LEGAL DESCRIPTION CONTINUED:

Exceptions to the properties continued:



7. Continued:

of which arc bears North 55°01'30" West a distance of 171.6 feet;) thence along the Southwesterly right of way line of the D & R G W RR North 58°35' West a distance of 272.3 feet to the West line of Section 12; thence along the West line of Section 12, South 00°14' West a distance of 85.8 feet, more or less, to the point of beginning.

TRACT 3:

Township 14 South, Range 86 West, 6th P.M.

Section 11: A tract of land located in the NE¼ of Section 11 more particularly described as follows:

Beginning at a point of the West line of Section 11 from which point the NE corner of Section 11 bears North 0°14' East a distance of 1038 feet; thence along the West line of Section 11, North 00°14' East a distance of 85.8 feet to the Northeasterly right of way line of the D & R G W RR; thence along the Northeasterly right of way line of the D & R G W RR North 58°35' West a distance of 226.7 feet; thence along the Northeasterly right of way line of the D & R G W RR along the arc of a curve to the right with a radius of 1005.0 feet a distance of 251.9 feet (the chord of which arc bears North 51°24' West a distance of 251.3 feet); thence North 52°36' West a distance of 210.7 feet; thence along the arc of a curve to the left with a radius of 2915.0 feet a distance of 209.4 feet; thence North 56°43' West a distance of 764.1 feet to the North line of the NE¼, Section 11; thence along the North line of the NE¼, South 89°37'30" West a distance of 180.4 feet; thence South 56°43' East a distance of 914.3 feet; thence along the arc of a curve to the right with a radius of 2815.0 feet a distance of 202.2 feet (the chord of which arc bears South 54°39'30" East a distance of 202.2 feet); thence South 52°36' East a distance of 777.1 feet to the East line of Section 11; thence along the East line of Section 11, North 00°14' East a distance of 62.7 feet, more or less, to the point of beginning.

NOTE: It is possible that the property described in exception No. 7 above represents Colorado Highway No. 135 and, therefore, is not included in the property to be insured. Without an accurate survey of the area, it is not possible to determine whether this property is Highway 135 as it is presently located.

8. Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land located in the SW¼ of said section more particularly described as follows:

Beginning at the Northeast corner of said SW¼ of said Section 12, thence South 24°38' West a distance of 718.96 feet; thence South 04°11' West a distance of 145.02 feet; thence South 32°31' East a distance of 416.97 feet;

(Schedule A continued)

SHEET 2.

LEGAL DESCRIPTION CONTINUED:

Exceptions to the properties continued:



8. Continued:

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Said property being conveyed to R. G. Verzuh and Esther L. Verzuh in Warranty Deed recorded in Book 372 at page 110.

NOTE: The following described property is also included in Parcel A of the subject property:

TRACT No. 1:

Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said sections, more particularly described as follows:

Beginning at Corner No. 1, a point at the intersection of the North line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12, with the East line of the main line railroad right-of-way, whence the West quarter corner of said Section 12 bears North 57°22' West 2499.91 feet distant; thence following said railroad right-of-way line South 14°26' East 4.00 feet; thence South 21°02' East 89.00 feet; thence South 24°20' East 78.00 feet; thence South 30°52' East 90.00 feet; thence South 37°24' East 90.00 feet; thence South 43°56' East 97.00 feet; thence South 47°12' East 394.00 feet; thence South 48°31' East 105.00 feet to a point at the intersection of said east railroad right-of-way line with the east line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12, thence following the said East line North 00°31' West 703.00 feet to the northeast corner of the said SE $\frac{1}{4}$ SW $\frac{1}{4}$; thence following said north line North 89°13' West 600.00 feet to the place of beginning. (This area conforms to the 1939 resurvey of said Section 12 with all courses referred to the true meridian.)

TRACT No. 2:

Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12, more particularly described as follows:

Beginning at Corner No. 1, a point common to the northwest corner of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 12, whence the west quarter corner of said Section 12 bears North 45°27' West 1907.48 feet distant; thence South 00°32' East 294.00 feet along the west line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12, to point at its intersection with the north line of the spur tract right-of-way; thence following said right-of-way South 73°34' East 658.50 feet; thence South 73°31' East 243.00 feet to the point of

(Schedule A continued)

SHEET No.

LEGAL DESCRIPTION CONTINUED:



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Parcel A continued:

intersection of the north line of the spur tract right-of-way with the west line of the main railroad right-of-way; thence following said railroad right-of-way North 47°12' West 44 feet; thence North 43°56' West 111.00 feet; thence North 37°24' West 111.00 feet; thence North 30°52' West 111.00 feet; thence North 24°20' West 94.00 feet; thence North 21°02' West 109.00 feet; thence North 14°26' West 66.00 feet to a point at the intersection of the west railroad right-of-way line with the north line of the SE $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12; thence following said north line North 89°13' West 539.00 feet, to the place of beginning. (This area conforms to the 1939 resurvey of the said Section 12, with all courses referred to the true meridian.)

TRACT No. 3:

Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12, more particularly described as follows:

Beginning at Corner No. 1, a point at the intersection of the north line of the railroad right-of-way with the north line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$, said Section 12, whence the West quarter corner of said Section 12 bears North 24°40' West 1461.46 feet distant; thence following the railroad right-of-way South 47°59' East 79 feet; thence South 57°49' East 95.80 feet; thence South 67°43' East 100.80 feet; thence South 72°40' East 399.00 feet; thence South 73°34' East 146.00 feet to a point at the intersection of the north line of the railroad right-of-way with the east line of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of said Section 12; thence North 00°32' West on said east line 294.00 feet to a point at the intersection of said east line with the north line of said SW $\frac{1}{4}$ SW $\frac{1}{4}$; thence North 89°13' West on said North line, 749.80 feet to the place of beginning. (This area conforms to the 1939 resurvey of the said Section 12, with all courses referred to the true meridian.)

PARCEL BTRACT 1:Township 14 South, Range 86 West, 6th P.M.

Section 11: A tract of land located in the NE $\frac{1}{4}$ of said section, more particularly described as follows:

From the Northeast corner of said Section 11; thence South 0°14' West 1081.3 feet to the south right of way line of Colorado State Highway No. 135; thence South 0°14' West 188.8 feet to Corner No. 1 for a place of beginning; thence West 140.0 feet to Corner No. 2; thence South 0°14' West 85.0 feet to Corner No. 3; thence East 140.0 feet to Corner No. 4; thence North 0°14' East 85.0 feet to the place of beginning.

LEGAL DESCRIPTION CONTINUED:

PARCEL B Continued:



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TRACT 2:

Township 14 South, Range 86 West, 6th P.M.

Section 12: A tract of land located in the NW $\frac{1}{4}$ of said section, being more particularly described as follows:

Beginning at a point South 0°14' West of the Northeast corner of Section 11, 1081.3 feet and being on the South right of way line of Colorado State Highway No. 135; thence South 0°14' West 273.8 feet to Corner No. 2; thence East 20.0 feet to Corner No. 3; thence North 0°14' East 259.8 feet to Corner No. 4; thence North 44°50' West 24.5 feet to the place of beginning.

TRACT 3:

Township 14 South, Range 86 West, 6th P.M.

Section 11: A tract of land located in the E $\frac{1}{2}$ NE $\frac{1}{4}$ of said section, more particularly described as follows:

Beginning at a point where the section line intersects the South right of way line of State Highway 135, South 0°14' West 1081.3 feet from the Northeast corner of said Section 11, and running; thence South 0°14' West 188.8 feet; thence West 140 feet; thence South 0°14' West 85 feet; thence West 53 feet; thence North 0°14' East 418 feet to the South line of said Highway No. 135; thence South 53°00' East 240.9 feet to the point of beginning.

COUNTY OF GUNNISON,
STATE OF COLORADO.

NOTE: Tract No. 2 of Parcel B of the subject property fails to close by 3.37 feet North and South and 2.66 feet East and West. This description should be corrected, and the proper documents executed and recorded to complete the correction of record. Upon review of the corrected legal description, the Company will notify the Insured as to what documents are necessary to complete the correction.