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**DECLARATION OF PROTECTIVE COVENANTS OF  
THE SMITH HILL RANCHES**

This Declaration of Protective Covenants of The Smith Hill Ranches is executed this 29th day of August, 2003, by The Phoenix Family Group, Ltd., a Texas limited partnership ("Declarant").

**ARTICLE 1  
STATEMENT OF PURPOSE OF DECLARATION**

1.1. Ownership of Property. Declarant is the owner of the real property situate in Gunnison County, Colorado, set forth on the Plat of The Smith Hill Ranches, which was filed August 29, 2003, in the records of Gunnison County, Colorado, bearing Reception No. 534305.

1.2. Declaration of Covenants. Declarant hereby makes, declares, and establishes the following covenants, conditions, 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 and shall inure to and be for the benefit of each Owner of a Ranch within the Property.

1.3. 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 the Property and to provide for the preservation of values of the Property and to provide and to establish the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Owners of Ranches.

1.4. Common Interest Community. Declarant further declares the Property to be a Planned Community under the Colorado Common Interest Ownership Act. The name of the Planned Community is The Smith Hill Ranches, and the Planned Community is located in Gunnison County, Colorado. The Planned Community and the Property are subject to the applicable provisions of the Gunnison County Land Use Resolution.

1.5. Dedication. Declarant hereby dedicates all roads on the Plat as private roads for the benefit of Ranch Owners within The Smith Hill Ranches to be operated, administered, and maintained by the Association. In addition, Declarant dedicates the easement described in that certain Grant of Easement recorded January 15, 2002 as Reception No. 517421 of the records of Gunnison County, Colorado, to be operated, administered, and maintained by the Association.

**ARTICLE 2  
DEFINITIONS**

The following terms and words shall have the following definitions:



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2.1. "Allocated Interest" shall mean the allocated interest under CCIOA of each Ranch (Unit) created in the Property and shall be one vote in the Association and a fraction of the Common Expense liability of the Association, which fraction has a numerator of one and a denominator consisting of the total number of Ranches within the Property.

2.2. "Architectural Review Board" shall mean that Board described and authorized in Article 4.

2.3. "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.

2.4. "Association" shall mean the homeowners' association that Declarant causes to be incorporated as a nonprofit Colorado corporation to administer and enforce this Declaration, or any successor corporation or entity charged with the duties and obligations set forth herein.

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

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

2.7. "Board of Directors," "Executive Board," or "Board" are synonymous terms and shall mean the Board of Directors (Executive Board) of the Association duly elected or appointed and acting according to the Articles of Incorporation and Bylaws of the Association.

2.8. "Building" shall mean a building or any similar type of improvement situate and located on a Ranch or parcel of land within the Property.

2.9. "CCIOA" shall mean the Colorado Common Interest Ownership Act, C.R.S. sections 38-33.3-101 et seq.

2.10. "Common Expense" shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

2.11. "Declarant" shall mean The Phoenix Family Group, Ltd., a Texas limited partnership, its successors and assigns.

2.12. "Declaration" shall mean this Declaration of Protective Covenants, as it may from time to time be amended or supplemented.

2.13. "Garage" shall mean an accessory building or an accessory portion of a residence designed primarily for the storage of motor vehicles and other personal property.

2.14. "Homesite" shall mean the homesite set forth on the Plat within a Ranch where a building or other improvement shall be located, subject to the prior written approval of the Architectural Review Board.

2.15. "Improvement" shall mean all physical changes such as Buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, ditches, 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, and any new exterior construction or exterior improvement constructed or completed on the Property.

2.16. "Integrated Secondary Residence" shall mean a secondary Residence that is structurally integrated within, and has an internal access to, a Primary Residence.

2.17. "LUR" shall mean the Gunnison County Land Use Resolution as adopted by the Board of County Commissioners of Gunnison County, Colorado.

2.18. "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.

2.19. "Member" shall mean a member of the Association.

2.20. "Mortgage" shall mean any mortgage, deed of trust, or other document pledging a Ranch or interest therein as security for the payment of indebtedness.

2.21. "Occupant" shall mean a lessee or licensee of an Owner, or any other person or entity other than an Owner, in lawful possession of a Ranch with the permission of the Owner.

2.22. "Owner" shall mean any person or entity that is the owner of title to any Ranch within the Property, whether recorded or not, excluding any entity or person who holds such interest as security for the payment of an obligation, but including contract sellers and any mortgagee or other security holder in actual possession of a Ranch.

2.23. "Period of Declarant Control" shall mean that period described in Section 8.9.

2.24. "Plat" shall mean the Plat of The Smith Hill Ranches, filed August 29, 2003, in the records of Gunnison County, Colorado, bearing Reception No. 534305, and any revisions or amendments thereto.

2.25. "Primary Residence" shall mean the primary Residence on a Ranch.

2.26. "Property" shall be that real property situate in Gunnison County, Colorado, set forth on the Plat. In addition, "Property" shall include the water rights described on Exhibit A

attached hereto, but only at such time as those water rights are dedicated and conveyed to the Association as provided herein.

2.27. "Ranch" shall mean a physical portion of the Property designated for separate ownership or occupancy, the boundaries of which are, or will be, set forth on the Plat, and which boundaries are incorporated into this Declaration by reference. A Ranch is a "Unit" under CCIOA.

2.28. "Reserved Easement" shall mean an easement as set forth on the Plat, which Declarant may dedicate in the future in accordance with the provisions of Section 12.2.

2.29. "Residence" shall mean a structure or any part of a structure designed for residential purposes having one or more rooms, not more than one kitchen, and at least one bathroom, which is designed for long-term occupancy by one or more persons for living and sleeping purposes (excluding vehicles).

2.30. "Secondary Residence" shall mean a Residence that is an accessory structure to a Primary Residence. Secondary Residence does not include an Integrated Secondary Residence.

### ARTICLE 3 USE OF RANCHES

3.1. Residential Use. All Ranches shall be used exclusively for residential purposes. Each Ranch shall have no more than one Primary Residence, one attached or detached Garage, and one Barn. In addition, every Ranch is allowed to have an Integrated Secondary Residence as a part of the Primary Residence, so long as it complies with all requirements of the LUR. Such Primary Residence, Secondary Residence (if allowed), Garage, and Barn shall be contained in no more than three (3) buildings. No additional Buildings shall be permitted. No time-sharing shall be allowed. No leasing of the Property is allowed, except as permitted by Section 3.3.

3.2. Homesite. Any Primary Residence, Secondary Residence, and Garage shall be located entirely within the designated Homesite of the Ranch.

3.3. Secondary Residence. The LUR does not presently provide for a Secondary Residence to be constructed on a Ranch. In the event that the LUR is subsequently amended to allow a Secondary Residence upon a Ranch, then such construction shall be allowed upon each Ranch, so long as all requirements of this Declaration and of the LUR are satisfied. In such event, the additional requirements of this Section shall pertain to any such Secondary Residence. The Secondary Residence shall at all times be owned by the Owner of the Primary Residence and the Ranch upon which it is situate. Notwithstanding the prohibition against leasing contained in 3.1, the Secondary Residence may be rented or leased to a caretaker of the Primary Residence and Ranch. At no time shall a Secondary Residence be used as the primary residence of a person or family other than the Owner, the caretaker, or their families. Any Secondary Residence shall only be served by and connected to the same water and sanitation facilities designed for and serving the Primary Residence on the Ranch, and access to the Secondary Residence shall only be by the same access driveway that provides access to the Primary Residence.



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3.4. Barn. One barn with an appropriately fenced corral or corrals shall be allowed on each Ranch. All corrals throughout the Property shall be constructed of wood or other materials approved by the Architectural Review Board in a style as approved by the Architectural Review Board.

3.5. Approval of Use. No Improvement shall be constructed on any Ranch except only as approved by the Architectural Review Board.

3.6. No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Ranch; provided, however, that the Owner or Occupant of a Ranch may conduct an in-home executive office, or an in-home occupation, artistic or literary activity so long as such in-home uses are subordinate to the residential character and use of the Ranch and are limited to those activities that will cause no more than a negligible additional impact of traffic, sight or sound on the Property. Such in-home use is subject to review by the Board, which shall retain the power to disapprove such use or to impose such conditions on such use as the Board deems necessary.

3.7. No Perimeter Fencing. No perimeter fencing shall be allowed on any of the individual Ranches. This shall not, however, prohibit the perimeter fencing of the entirety of the Property, which shall be maintained by the Association.

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

3.9. Geologic Hazard Area. Owners are advised that portions of the Property are located within a geologic hazard area, and Owners are advised to review the report of Buckhorn Geotech, a copy (or summary) of which is attached hereto as Exhibit B.

#### ARTICLE 4 ARCHITECTURAL REVIEW AND APPROVAL

4.1. Architectural Review Board. The Board of Directors of the Association shall be the Architectural Review Board.

4.2. Review and Approval. No Primary Residence, Secondary Residence, Garage, Barn, Building, or other Improvement shall be commenced, constructed, erected, altered, taken apart or maintained upon any Ranch, nor shall any landscaping, excavation or tree clearing be done (excluding minor landscaping such as planting of flowers and shrubs), nor shall any exterior addition, change, decoration or alteration be made, until the plans and specifications thereof have been submitted to and approved in writing by the Architectural Review Board in the manner hereafter set forth.

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

4.3.1. A plot plan showing the location of any Improvements, such as Buildings, landscaping, corrals, fences, access driveway, parking area, and any terrain or structure features, such as large rocks, trees, ponds, patios, fences, utility lines, storage areas, or decks.

4.3.2. Complete plans and specifications for the Buildings, including a roof plan, in sufficient detail to verify and confirm the size, type and dimensions of the Buildings, mass and height of the Buildings, all design features thereof, all exterior elevations showing all sides of the Buildings, all floor plans and the types of construction and materials. Foundation plans shall be stamped by a licensed engineer or architect.

4.3.3. Samples of the exterior materials and color schemes for the Buildings.

4.3.4. Detailed plans evidencing compliance with the applicable requirements of the LUR including, without limitation, those for residential building sizes and lot coverage (LUR Section 5-405), landscaping (LUR Section 5-411), exterior lighting (LUR Section 5-414), fencing (LUR Section 5-413), drainage (LUR Section 5-417), grading and erosion control (LUR Section 5-416), and reclamation and noxious weed control (LUR Section 5-415).

4.4. Purpose of Review. The Architectural Review Board shall consider the suitability of the proposed Buildings or Improvements and in particular the harmony of the Buildings and Improvements with the environment, the effect of the Buildings or Improvements on the use and view of the Ranch and surrounding Ranches and property and the placement of the Buildings and Improvements with respect to topography, drainage, snow removal, ground elevations, existing natural, and terrain features. The Architectural Review Board shall also ensure compliance with design guidelines and rules and regulations.

4.5. Hearing. The Architectural Review Board shall, within forty-five (45) days after receiving an application for approval with all accompanying data, hold a hearing on such request, subject to Section 4.10. The Architectural Review Board may approve, disapprove, or approve with conditions any request submitted to it. The decision of the Architectural Review Board shall be in writing. In the event that the Architectural Review Board fails to take action within ten (10) days after the date of the hearing, or fails to hold such hearing within forty-five (45) days after receiving an application, the application shall be deemed to have been approved.

4.6. Notice of Hearing. The Applicant, or any person on his behalf, may attend the hearing on the application for approval and submit information in support of the application. Notice of the hearing is not required to be given to Members of the Association; however, Members shall have the right to be present at the hearing or to submit written comments.



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4.7. Quorum. A majority of the Architectural Review Board shall constitute a quorum and all decisions of the Architectural Review Board shall be by a majority vote of the directors present. Architectural Review Board members may attend such hearings by telephone.

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

4.9. Rules and Regulations. The Architectural Review Board may adopt such design guidelines and rules and regulations which are consistent with this Declaration as it deems appropriate to govern its proceedings and the use of Ranches.

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

4.11. Building and Other Permits. In addition to the requirement for approval by the Architectural Review Board, each Owner is responsible for obtaining all approvals, licenses, and permits as may be required by Gunnison County, Colorado and any other entity or district having jurisdiction over the Ranch prior to the commencement of construction.

## ARTICLE 5 DESIGN REQUIREMENTS

5.1. Design Requirements. Any Primary Residence, Secondary Residence, Garage, Barn, Building, or Improvement on any Ranch shall comply with the design requirements of this Article and of all design guidelines which may be adopted by the Architectural Review Board.

5.2. Homesite. Any Residence and Garage shall be constructed entirely within the designated Homesite for the Ranch. Barns and other non-Building Improvements may be located outside the Homesite if approved by the Architectural Review Board.

5.3. Variances. The Architectural Review Board may allow for a variance for Improvements to be located outside the designated Homesite if there is a significant justification for locating the Improvement outside the Homesite, and it is infeasible to locate the Improvement within the Homesite.

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

5.5. Roofs. Roof material and design shall be approved by the Architectural Review Board. Any metal roof must have a dark or neutral, nonreflective color finish (specifically excluding any roof material with a baked-on enamel finish) and must be approved by the Architectural Review Board.

5.6. Garages. Each Primary Residence shall include an enclosed Garage (attached or detached) with garage doors and capable of storing at least two (2) cars.

5.7. Exterior Building Material and Style. All Buildings shall be built in an exterior style and with colors and materials harmonious to the area and similar in style, color, and materials to like kind Buildings in existence in the surrounding areas. No exterior walls shall consist of sheet metal, metal material, composition shingles or unplastered cement or similar block. All colors of exterior walls and roofs shall be natural or earth tone colors (including dark or forest greens but excluding light blues) to blend with the natural surrounding, except that colored trim may be allowed upon approval of the Architectural Review Board.

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

5.9. Exterior Lighting. All exterior lighting shall be designed and directed in a manner approved by the Architectural Review Board, and shall comply with the requirements of Gunnison County (LUR Section 5-414). All exterior lighting or illumination on any Ranch shall be so located, placed, shielded, and designed to be architecturally and aesthetically keeping with the Buildings and surroundings and to have minimum visual impact on any other Ranch or any nearby land. No unsheathed exterior lighting shall be allowed. No mercury vapor or similar lighting shall be allowed.

5.10. Antennae. No exterior radio, television, microwave, or other antennae or antennae dish or signal capture or distribution device shall be permitted or installed on any Ranch unless it is screened from view and approved by the Architectural Review Board. Such screening shall be in keeping with the terrain and environment.

5.11. Wood Burning Devices. The installation or use of any solid fuel-burning device shall comply with all applicable rules and regulations of Gunnison County (LUR Section 5-407). All firewood must be stacked and shall be stored in a location that does not constitute a fire hazard to any Improvements or the natural surroundings.

5.12. Fire Protection. All Buildings must be constructed in accordance with applicable codes, standards, and guidelines pertaining to fire protection.

5.12.1. Life Safety Protection. All residential and garage Buildings, attached or detached from the main structure, shall be required to install and maintain a water or chemical sprinkler system of a type and design that, at a minimum, meets NFPA 13-D guidelines. A minimum of 600 gallons of water storage capacity, dedicated wholly to fire protection, shall be required. All residential and garage structures (including any pro-



posed structures other than residential or garage Buildings), the size of the storage tank, and the location of the fire department connection shall be reviewed and approved for compliance with life safety system requirements during the building permit stage by the Crested Butte Fire Protection District.

5.12.2. Property Protection. Each Homesite shall be required to install a minimum of 3,000 gallon water tank dedicated wholly for fire protection. The location of each tank and the design of each tank shall be reviewed during the building permit application stage by the Crested Butte Fire Protection District. Said tank shall be placed underground at a sufficient depth so as to prevent freezing and shall be located a maximum of 150 feet away from the main structure. Said maximum may be increased or decreased by the Crested Butte Fire Protection District during the review process. Each tank must be installed, inspected, filled, and tested prior to issuance of building permit. It shall be the responsibility of the Owner to ensure these underground tanks are kept full at all times.

5.12.3. Monitoring. Each Building where fire protection devices are required shall have an approved early warning alarm system to include, but not be limited to smoke, CO-1, LEL gas, and fire sprinkler flow detection devices. All alarm systems shall be monitored by a listed central station service. Initiation of any early warning device shall activate an external horn and strobe light and an interior audible warning device. Location of the external horn, strobe light, and interior audible warning device shall be reviewed and approved by the Crested Butte Fire Protection District at the time of initial system review during the building permit application stage.

5.12.4. Propane Tanks. All propane tanks shall be installed underground in such a manner that no part of any tank lies above the lowest point of foundation of any structure served by that tank. All proposed utility and tank locations will be reviewed and approved by a County official, building inspector, and/or the Crested Butte Fire Protection District during the building permit application process.

5.13. Wildfire Mitigation. Owners are advised that the Property is located within an area designated as a wildfire hazard area as mapped by the Colorado State Forest Service, and Owners are advised to consult publications by the Colorado State Forest Service, the Gunnison County Weed Coordinator, the Gunnison County Public Works Department, and Colorado State University regarding creating defensible space.

## ARTICLE 6 CONSTRUCTION AND MAINTENANCE REQUIREMENTS

6.1. Excavation. No excavation shall be made on any Ranch, except in connection with a building approved in accordance with this Declaration of Protective Covenants. The Architectural Review Board, however, may approve excavations for approved improvements that have a significant justification and improve and enhance the Property (e.g., ponds).



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6.2. Electrical and Telephone Service. Except as to such portions that are required to be above ground, all electrical and telephone service and other utilities shall be installed underground.

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

6.4. Signs. No sign of any kind shall be displayed on any Ranch, except only a sign not to exceed four (4) square feet identifying the Owner and/or address of the Ranch, with the design and construction thereof to be approved by the Architectural Review Board, or other signs as approved by the Architectural Review Board. "For Sale" signs shall not be allowed. All signs shall comply with all applicable rules and regulations of Gunnison County (LUR Section 5-409). This Section shall not, however, restrict or prohibit any signs or signage required by the Crested Butte Fire Protection District or other governmental entity or as required by law.

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

6.6. Temporary Structures. No temporary structure, mobile home, modular home, trailer house, travel trailer, or recreational vehicle shall be permitted on any Ranch, except only as may be determined to be necessary during the period of construction and as specifically approved by the Architectural Review Board. This provision shall not, however, prohibit occasional, temporary parking and use of a travel trailer or recreational vehicle on a Ranch by temporary guests of the Ranch Owner, or parking and storage of a travel trailer or recreational vehicle within a Garage or Barn, as permitted by Section 6.17.

6.7. Continuity of Construction. All construction, reconstruction, alterations, or improvements shall be prosecuted diligently to completion and shall be completed within twelve (12) months after the commencement thereof, unless an exception is granted by the Board for good cause.

6.8. Landscaping. The Ranch and all landscaping thereon shall be maintained, in general, in its natural condition, subject to Architectural Review Board approval. Development of a Ranch shall be subject to fulfillment of the landscaping and buffering requirements of the LUR. No trees shall be cut or removed from any Ranch except only (1) as required to permit ingress and egress to and from the Homesite; (2) to clear the actual construction site for any Primary Residence, Secondary Residence, Garage, or Barn; (3) to remove any diseased or dead trees; (4) to remove any tree that poses a danger to any Building; (5) for any recreational or other easement; (6) with Architectural Review Board approval, to open or provide sight corridors from the



Primary Residence or Secondary Residence; or (7) with Architectural Review Board approval, to provide for defensible wildfire space.

6.9. Trash. 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, burying, or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from bears, wildlife, and other animals. Barbeque grills and fire pits shall be kept clean so as not to attract bears or other wildlife. All Ranches shall at all times, including during construction, be maintained in a neat and attractive condition. All construction debris shall be stored within a dumpster or other comparable container or receptacle.

6.10. Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles or motor vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any Ranch, except in a fully enclosed garage. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own power for a period of time one (1) month or longer, excluding vehicles parked by Owners while away from the Ranch. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner.

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

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

6.13. Hazardous Activities. No activities shall be allowed or conducted on the Property which are or might be reasonably considered to be unsafe or hazardous to any person or property. No outside open fires shall be permitted on any Ranch unless contained within a cooker, barbeque unit, grill, or fire pit.

6.14. Fencing. No fences, walls, or barriers shall be constructed, erected, or maintained on any Ranches unless approved by the Architectural Review Board. In addition, all fences or walls must comply with the requirements of LUR Section 5-413. All fencing shall be located entirely within the Homesite, except that the Architectural Review Board may permit horse cor-



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als on the Ranch that extend beyond the Homesite or other fencing for safety, security, or aesthetic reasons. In accordance with the provisions of the Colorado Fence Law, C.R.S. sections 35-46-101 et seq, it is the Ranch Owner's responsibility to construct and maintain fencing in order to keep livestock off the Homesite.

6.15. Snowmobiles. Snowmobiles, snowcats, snow tractors, or other similar motorized vehicles for travel over snow may be operated upon the Property only between the hours of 8 a.m. and 9 p.m. and only for the following purposes:

6.15.1. To set and maintain cross country ski courses.

6.15.2. For access to and from a residence during the winter months, with such use being limited to existing roads, driveways, and the alternate access road to Smith Hill Mine Road.

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

6.16. Motorcycles and All Terrain Vehicles. Motorcycles, all terrain vehicles, and other similar or noisy vehicles may be operated upon the Property only between the hours of 8 a.m. and 9 p.m. and only in accordance with the following provisions:

6.16.1. For access to and from a residence.

6.16.2. On roads, not on Ranches (except on driveways for access).

6.17. Parking. All motor vehicle parking shall be in designated parking areas approved by the Architectural Review Board. Tractors, snowmobiles, motorcycles, recreational vehicles, boats, trailers, and other similar vehicles shall be parked and/or stored within a fully enclosed Garage or Barn; provided, that occasional, temporary parking and use of a travel trailer or recreational vehicle on a Ranch by guests of the Ranch Owner is permitted. On-street parking on subdivision roads shall not be allowed, except for special events.

6.18. Use of Property. Any person using a road within the Property or any other portion of the Property must be accompanied by a Member at all times, except to travel between Washington Gulch Road and a Ranch; provided, however, that an Owner may grant permission to a caretaker or other guest to occupy and use the Primary Residence, Integrated Secondary Residence, and/or Secondary Residence even though the Owner or a Member is not present at the time. No Owner shall grant any easement or license for use of any part of the Property unless the same is specifically approved in writing by the Association.

## ARTICLE 7 ANIMALS

7.1. Domestic Household Pets. No more than a total of three (3) domesticated household pets (e.g., dogs and cats) shall be allowed, kept, or maintained on any Ranch.



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7.2. Confinement of Animals. Dogs and other pets shall be confined by kenneling, leashing, fencing, or other physical control. The owner of any animal and/or the Owner of any Ranch on which the animal is visiting or staying shall at all times be personally liable and responsible for all actions of such animal and any damage caused by such animal, and shall take appropriate steps to prevent such animal from harassing wildlife. Failure to properly control animals may result in enforcement measures by Gunnison County, the expense of which shall be charged to the Ranch Owner and/or the Association.

7.3. Horses. Up to three (3) horses shall be allowed on any Ranch so long as such horses are: (a) owned by the Ranch Owner or family members or the caretaker, and (b) boarded within a Barn or corral and such area is kept in a clean and sanitary condition at all times. Horses may be ridden on an Owner's Ranch or, by permission of the applicable Owner(s), upon other Ranches within the Property.

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

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

## ARTICLE 8 ASSOCIATION

8.1. Government of Association. The Smith Hill Ranches Homeowners Association, Inc., a Colorado nonprofit corporation, or a similarly named Association, 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. The Association shall be managed by the Board of Directors. The number of directors of the Board and the terms of the directors shall be set forth in the Association's Articles of Incorporation or Bylaws. The directors shall be elected by majority vote of the Members, except for those appointed by Declarant as set forth in Section 8.9.

8.2. 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.

8.3. Termination of Membership. The right of membership in the Association and the status as a Member shall terminate upon the termination of ownership of Ranch or land that is subject to this Declaration. Upon conveyance, sale, or assignment of the Owner's interest, the selling Owner shall be relieved of liability for Assessments levied from and after the date of such

sale or conveyance; provided, however, that no such sale or conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

8.4. Voting Rights. All Owners shall be Members of the Association. The Owner 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.

8.5. Compliance with Association Documents. Each Owner shall abide by and have the benefit of the provisions, covenants, conditions, and restrictions contained in the Association Documents, as they apply to the Owner's Ranch or property and use of Association property and easements.

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

8.6.1. The use of any private road or street.

8.6.2. The use of any easements within the Property.

8.6.3. Standards for the care and maintenance of all improvements, grounds and landscaping of the Association or Members within the Property, including private roads and streets.

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

8.6.5. Standards for the peaceable enjoyment of the Property, including those related to excessive noise.

8.6.6. Any other matter relating to The Smith Hill Ranches or the use of any Member's Ranch or land subject to this Declaration or the Property not inconsistent with this Declaration.

8.7. Grant of Utility and Access Easements. Declarant hereby authorizes and empowers the Association as its attorney-in-fact to give and grant utility easements for the installation, construction, and maintenance of underground utilities over and across any road easement and at other locations designated on the Plat. 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 utility easements and rights of way at any location necessary or convenient for the installation, construction, and maintenance of underground utilities. Declarant dedicates the use of the road rights of way as set forth on the Plat for use for utilities to serve the Ranches.

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

8.8.1. Keep in good repair all roads and entry feature within the Property and maintain the same in suitable condition for use by the Members of the Association and drivers of emergency vehicles.

8.8.2. Provide dust control at any time that the use of any road within the Property is the cause of dust pollution, to provide dust control in the form of the use of magnesium chloride, oil treatment, or other suitable dust retardant.

8.8.3. Plow snow from the roads during the winter months as required for access to any Ranch and the Property.

8.8.4. Be responsible for complying with the terms and provisions of the Grant of Easement recorded January 15, 2002 as Reception No. 517421 of the records of Gunnison County, Colorado.

8.9. Period of Declarant Control. From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all officers and directors of the Board, subject to the provisions in this Section. The time during which this right exists is the Period of Declarant Control. The Period of Declarant Control shall terminate upon the first to occur of: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Ranches to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Ranch by Declarant in the ordinary course of business. Declarant may voluntarily surrender the right to appoint and remove the officers and directors of the Board prior to the termination of the Period of Declarant Control. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Ranches to Owners other than Declarant, at least one director and not less than twenty-five percent (25%) of the directors of the Board shall be elected by Members other than Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Ranches to Owners other than Declarant, not less than thirty-three and one-third percent (33-1/3%) of the directors of the Executive Board shall be elected by Members other than Declarant. Not later than the termination of the Period of Declarant's Control as provided above, the Members (including Declarant) shall elect an Executive Board of at least three (3) directors, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant.

8.10. Notice. The Association shall provide written notice of Assessments and other matters requiring Member voting or action. The Association shall maintain a list of the current mailing address of all Owners of Ranches within the Property. Owners are responsible for providing current mailing addresses to the Association. Notice shall be sufficient if (1) accomplished by personal delivery; (2) left at the Owner's residence with a member of the Owner's family who is over the age of 18; or (3) sent by U.S. mail or overnight delivery to the Owner's mailing address on file with the Association. In the above cases, Notice shall be deemed given

(1) at the date of delivery; (2) the date notice is left; or (3) the date of delivery if by overnight delivery or, if by U.S. mail, three (3) days after the notice is deposited with the Postal Service. Any notice required in the Articles of Incorporation or By-Laws shall be provided in the same manner as stated above. In genuine emergencies, notice need not be written and can be given by other reasonable methods suited to the nature of the emergency, such as telephone or facsimile.

## ARTICLE 9 ASSESSMENTS

9.1. Creation of Lien. Each Owner of any Ranch, or any land subject to this Declaration by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Association all regular, special and default Assessments or charges, all of which shall be fixed, established and collected as determined by the Association. The annual, special and default Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge and continuing lien upon the Ranch or land against which each such Assessment is made until paid. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Ranch or land at the time when the Assessment became due. All such Assessments shall be adopted and assessed in the manner set forth in this Article.

9.2. Purpose of Assessments. The Assessments levied by the Association shall be used for the following:

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

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

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

9.2.4. The construction, maintenance, or repair of facilities for the benefit, generally, of Ranch Owners, including, without limitation, perimeter fencing around the Property and utilities serving the Property.

9.2.5. Any other purpose approved by a majority vote of the members of the Association or by a two-thirds (2/3) vote of the Board.

9.3. Types of Assessments. The Board shall have the authority to levy the following types of Assessments for the Association:

9.3.1. Regular Assessments for the business and operation of the Association pertaining to all Members of the Association.





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9.3.2. Special Assessments for the purpose of construction, improvement, repair, replacement, enlargement, or other special purposes pertaining to a specific or special matter.

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

9.5. Special Assessments. In addition to the regular Assessments, the Board may levy in any fiscal year one or more special Assessments. Notice of the amount and due dates for such special Assessments shall be sent to each Owner at least thirty days prior to the due date.

9.6. Assessment for Each Ranch. All regular Assessments shall be apportioned and allocated equally among all Ranches. All special Assessments shall be apportioned and allocated equally among all Ranches unless such special Assessment benefits substantially fewer than all Ranches, in which event such special Assessment shall be levied against only the Ranches so benefited.

9.7. Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of or because of an Owner, shall be a default Assessment and shall become a lien against such Owner's 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.

9.8. 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:

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

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

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

9.8.4. Bring an action against any Owner personally obligated to pay the delinquent Assessment.

9.8.5. File a statement of lien with respect to the Ranch 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 Ranch, setting forth the name of the Owner, the legal description of the Ranch, the name of the Association and the amount of the delinquent Assessments then

owing, which statement of lien shall be signed and acknowledged by the President, Vice President, Secretary, attorney, manager, or other representative of the Association and which shall be sent by certified or registered mail, return receipt requested, to the Owner of the Ranch at such addresses the Association may have in its records as to the Owner. Ten (10) days following the mailing of such notice, the Association may proceed to record and foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of Colorado. Such statement of lien shall secure all Assessments accruing or assessed subsequent to the date of recording of such statement of lien until the same has been satisfied and released, together with the Association's attorneys' fees and costs incurred in the preparation and recording of such statement of lien and any release thereof. In any action for the payment or foreclosure of such Assessment, the Association shall be entitled to recover, as part of the action, the interest, costs, and reasonable attorneys' fees with respect to the action.

9.9. Priority of Lien. A lien under this Article is prior to all other liens and encumbrances on a Ranch except:

9.9.1. Liens and encumbrances recorded before the recordation of this Declaration;

9.9.2. A security interest on the Ranch which has priority over all other security interests on the Ranch and which was recorded before the date on which the Assessment sought to be enforced became delinquent; and

9.9.3. Liens for real estate taxes and other governmental assessments or charges against the Ranch.

9.10. Six Month Priority. A lien under this Article is also prior to the security interests described in Section 9.9.2 to the extent of an amount equal to the common expense Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Article of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.

9.11. 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 Ranch shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses, penalties, and attorneys' fees against such Ranch.

## ARTICLE 10 ENFORCEMENT OF COVENANTS

10.1. Violations Deemed a Nuisance. Every violation of this Declaration, the Articles of Incorporation or Bylaws of the Association, or any rules and regulations adopted by the Associa-



tion may be deemed by the Board to be a nuisance and is subject to all the remedies provided for the abatement thereof.

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

10.3. Who May Enforce. Any action to enforce any violation of any provision of this Declaration may be brought as follows:

10.3.1. By the Association.

10.3.2. By the Owner of any Ranch.

10.4. 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 11 DURATION OF COVENANTS

11.1. Term. The term of this Declaration, and any amendments or supplements thereto, shall be twenty (20) years from and after the date of recording in the records of Gunnison County, Colorado. Thereafter, this Declaration shall be automatically extended for five (5) successive periods of ten (10) years each, unless otherwise terminated or amended as hereafter provided.

11.2. Amendment. This Declaration and/or the Plat, or any provision thereof, may only be terminated, extended, modified or amended as to the Property, or any portion thereof, upon the written consent by the Owners of two-thirds (2/3) 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.

11.3. Amendment by Declarant. Notwithstanding the provisions of Section 11.2, Declarant reserves the right and power to modify or amend this Declaration and/or the Plat for any ministerial, technical, or corrective purposes by executing and recording such amendment in the records of Gunnison County, Colorado. This right to modify or amend this Declaration or the Plat shall be effective until two-thirds (2/3) of all Ranches within the Property have been conveyed by a recorded instrument of conveyance to a person or persons other than Declarant. This Section shall not affect any rights of Declarant under Article 12.

11.4. Mortgage Holder Approval Not Required. The Declaration and/or Plat may be amended as set forth herein, and such amendment shall be effective against the holders of Mort-



gages encumbering Ranches in the Property notwithstanding that such holders of Mortgages have not approved such amendment.

## ARTICLE 12 RIGHTS RESERVED TO DECLARANT

12.1. Special Declarant Rights. 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:

12.1.1. The right to amend the Declaration or Plat as set forth in Article 11.

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

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

12.2. Reserved Easements. Notwithstanding anything to the contrary contained herein, Declarant hereby reserves the right to dedicate, at any time in the future, certain easements set forth on the Plat as "Reserved Easements." Such Reserved Easements vary in purpose and may have common and/or different grantees. The following are the stated purposes and grantees for each Reserved Easement:

12.2.1. Reserved Easement Number 1: The purpose is to provide for a water storage reservoir. The grantees shall be Declarant and/or the Association.

12.2.2. Reserved Easement Number 2: The purpose is to provide for an underground water supply pipeline, underground water collection vault, and pump station as part of a central water system that may be developed. The grantee shall be the Association.

12.2.3. Reserved Easement Number 3: The purposes is to provide for underground utility easements to serve the Property and/or other properties, should it become necessary in the future. The grantees shall be Declarant and/or utility providers.

12.2.4. Reserved Easement Number 4: The purpose is to provide for trail access for the general public from Smith Hill Mine Road to U.S. National Forest lands. The grantees shall be the Gunnison County Trails Commission and/or another similar entity and/or the general public.

12.2.5. Reserved Easement Number 5: The purposes are to establish and maintain wetlands and riparian areas. The grantee shall be some type of conservation or land preservation entity.



12.2.6. Reserved Easement Number 6: The purpose is to provide an access road and utilities easement from Slate River Road to Smith Hill Mine Road. The grantees are unidentified at this time and may include owners of property not constituting a part of The Smith Hill Ranches.

12.2.7. Reserved Easement Number 7: The purpose is to provide for an underground water supply pipeline, underground water collection vault, and pump station as part of a central water system that may be developed. The grantee shall be the Association.

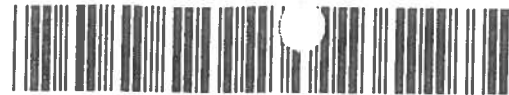
Any such Reserved Easement shall be dedicated by Declarant's execution and recording in the Gunnison County, Colorado records of an instrument of dedication, which shall contain such terms, conditions, provisions, limitations, specifications, and grantee or grantees as Declarant shall deem necessary or appropriate. Included within Declarant's rights shall be the right to modify, amend, or supplement any such instrument of dedication at any time in the future. With respect to dedication of any Reserved Easement to persons or entities who are not Owners or the Association, Declarant shall be entitled to receive and retain any consideration or other benefits on account of such dedication.

12.3. Life Estate. Declarant hereby grants to Adelaide Elizabeth Biggs, for the duration of her life, the right, with accompanied guests, to enter upon the Property (but specifically excluding any Homesite) and to use and enjoy any amenities or privileges available to all Ranch Owners, as a whole, notwithstanding that Declarant may have conveyed all Ranches and that Adelaide Elizabeth Biggs may no longer be a Member of the Association.

## ARTICLE 13 WATER RIGHTS

13.1. Water Rights. At such time as Declarant has conveyed five (5) Ranches to Owners other than Declarant, Declarant shall dedicate and convey to the Association the water rights set forth in Exhibit A. Prior to such time, those water rights shall remain under Declarant's ownership and control. Such water rights, once dedicated and conveyed to the Association, may not be separated from the Property other than through use with an augmentation plan for water use on the Property. The Association shall be in charge of managing, administering, and using such water rights, regardless of the physical location of any spring or other point of diversion upon an individual Ranch. The Association in conjunction with Ranch Owners shall be in charge of determining how water shall be disbursed and used.

13.2. 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 any water system and water rights within the Property and to undertake such action as was required of the Association but not performed.



## ARTICLE 14

### PRINCIPLES OF INTERPRETATION

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

14.2. 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.

14.3. 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.

14.4. 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 three (3) 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.

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

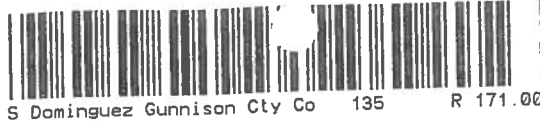
14.6. Attorneys' Fees. The Association shall be entitled to reasonable attorneys' fees, as well as its reasonable costs and expenses, incurred by it in any proceeding or action to interpret or enforce any provision of the Association documents.

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

14.8. Interest. Any sums, amounts, or monies due and owing to the Association under the Association documents shall bear interest at eighteen percent (18%) per year from the date due until paid.

14.9. Partition of Ranches. No part of a Ranch may be partitioned, separated, or subdivided from any other part thereof.

14.10. Binding Agreement. It is understood and agreed that this Declaration shall be binding upon the successors and assigns of the parties hereto. It is specifically agreed and under-



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stood that any rights or privileges reserved herein by Declarant, or that may accrue to Declarant by law, shall inure to the benefit of, and may be exercised by, the successors and assigns of Declarant.

In witness whereof, Declarant has executed this Declaration of Protective Covenants the day and year first above written.

The Phoenix Family Group, Ltd., a Texas limited partnership

By: Ganky, Inc., a Texas corporation, as General Partner

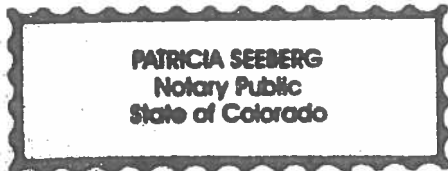
By: Adelaide Elizabeth Biggs (County of)  
Adelaide Elizabeth Biggs, President

STATE OF Colorado )  
County of Gunnison ) ss

The foregoing instrument was acknowledged before me this 29th day of August, 2003 by Adelaide Elizabeth Biggs as President of Ganky, Inc., a Texas corporation, as General Partner of The Phoenix Family Group, Ltd., a Texas limited partnership.

Witness my hand and official seal.

My commission expires: July 3, 2007



my commission expires July 3, 2007

Pat. Seeborg  
Notary Public



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## EXHIBIT A

## DESCRIPTION OF PROPERTY AND WATER RIGHTS

A Parcel of land located within Section 27, Township 13 South, Range 86 West, of the 6th Principal Meridian, County of Gunnison, State of Colorado, being more particularly described as follows:

Parcel No. 1: The north  $\frac{1}{2}$ , north  $\frac{1}{2}$ , southwest  $\frac{1}{4}$ , said Section 27, excepting therefrom the 2 parcels described in Book 787, Page 287 and Book 780, Page 331 and  
Parcel No. 2: The northwest  $\frac{1}{4}$ ; the west  $\frac{1}{2}$ , northeast  $\frac{1}{4}$ ; north  $\frac{1}{3}$ , northwest  $\frac{1}{4}$ , southeast  $\frac{1}{4}$  of said Section 27 being more particularly described as follows:

Commencing at the northeast corner of said Section 27 said corner being monumented with a BLM brass cap;

Thence along the north line of said Section 27 South  $89^{\circ}58'48''$  West, a distance of 1,336.65 feet to the POINT OF BEGINNING;

Thence along the east line of the east half of east half of said Section 27 South  $00^{\circ}05'09''$  West, a distance of 3,063.36 feet, said corner being monumented with an aluminum cap LS No. 11250;

Thence North  $89^{\circ}40'12''$  West, a distance of 1,347.52 feet to a point on the east line of the southeast quarter of said Section 27, said corner being monumented with an aluminum cap LS No. 11250;

Thence along the said east line South  $00^{\circ}13'24''$  West, a distance of 218.22 feet to the southeast corner of the north half of the north half of the southwest quarter said Section 27, said corner being monumented with an aluminum cap LS No. 11250;

Thence along the south line of said north half North  $89^{\circ}59'09''$  West, a distance of 1,241.85 feet to the southeast corner of the parcels described in Book 787, Page 287 and in Book 780, Page 331, said corner being monumented with a plastic cap LS No. 11250;

Thence along the boundary of said tract the following 7 courses:

1. North  $00^{\circ}57'17''$  East, a distance of 659.17 feet, said corner being monumented with an aluminum cap LS No. 11250;

2. Thence North  $89^{\circ}54'32''$  West, a distance of 1,097.62 feet, said corner being monumented with a plastic cap LS No. 11250;

3. Thence South  $31^{\circ}55'28''$  East, a distance of 179.26 feet;

4. Thence South  $36^{\circ}16'41''$  East, a distance of 98.95 feet;

5. Thence South  $38^{\circ}48'07''$  East, a distance of 292.00 feet;

6. Thence South  $34^{\circ}58'00''$  East, a distance of 83.22 feet;

7. Thence South  $36^{\circ}08'13''$  East, a distance of 166.67 feet, said point being located on the south line of the north half of the north half of the southwest quarter said Section 27, said corner being monumented with a steel cap LS No. 11250;

Thence along the south line of said north half South  $89^{\circ}57'52''$  West, a distance of 827.82 feet to the southwest corner of said north half, said corner being monumented with an aluminum cap LS No. 11250;

Thence along the west line of said Section 27 North  $00^{\circ}12'15''$  West, a distance of 666.11 feet to the west quarter corner of said Section 27, said corner being monumented with a GLO brass cap;

Thence continuing along the west line of said Section 27 North  $00^{\circ}32'03''$  East, a distance of 2,608.11 feet, said corner being monumented with a BLM brass cap;

Thence along the north line of said Section 27 North  $89^{\circ}58'48''$  East, a distance of 4,004.99 feet to the POINT OF BEGINNING.

Gunnison County, Colorado.





All water and water rights, ditches and ditch rights, springs and spring rights, both decreed and undeclared, which are appurtenant to and used in connection with that land which is more fully described in EXHIBIT A, above, and including, but not limited to, the following:

1. Nemanic Spring Pool No. 1 and the water decreed thereto under Case No. 79CW301 not to exceed 0.10 c.f.s. and 1.0 acre feet of storage water for irrigation, stock water, wildlife procreation and recreation purposes, absolute; and a like amount for domestic purposes, conditional

2. Nemanic Spring Pools No. 2 and the water decreed thereto under Case No. 79CW302 not to exceed 0.077 c.f.s. or 35 g.p.m., with one-half acre foot of storage water for irrigation, stock water, wildlife procreation and recreation purposes, absolute; and to the same water for domestic purposes, conditional

3. Nemanic Crystal Springs No. 3 and the water decreed thereto under Case No. 79CW303 not to exceed 0.022 c.f.s. or 35 g.p.m., direct flow water for domestic, stock water, irrigation, wildlife procreation and recreational purposes, absolute; and to the same water for domestic purposes, conditional

4. Nemanic Spring Pool No. 4 and the water decreed thereto under Case No. 79CW304 for 0.10 c.f.s. of water and 1.75 acre feet of storage water for stock water, irrigation, wildlife procreation and recreation purposes, absolute; and to the same water for domestic purposes, conditional

5. Water decreed in Case No. 97CW237 - Appropriation Date September 19, 1997, for the purposes of stock watering, wildlife, domestic, fire protection, and recreation:

Nemanic Spring Pool No. 1 Enlargement for 4.9 AF, conditional

Nemanic Spring Pool No. 2 Enlargement for 1.3 AF, conditional

Slate River Pump and Pipeline First Enlargement for 0.3 c.f.s., conditional

Washington Gulch Pump and Pipeline First Enlargement for 0.3 c.f.s., conditional

6. Water decreed in Case No. 96CW296 - Appropriation Date June 1, 1990:

For irrigation and stock watering:

Ganky Spring No. 1 - 10 g.p.m., absolute

Ganky Spring No. 2 - 5 g.p.m., absolute

For stock watering:

Ganky Spring No. 3 - 5 g.p.m., absolute

Ganky Spring No. 4 - 5 g.p.m., absolute

Ganky Spring No. 5 - 5 g.p.m., absolute

Ganky Spring No. 6 - 5 g.p.m., absolute

Ganky Spring No. 7 - 5 g.p.m., absolute

7. Water decreed in Case No. 96CW296 - Appropriation date August 21, 1996, for the purposes of stock watering, wildlife, fire protection, recreation, and domestic:

Slate River Pump and Pipeline, 0.4 c.f.s., conditional

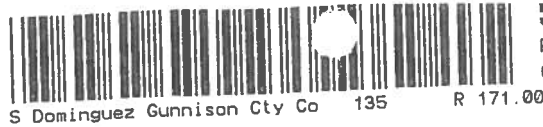
Washington Gulch Pump and Pipeline, 0.4 c.f.s., conditional

8. Water decreed in Case No. 96CW296 - Appropriation date August 12, 1996, for the purposes of stock watering, wildlife, fire protection, recreation, and domestic:

Ganky Pond No. 1 - 12.3 AF, conditional

Ganky Pond No. 2 - 12.1 AF, conditional

All of the above water rights are tributary to Slate River, a tributary to the East River, a tributary to the Gunnison River, in old Water District 59, Water Division No. 4.



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## EXHIBIT B

**BUCKHORN GEOTECH**

Civil, Structural & Geotechnical Engineers

222 South Park Ave. Montrose, CO 81401  
(970) 249-6828 FAX (970) 249-0945

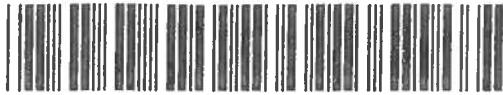
### **PRELIMINARY GEOLOGIC HAZARDS ASSESSMENT GARY GARLAND SMITH HILL RANCHES MT. CRESTED BUTTE, COLORADO**

Buckhorn Geotech, Inc., has conducted a study regarding surficial soil, geologic, and site conditions at the proposed Smith Hill Ranches Subdivision near Mount Crested Butte, Colorado. This work was performed at the request of Mr. Gary Garland. The purpose of this study is to make a preliminary evaluation of the property for construction of eight primary single-family and six secondary residences, with outbuildings, access roads, and associated infrastructure, as requested by the Gunnison County Planning Department. The study consisted of a review of the Gunnison Land Use Resolution (LUR), USGS geologic maps, Colorado Geological Survey geohazard maps, work we have carried out in the vicinity of the proposed development, other geological and engineering consultants' reports issued for the area, and the proposed development plans. The following report presents the findings of our study and our assessment of the impacts of the identified geologic hazards upon the proposed development. Since winter conditions did not allow access to the property prior to preparation of this report, a follow-up inspection after the site is accessible and clear of snow will be necessary for final completion.

#### **Site and Development Plans**

We understand from plans provided to us by Mr. Garland that the Smith Hill Ranches encompasses approximately 288 acres straddling Smith Hill (ridge), between Slate River Road to the southwest, Washington Gulch Road to the northeast, and the southern tip of Meridian Lake on the north, as shown in the Vicinity Map, Figure 1. Slopes are generally northeast- or southwest-facing at 30 to 50 percent and are briefly interrupted by intersections of ridgelines. Vegetation, as shown in aerial photographs supplied by Mr. Garland, appears to consist primarily of isolated aspen stands set within fields of low mountain grasses and shrubs. The proposed

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development comprises 8 homesites of approximately one-half to one-third acre each which will accommodate single-family residential homes and associated outbuildings. A single access is proposed from the east off of Washington Gulch Road. Each homesite would have its own driveway off of this access, all less than one-quarter mile in length. An existing road that branches off of Slate River Road is slated for use as secondary emergency access and a utility easement.

### Geology

The geology of the Crested Butte and Mt. Crested Butte area is rich and varied. The basal bedrock unit in this area is the upper unit of Mancos Shale (Km), which is described by the USGS as mostly dark grey, silty to sandy marine shale with thin to thick interbeds of siltstone, sandstone, and limestone. The Mancos Shale was overlain during the Cretaceous era (approximately 80 to 100 million years ago) by the Mesaverde Formation Sandstones. Beginning approximately 60 million years ago, volcanic and tectonic forces began to uplift and distort the landscape. Volcanic intrusions accompanied the uplifting, fracturing, and jointing of the sedimentary bedrocks and now form the tops and cores of many ridges and mountains in the area. Sedimentary rock near the volcanic intrusions metamorphosed the shale into slate and sandstones into quartzites, which generally are harder and more resistant to weathering than the parent material.

As the volcanic and tectonic forces subsided, glaciation and weather began the process of erosion. Glaciation has had a large influence on the creation of Washington Gulch, scouring in some places to the Mancos Shale and depositing a mixed bag of clay- to boulder-sized debris in moraines over the shale. Since the retreat of the glaciers, weather, groundwater, surfacewater, and gravity have worked to erode both surficial glacial material and bedrock into the rivers and wash them downstream.

Smith Hill is underlain by Mancos Shale bedrock, as shown on Figure 2. The shale locally dips to the southwest at 15 to 30 degrees. A thin veneer of glacial material overlies the shale, and has undergone substantial downhill movement (landslides and/or earthflows) in numerous locations on the southeastern slopes, exposing the underlying bedrock.

### Geologic Hazards

A geologic hazard is defined as a geologic phenomenon that is so adverse to past, current, or foreseeable construction or land use as to constitute a significant hazard to public health and safety or to property. In Colorado, these hazards have been identified as avalanches, rockfall, landslides, debris flows, unstable slopes, seismic effects, radioactivity, ground subsidence, flooding, and expansive soil and rock.

Based on a review of published information, our work in the area, and other consultants' reports, potential hazards for the Smith Hill Ranches exist in the following categories: groundwater, landslides, potentially unstable slopes, and expansive soil and rock. We did not find sufficient



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evidence to suggest potential hazards due to avalanches, rockfall, debris flows, seismic effects, radioactivity, flooding, or ground subsidence. Below is a discussion of the potential hazards to construction in Smith Hill Ranches, and general methods or approaches for mitigation of each hazard. Figure 3 shows the approximate areas of potential hazards, and are referred to by specific hazard in the text below.

### Groundwater

Shallow groundwater can be a hazard when it contributes to slope instability, softens and reduces the bearing capacity of the soil, floods utility or foundation excavations, or renders the overlying soil susceptible to frost heave. Precipitation and drainage from the higher slopes of Smith Hill can take multiple paths over and through the soils. Some will infiltrate into the soil and percolate downward to recharge underlying aquifers or return to the ground surface where it is released via evapotranspiration or as a spring or seep. The rest will run overland as sheet flow until it either encounters a watercourse or a location that allows infiltration.

The presence of groundwater is indicated by springs and seeps, phreatophytic vegetation, and past landslide activity. These are merely indicators of groundwater that can be expected on the property—a geotechnical investigation will provide more detailed information on the location and extent of groundwater levels at each homesite and along the road and driveway alignments.

Generally, mitigation of this hazard requires avoidance of disturbing areas with high groundwater as a first choice, with collection and redirection of groundwater from areas of concern as a secondary mitigation method.

### Landslides and Earthflows

Landslides and earthflows are rapid, downslope movement of dry, coarse earth material. The single cause of these movements is a change in equilibrium of the downward-acting gravitational force acting in balance with the resisting forces, which include shear strength of the soils, cohesion from tree and plant roots, and topographic relief providing support at the toe of slopes. This change in equilibrium can be brought about by a number of human events including excavation of material at the toe of a slope, addition of weight on a slope, removal of vegetation, and increasing or concentrating the flow of water on top of or in a slope. Natural events can cause the same disruption of equilibrium, from streams changing course to avalanches stripping vegetation.

The *Geologic Hazards in the Crested Butte-Gunnison Area* map (CGS: Soule, 1976) delineates a good deal of the southwestern portion of the property as "Landslide-Earthflow Area", with demonstrably active natural movement, based on distinctive physiography. An example of this, although not definitive, is the compressed meanders of the Slate River adjacent to the southwestern portion of the Smith Hill Ranches property. As shown on the attached Geologic Hazards map (Figure 3), the landslide designation made by Soule covers a large portion of the southwestern slope of Smith Hill and a thin band near the toe of the northeastern slope. The access road from Washington Gulch Road passes through a sliver of delineated "Landslide-Earthflow Area" at its lower end and between homesites 1 and 8, as well as a good deal of the

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planned secondary emergency access originating from Slate River Road. Homesite 8 is likewise located within this designation. Site specific investigations will be required to assess the potential for instigation or current movement of landslide events in areas of proposed development.

Mitigation of large-scale landslide/earthflow events is generally not economically feasible. It is advisable instead to avoid any development where sudden release of material from a landslide may initiate or run out.

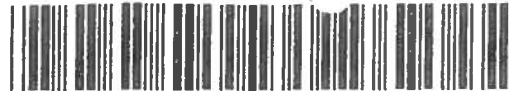
### Potentially Unstable Slopes

As indicated in the *Geology* Section, the property encompasses a ridge and side slopes consisting of Mancos Shale overlain by a thin veneer of glacial deposits. The shale dips to the southwest, and the numerous mapped slumps on the property (particularly on the southwestern slopes) testify to the meta-stable nature of this combination of materials. The northeastern slopes are less prone to this type of movement because of the opposing dip of the shale beds, but some mapped slumps on this slope indicate that some potential for instability exists (shown on Figure 2. Note that one additional slump is mapped based on our interpretation of the topography and the presence of a sag pond near Homesite 2). It is primarily due to this reason that the northeastern portion of the property is mapped as Potentially Unstable Slopes (PUS). This designation encompasses Homesites 1, 2, 3, 4, and 7, with a good deal of the access drive originating from Washington Gulch Road.

Soule's definition of a potentially unstable slope is one that has characteristics in common with unstable slopes (slopes that show definite signs of historical movement), but has no discernable movement, past or present. These characteristics include composition of surficial materials, proximity and geologic similarity to failed slopes, and inclination and aspect. Our experience with properties in Gunnison County that fall under this designation vary greatly depending upon the local conditions. Many homes and roads have been built successfully in the Meridian Lake Park and Pristine Point Subdivisions although they lie in areas both designated as potentially unstable slopes and unstable slopes. In a discussion with Mr. Bruce Bartleson, geology Professor Emeritus at Western State College in Gunnison, the areas of the site that are to be developed (primarily located on the northeastern portion of the property) show signs of previous movement, but are not readily identifiable as movement prior to or after glaciation from air photo interpretation.

The homesites located in this hazard designation lie on slopes that vary between 5 and 35 percent. Homesites 3, 4, and 7 are located on morainal ridges that generally provide adequate bearing surfaces provided careful design and construction practices are followed. Homesites 1 and 2 are located in the vicinity of mapped slump features, indicating the surrounding slopes may be susceptible to movement if care is not taken to site any construction appropriately. Site-specific investigations (surface and subsurface) will be required to properly address stability at each of the sites.

Areas of susceptibility are usually identifiable through undulating topography, groundwater seepage, bent or splayed trees, soil cracks and/or steep-sided, crescent-shaped depressions.

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Slope stability can be impaired by cutting into steep slopes (especially near the toe), applying new loads (especially near the crest), removing vegetation, and introducing soil moisture or disrupting the existing pattern of surface or subsurface water flow. Because of the nature of the potentially unstable slopes, construction of roadways, foundations, driveways, and retaining structures should consider potential for instability and should ensure positive drainage away from the foundations, roadways, and walls. Providing logical landscape topography and intercepting subsurface flow at the uphill side of the house will be important in mitigation of this hazard.

#### **Expansive Soil and Rock**

Soil and rock materials containing some types of clay, especially bentonite (montmorillonite), can expand in volume as they absorb water and then shrink as they become dry. These expansive soil and rock materials are very hazardous and can cause serious damage to foundations, roadways, pavements, and embankments. In the Smith Hill ranches area, these clays are derived from weathering of Mancos Shale and volcanic rocks.

Only Homesite 6 and portions of the Homesite 6 driveway are located on mapped Mancos Shale, while the rest of the development is situated upon mapped glacial moraine material overlying the shale at varying depths. It should be assumed that the morainal material has entrained shale and volcanic rocks that will present varying degrees of expansion potential. Site-specific subsurface investigations will be able to delineate the extent and degree of expansion potential.

The potential hazard from expansive soil can be mitigated by control of on-site drainage so that no water is allowed to accumulate, stand, or penetrate into the soil in the vicinity of foundations and slab/pavement areas. Further mitigation, if required, can be attained through design of foundation systems that extend to firmer material or which have sufficient strength to resist differential movements.

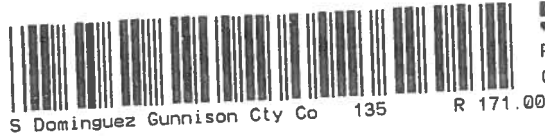
#### **Summary and Conclusions**

The above presents the findings of Buckhorn Geotech's review of published information, our work in the area, and other consultants' reports for geologic hazards on the Smith Hill Ranches property.

Based on our research, the most prominent geologic hazards the development will encounter are groundwater, landslides, and potentially unstable slopes. It appears from our review that Homesites 1, 2, and 8 are most prone to encounter these hazards.

The development is at moderate risk of expansive soil and rock, but this hazard is easily mitigated by proper design techniques.

We did not find evidence to suggest hazards exist from avalanches, rockfall, debris flows, seismic effects, radioactivity, flooding, and ground subsidence.



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As discussed in general above, mitigation of the geologic hazards present on the property is feasible. It is recommended that a site visit that includes surface and subsurface investigations be carried out after the snow has melted to further delineate the extent and degree of each hazard. This will ensure that the most appropriate design parameters and mitigation measures will be applied to each roadway and building site.

Thank you for the opportunity to perform this research and reporting for you. Buckhorn Geotech is a full-service engineering firm providing geologic and geotechnical investigations and foundation, site drainage, structural, and retaining structure design services, as well as construction materials testing. If you require any of these services or have any questions regarding this report, please do not hesitate to give us a call.

Respectfully Submitted,  
March 7, 2002

Shane Duckworth, EIT

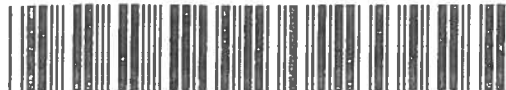
Reviewed by:  
March 7, 2002

Thomas E. Griepentrog, P.E.



Enclosures: Vicinity Map, Surficial Geology Map, Geologic Hazards Map





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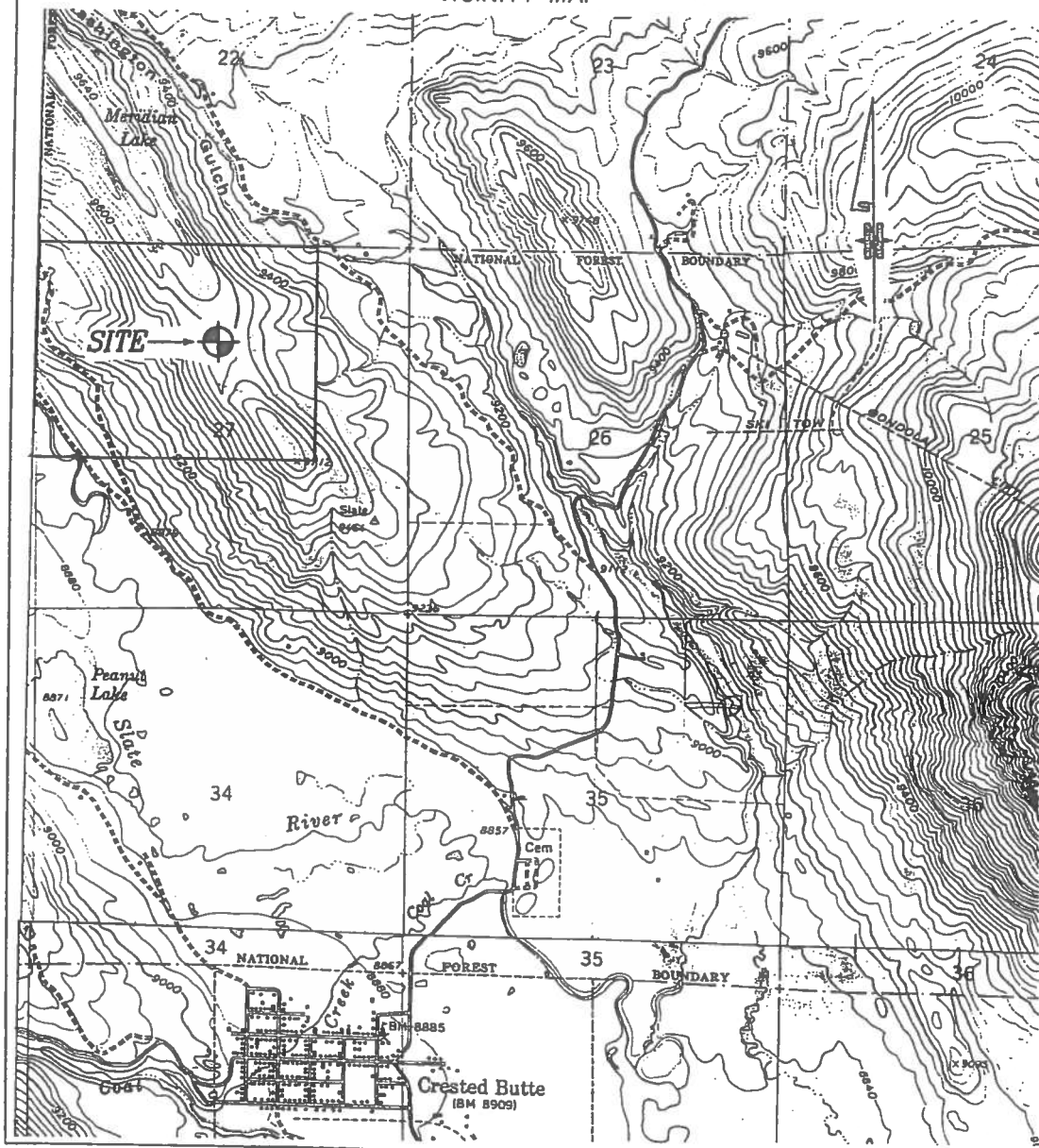
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# SMITH HILL RANCHES VICINITY MAP



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| OF 3              | DATE 28 FEBRUARY 2002 |
|                   | JOB NO. 02-063        |

GARY GARLAND  
SMITH HILL RANCHES  
VICINITY MAP

BUCKHORN GEOTECH



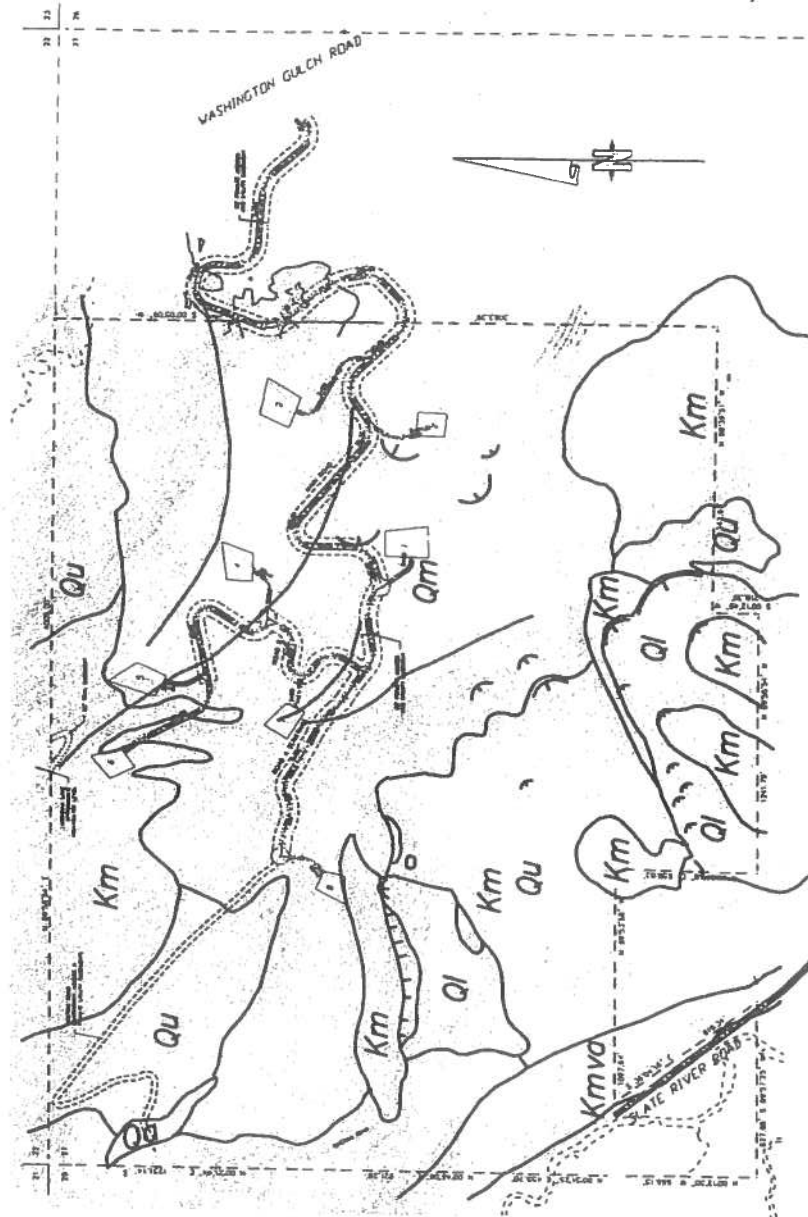


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SMITH HILL RANCHES  
GEOLOGY MAP (AS MAPPED BY GASKILL ET AL., 1991)



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DATE 28 FEBRUARY 2002

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GARY GARLAND

SMITH HILL RANCHES  
GEOLOGY

BUCKHORN GEOTECH

