

# **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR DILLEY RANCH**

THIS DECLARATION is made this 08<sup>th</sup> day of February 2000, by Red Creek Ranch of Colorado, Inc. ("Declarant"). The purpose is to exempt the Property (as defined below) from the Colorado Common Interest Ownership Act. Capitalized terms are defined in Article 10.1.

## **ARTICLE 1 - GENERAL**

Section 1.1 Common interest Community. The name of the common interest community created by this Declaration is "Dilley Ranch." Dilley Ranch is a planned community as defined in the Colorado Common Interest Ownership Act, Section 38-33.3-103(22), Colorado Revised Statutes, but intends to be exempt from such Act

Section 1.2 Property Affected. Declarant owns certain real property in Fremont County, Colorado described on the attached Exhibit A. The real property described on Exhibit A (and any added thereto by Declarant) is referred to in this Declaration as the "Property."

Section 1.3 Purposes of Declaration This Declaration is executed and recorded (a) to provide for the Property Owners Association to maintain non-public roads within the Property and to perform certain functions for the benefit of owners of land within the property (b) to define the duties, powers and rights of the Property Owners Association; and (c) to define certain duties, powers and rights of Owners. This Declaration restates and amends in its entirety any previous Declaration recorded against the Property. In all respects, any such previous Declaration is superseded and amended by this Declaration, which shall be the sole Declaration against the Property.

Section 1.4 Declaration Declarant, for itself, its successors and assigns, hereby declares that the Property, and each part thereof, shall, on and after the date this Declaration is recorded, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions and other provisions set forth in this Declaration. The provisions of this Declaration are intended to and shall run with the land and, until their expiration in accordance with Section 10.2 hereof, shall bind, be a charge upon and inure to the mutual benefit of (a) all of the property within the Property and each part or parcel thereof; (b) Declarant and its successors and assigns; (c) the Property Owners Association and its successors and assigns; and (d) all other persons and entities having or acquiring any right, title or interest in any property which is part of the Property or any part or parcel thereof or any Improvement thereon, and their encumbrancers, claimants, heirs, personal representatives, successors and assigns.

## **ARTICLE 2 - PROTECTIVE COVENANTS**

Section 2.1 Property Uses. All Lots in the Property shall be used exclusively for recreational, private residential or agricultural uses, provided that such uses shall be specifically be limited to (1) the following uses permitted by right or by review under the zoning regulations for the Property: personal equestrian arena; farming or ranching; greenhouse and nursery; guest house; hay, grain, feed, seed and fertilizer (storage); one-family residence; riding academy and/or stables; commercial/club equestrian arena and (2) any home occupation certificate granted by Fremont County, Colorado through appropriate approvals. No dwelling unit erected or maintained within the Property shall be used or occupied for any purpose other than a single-family dwelling. Each dwelling unit shall contain no less than 1,500 square feet of heated floor area devoted to living purposes (i.e., exclusive of roofed or unroofed porches, patios, terraces, basements or garages). No dwelling unit or other improvements not built on-site shall be permitted, it being intended that all dwelling units and other improvements shall be custom built on site. This prohibition shall include, without limitation, modular homes, mobile homes and manufactured homes of any type. No Lot Owner will dump refuse or garbage on any Lot nor will any Lot Owner build, maintain, operate or construct any structure that will cause the accumulation of animal waste, junk or an obnoxious odor. No business, profession or other activity for gain shall be carried on or within any Lot or dwelling unit not withstanding zoning or special use permits otherwise available by Fremont County, except for those uses as specifically allowed in this Section 2.1.

Section 2.2 Improvements. No Improvement shall be erected within the Property, except single-family dwelling units and accompanying outbuildings or stables and other facilities necessary for the agricultural use of the Property (called "improvements(s)") or as approved in writing by Declarant. All power, telephone, gas, water, waste water and other utility lines of every nature shall be underground, unless approved in writing by Declarant based on extraordinary geologic or other construction conditions.

Section 2.3 Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 2.4 Temporary Residence. No pick-up, camper, camp trailer, tent, motor home, or other similar accommodation may occupy a Lot other than for recreational purposes. A mobile home may be used on a Lot as a temporary residence during construction of a permanent residence on the Lot, for a period not to exceed six (6) months, after notifying the Association in writing in advance of such use. No such facilities may be used as a permanent dwelling.

Section 2.5 Construction Completion. The exterior of all Improvements must be completed within eighteen (18) months after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. For purposes of this Section 2.5, "commencement of construction" for an improvement is defined as the obtaining of necessary building permits and the excavation of earth for a foundation, and for all other Improvements is

defined as the undertaking of any visible exterior work. If construction is not completed within eighteen (18) months after commencement, or if construction shall cease for a period of sixty days without permission of the Association, the Association will give

the Owner thereof written notice of such fact, and if construction on such Improvement is not diligently commenced within thirty days after such notice, the unfinished Improvement or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 2.6 Construction or Sales Offices. Buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant. Model homes may be used and exhibited only by Declarant or with the permission of Declarant.

### **ARTICLE 3 - DENSITY, SETBACK AND QUALITY STANDARDS**

Section 3.1 Limitation on Dwellings and Subdivisions. No more than one dwelling unit ~~and a separate guest house~~ shall be erected or maintained within any Lot. No Lot (notwithstanding any zoning ordinance or regulation to the contrary) shall be less than 35 acres in size. Any Lot may be replatted or otherwise subdivided only once into not more than two lots, provided, each Lot after such subdivision contains at least 35 acres. The foregoing sentence shall not apply to or restrict Declarant's rights to further subdivide lots owned by Declarant.

Section 3.2 Setback Area. No building, porch, eave, overhang, projection or other part of a building shall be located within fifty (50) feet sides and rear and seventy-five (75) feet front of any Lot Line. All construction must also conform to the building code, zoning code and subdivision regulations of Fremont County, which regulations may vary from the provisions of this section and other sections.

Section 3.3 Exterior Materials and Colors. Exterior walls of all structures shall be constructed of or covered by quality materials such as clapboards, wood shingles, wood, stone, stucco or masonry. All exterior materials shall be of natural or earth tone coloring so as not to distract or contrast with the natural character of the surrounding landscape. No tar paper, tarred shingles or other types of tarred siding shall be allowed. "Natural or earth tone coloring" shall mean colors which are based in brown, beige and green and tones thereof, and of a color spectrum such that the use of the colors will not be obtrusive, and shall generally blend in with the colors of earth, rocks, and plants naturally existing on the Property.

Section 3.4 Rebuilding or Restoration. Any dwelling unit or other Improvement which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within eighteen (18) months from the time the damage occurred.

Section 3.5 Fencing. All animals kept by a Lot Owner must be fenced within the boundaries or the Lot.

Section 3.6 Obstructions on Common Easements. No gates or obstructions will be placed upon or block any access road unless the access road terminates on the Lot Owners' property. However, a Lot Owner may place, at its expense, a cattle guard on the common easement if the cattle guard is constructed to county road specifications and has a gate on one side of the cattle guard for use by vehicles, livestock, horses or persons otherwise using the road.

### **ARTICLE 4--MAINTENANCE STANDARDS**

Section 4.1 Building and Grounds Conditions. Each Owner shall maintain the exterior of his or her dwelling unit and all other Improvements in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall, to the best of his or her ability, maintain his or her Lot in good repair and appearance at all times.

Section 4.2 Refuse. No unsightly objects or materials, including but not limited to ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except during refuse collections.

Section 4.3 Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on within any Lot or in any dwelling unit. No hog farm or feed lot may be operated on any Lot.

Section 4.4 Inoperative Vehicles. No unused, stripped down, partially wrecked or inoperative motor vehicle or part thereof shall be permitted to be parked on any street or on any Lot in such a manner as to be visible at ground level from any neighboring property or street, unless fully screened in a manner approved by the Association.

Section 4.5 Signs. The only signs permitted on any Lot or Improvement shall be:

- (a) One sign of customary size for identification of the occupant and address of any dwelling unit;
- (b) Multiple signs for sale and administration purposes installed by, or with the permission of Declarant during development;
- (c) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (d) Such signs as may be required by law.

## **ARTICLE 5 - ASSOCIATION OPERATION**

Section 5.1 Association Structure. The Association has been formed as a Colorado corporation under the Colorado Nonprofit Corporation Act. The Association shall have the duties, powers and rights set forth in the Association Documents. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs. The Board of Directors shall be elected by its Members; provided, however, that the Declarant shall have the sole right to appoint the members of the Board of Directors for the period or time provided in Section 5.5.

Section 5.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, terms and qualifications of the members of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws of the Association. The Board of Directors may, by resolution, delegate portions of its authority to an executive committee or to other committees, to officers of the Association or to agents and employees of the Association, but such delegation of authority shall not relieve the Board or Directors of the ultimate responsibility for the management of the affairs of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized committee, officer, agent or employee without a vote of Members, except as otherwise specifically provided in this Declaration or by Colorado law. All lawful decisions, agreements and undertakings by the Board, or its authorized representatives, shall be binding upon all Members, Owners, Related users and other Persons.

Section 5.3 Membership in Community Association. Each Owner shall be a Member of the Association. An Owner shall automatically be the holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all of the Owner's rights as an Owner and as Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such Person to perform some or all of such Owner's obligations as provided in this Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for fulfillment of the obligations of Owner under the Association Documents.

Section 5.4 Voting Rights of Members. The Declarant shall be the only Member entitled to vote until the Transfer of Control Date (see Section 5.5, below). At such time, Members shall have the right to cast votes for the election of Board of Directors and on such other matters to be voted on by the Members, as provided in the Association Documents. One vote is allocated to each Lot and Member and Declarant shall have one vote for each Lot owned. Voting rights and procedures may be further defined in the Articles and Bylaws of the Association.

Section 5.5 Declarant's Reserved Right to Appoint. Notwithstanding any contrary provision the Declarant hereby reserves the right to appoint all the Members of the Board of Directors, at all times subsequent to the date of recordation of this Declaration, which right shall terminate upon the occurrence of the first of the following events:

- (a) by written notice of the Declarant to the President or Secretary of the Association of the Declarant's intent to terminate it's right to appoint the majority of the members of the Board of Directors; or
- (b) upon that date which is sixty days after seventy-five percent (75%) of all Lots within the Property have been sold to Owners other than Declarant. Such date shall be referred to as the "Transfer of Control Date."

## **ARTICLE 6 - DUTIES AND POWERS OF ASSOCIATION**

Section 6.1 General Duties and Powers of the Association. The Association has been formed to further the common interests of the Members. The Association shall have the duties and powers to take such action as is necessary to perform it's obligations under the Association Documents.

Section 6.2 Duty to Accept Property and Facilities Transferred by Declarant. The Association shall accept title to all any property, including without limitation any Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such properly and functions are not inconsistent with the terms of this Declaration.

Section 6.3 Duty to Manage and Care for Roads. The Association shall manage, operate, care for, maintain and repair all non-public roads within the Property.

Section 6.4 Power to Engage Employees Agents and Consultants. The Association shall have the power to hire and discharge employees and agents (except as otherwise provided in management contracts) and to retain and pay for such legal and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under the Association Documents.

Section 6.5 General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, as amended from time to time.

**ARTICLE 7 - DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS**

Section 7.1 Period of Declarant's Rights and Reservations. Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association and the Property for a period of ten years after the date this Declaration is recorded in the real property records or Fremont County, Colorado, or until such earlier date when Declarant ceases to own any of the Property. The rights and reservations hereinafter set forth shall be deemed excepted and reserved in each conveyance of property by Declarant, whether or not specifically stated therein, and in each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights, reservations and easement hereinafter set forth shall be prior and superior to any other provisions of the Association Documents and may not, without Declarant's prior written consent be modified, amended, rescinded, or affected by any amendment of the Association Documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment.

Section 7.2 Declarant's Development Rights. For the period stated in Section 7.1, Declarant shall have the following development rights:

- (a) Declarant may add real property to the Property, but only if the property to be added is adjacent to or surrounded by the real property described on Exhibit A, or to the extent necessary to correct errors or omissions in the legal description contained in Exhibit A;
- (b) Declarant may create additional Lots within the Property;
- (c) Declarant may subdivide any Lot into two or more Lots;
- (d) Declarant may withdraw any portion of the real estate contained within the Property, as described on Exhibit A, from the Property and release such withdrawn property from the provisions of this Declaration.

Section 7.3 Special Declarant Rights. For the period stated in Section 7.1, and as more particularly set forth in this Article 7 or elsewhere in this Declaration, Declarant shall have the following special Declarant rights:

- (a) to exercise any development rights set forth in Section 7.2;
- (b) to maintain anywhere within the Property (other than in Lots previously sold by Declarant), sales offices, management offices, signs advertising the Property and model homes;
- (c) to appoint or remove any officer of the Association or any member of the Board of Directors appointed by Declarant.

Section 7.4 Declarant's Approval. Until Declarant no longer has any Lots in the Property the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld: levy any Special Assessment; change or repeal any rules of the Association; make any substantial reduction or change in Association services; or make any amendment of Association Documents.

**ARTICLE 8 – ASSESSMENTS**

Section 8.1 Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefore or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments which are described in the Association Documents and which shall be both a personal obligation of the Owner and a lien against his Lot as provided therein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments attributable to them and/or their Lot. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for herein by non-use of the Property or the facilities contained therein, by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity. In addition to the foregoing Assessments, charges, fees and other sums, each Owner shall have the obligation to pay real property ad valorem taxes and special assessments imposed by Colorado governmental subdivisions against his Lot. All property dedicated to and accepted by a public or governmental authority shall be exempt from Assessments hereunder.

Section 8.2 Purpose of Assessments. The Assessments levied by the Association shall be used for the improvement and maintenance of non-public roads within the Property, and payment of other expenses specifically set forth herein.

Section 8.3 Common Assessments. The Common Assessments may include, and shall be limited to, the following common expenses:

- (a) repairs and maintenance for non-public roads within the Property;
- (b) expenses of management of the Association and its activities;
- (c) taxes and special assessments upon the Association's real and personal property;
- (d) premiums for all insurance which the Association is required or permitted to maintain;
- (e) common services to Owners as approved by the Board;

- (f) wages for Association employees and payments to Association contractors;
- (g) legal and accounting fees for the Association;
- (h) any deficit remaining from a previous Assessment year; and
- (i) the creation of reasonable contingency reserves for future road maintenance expenses and administration expenses. Common Assessments shall be paid annually as provided in Section 8.6.

Section 8.4 Declarant's Obligation. The Declarant shall not be subject to assessment for any Lots it retains until the Transfer of Control Date. Prior to such time, the Declarant shall contribute such funds to the Association as necessary to permit the Association to pay the expenses set forth in Section 8.3.

Section 8.5 Maximum Common Assessments.

- (a) The maximum annual Common Assessment on Lots, through December 31, 2000, shall be no more than \$300.00 per Lot. The Board of Directors may prorate the assessment for any Lot owner in the year of purchase of such Lot on the basis of the actual months of ownership of such Lot by the Lot Owner during such year.
- (b) Effective January 1, 2001 and each subsequent year, provided that the Transfer of Control Date shall have occurred, the maximum annual Common Assessment may be increased by a vote of the Members with at least seventy-five percent of the total voting power of the Association at a meeting duly called for this purpose, written notice of which setting forth the purpose therefor shall be sent to all Members not less than thirty days or more than sixty in advance of such meeting. Prior to the Transfer of Control Date, the Declarant shall be entitled to determine the maximum annual assessments. Notwithstanding the foregoing, the maximum annual Common Assessment may not exceed \$300.00 per Lot or the maximum allowed by law to remain exempt under the Colorado Common Interest Ownership Act.

Section 8.6 Common Assessment Procedure.

- (a) Until the Transfer of Control Date, the Declarant shall determine the amount of the annual assessment, within the limitations set forth herein. After such time, the Association Board of Directors shall set the total annual Common Assessment based upon an advanced budget of the Association's requirements for the following Assessment year. Within thirty days after adoption of the Association's budget for each year by the Board, the board shall mail by ordinary first-class mail, or otherwise deliver, a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the budget summary. Unless at that meeting a majority of all Owners (including those not present at such meeting) reject the budget, the budget is ratified, whether or not a quorum is present; In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.
- (b) After approval of the budget by the Owners. (or by the Declarant prior to the Transfer of Control Date), the Board shall cause to be prepared, delivered or mailed to each Owner, at least thirty days in advance of the date Payment is due, a payment statement setting forth the annual Common Assessment. All payments of Common Assessments shall be due and payable, without any notice or demand, on the due dates declared by the Board. Common Assessments shall be applicable to all Lots, provided that Declarant shall have no liability for Common Assessments until the Transfer of Control Date. Each owner other than Declarant shall become responsible for Common Assessments on a Lot as of the date the Lot is transferred to such Owner. The first annual Common Assessment for each Owner shall be adjusted according to the number of months remaining in the year.

Section 8.7 Rate of Assessments. Common Assessments shall be sufficient to meet the expected needs of the Association as set forth in these covenants. Common Assessments shall be allocated equally and uniformly among all Lots (other than, prior to the Transfer of Control Date, lots owned by Declarant), so that each Owner is obligated to pay an equal Common Assessment for each Lot owned. The rates for Common Assessments shall be determined by dividing the total Common Assessments payable for any Assessment period, as determined by the ratified budget, by the number of Lots then subject to this Declaration. The resulting quotient shall be the amount payable with respect to each Lot.

Section 8.8 Special Assessments. In addition to Common Assessments, the Board of Directors may, subject to the provisions of this section, levy Special Assessments for the purpose of raising funds to deal with unanticipated matters concerning the Property or the Association. Special Assessments shall be equally, uniformly imposed upon Lots as provided in Section 8.6. The Association shall notify Owners in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable, and the Owners shall pay any such Special Assessment in the manner so specified. The maximum amount of any Special Assessment may not exceed, including Common Assessments, a total of \$300.00 per Lot per year or the maximum amount allowed by law to remain exempt under the Colorado Common Interest Ownership Act.

Section 8.9 Costs of Enforcement, Late Charges and Interest. If any Assessment is not paid within thirty (30) days after it is due, the Member, Owner or other Person obligated to pay the Assessment may be additionally required to pay all costs of enforcement, including without limitation, reasonable attorneys' fees, court costs, witness expenses, and all related expenses, and to pay a reasonable late charge to be determined by the Board. Any Assessment which is not paid within ten days after the date of any notice of default given as set forth herein shall bear interest from the due date at a rate determined by the Board, not to exceed the lower of twenty-one percent per annum, or the maximum rate permitted by law, from the due date until paid.

Section 8.10 Notice of Default and Acceleration of Assessments. If any Assessment is not paid within thirty days after its due date, the Board of Directors may mail a notice of default to the Owner. The notice shall substantially set forth (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date not less than twenty days from the date of mailing of the notice by which such default must be cured; and (d) that failure to cure the default on or before the date specified in time notice may result in the foreclosure of the lien for the Assessment against the Lot of the Owner. If the delinquent Assessment and any collection expenses, late charges or interest thereon, plus any other sums due as of the date of payment, are not paid in full on or before the date specified in the notice, the Board, at its option, may enforce the collection of the Assessment and all charges and interest thereon in any manner authorized by law or in the Association Documents.

Section 8.11 Lawsuit to Enforce Assessments. The Board may bring a suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any late charge, interest, and other costs of enforcement against the defaulting Owner, including, without limitation, reasonable attorneys' fees.

Section 8.12 Lien to Enforce Assessments. The Association shall have a lien for Assessments. Each Owner, by acceptance of a Deed to his or her Lot within the Property, agrees to pay to the Association all assessments, together with interest, late charges, and expenses of collection, and agrees that any Assessment shall be a lien upon the Lot against which the assessment is made. In addition to or in lieu of bringing suit to collect Assessments, the Association may foreclose its Lien as provided by law and in this section. The Board may elect (but is not required to) to file a claim of lien against the Lot of the defaulting owner by recording a notice ("Notice of Lien") substantially setting forth: (a) the amount of the claimed delinquency, (b) the interest and expenses of collection which has accrued thereon, (c) the legal description and street address of the Lot against which the lien is claimed, and (d) the name of the record Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Association. The Lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Lien, including, without limitation, all court costs, recording costs and filing fees, have been fully paid or, satisfied, the Association shall execute and record a notice releasing the Notice of Lien, if recorded, upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the cost of preparing and recording the release of the Notice of Lien. Unless paid or otherwise satisfied, the lien may be foreclosed through a Colorado court of competent jurisdiction in accordance with the laws of the State of Colorado applicable to foreclosure of real estate mortgages (not including deeds of trust), or in any other manner permitted by law. The Association shall have the right and power to bid on the Lot at the sale and to acquire and hold, lease, mortgage, and convey the same.

## **ARTICLE 9 – EASEMENTS**

### Section 9.1 Easements.

(a) Easement for Access Roads. The Declarant will convey to the Association ownership of a 75-foot right of way for the non-county owned access road(s) shown on the plat map, for non-exclusive use and access by all Lots, Members, and their invitees.

(b) Other Easements. All other easements shall be as shown on the plat map for the Property, as amended from time-to-time, and as provided herein.

Section 9.2 Association Rights. The Association shall perform road maintenance and other rights or obligations pursuant to this Declaration.

### Section 9.3 Utilities.

(a) Declarant hereby creates and reserves to itself until Declarant has sold the last Lot in the Property to an Owner other than Declarant, and, thereafter, to the Association: perpetual, alienable, divisible and releasable easement(s) and the right from time to time to grant or vacate such easements to others over, under, in and across all access road(s) conveyed or to be conveyed pursuant to Section 9.1 or otherwise by deed or plat map for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water and waste water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

(b) Declarant reserves a 20-foot easement along the outer boundary of the Property as shown on the plat map. In addition, Declarant reserves a 10-foot utility easement along the side and rear lot lines of individual lots as shown on the plat map.

(c) If any utility or quasi-utility company furnishing a service covered by the easement(s) created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement. The Association shall succeed to such right and authority upon conveyance by Declarant of the last Lot in the Property to the first Owner thereof, other than Declarant. The easement(s) provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement on the Property.

Section 9.4 Easements Deemed Created. All conveyance of Lots hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article 9, whether or not specific reference to such easement(s) or to this Article appears in the instrument of such conveyance.

## ARTICLE 10 --- DEFINITIONS AND MISCELLANEOUS

Section 10.1 Definitions. Unless otherwise expressly provided in this Declaration, the following words and phrases, whenever used in this Declaration, shall have the meanings specified in this Section 10.1.

10.1.1 Assessment. "Assessment" shall mean a "Common Assessment," pursuant to Section 3.3 or a Special Assessment pursuant to Article S.S.

10.1.2 Association. "Association" shall mean Dilley Ranch Estates Home Owners Association, Inc., a Colorado non-profit corporation, its successors and assigns.

10.1.3 Association Documents. "Association Documents" shall mean the various operative documents of the Association, including:

- (a) the Articles of Incorporation of the Association;
- (b) the Bylaws of the Association; and
- (c) this Declaration, and all amendments to this Declaration.

10.1.4 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

10.1.5 Improvement(s). "Improvement(s)" shall mean those dwelling units and other facilities as defined in Section 2.2.

10.1.6 Property. "Property" shall mean the real property described on Exhibit A, together with any and all Improvements now or hereafter on such real property and appurtenances and rights to such real property.

10.1.7 Declarant. "Declarant" shall mean Red Creek Ranch of Colorado, Inc., a Colorado corporation, its successors and assigns.

10.1.8 Declaration. "Declaration" shall mean this Declaration of Covenants.

10.1.9 Lot. "Lot" shall mean a parcel of land subject to this Declaration, which is identified as a Lot in a subsequent plat recorded against the Property.

10.1.10 Member. "Member" shall mean a member of the Association, who must also be an Owner. Membership in the Association shall be appurtenant to, and may not be severed from, ownership of a Lot.

10.1.11 Owner. "Owner" shall mean the record title holder, including Declarant, whether one or more Persons, of fee simple title to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder.

10.1.12 Person. "Person" shall mean a natural person, a corporation, a partnership or any other public or private entity recognized as being capable of owning real property under Colorado law.

10.1.13 Rules and Regulations. "Rules and Regulations" shall mean the rules and regulations adopted by the Board of Directors concerning the operation of the Association.

Section 10.2 Term of Declaration. Unless amended as herein provided, all provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration shall be effective for twenty years after the date when this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten years each unless terminated by agreement of the Owners With at least two-thirds of the voting power of the Association, in the manner provided in Section 218 of the Colorado Common Interest Ownership Act, Section 38-33.3-213, Colorado Revised Statutes.

Section 10.3 Amendment of Declaration by Declarant. Until the first Lot subject to this Declaration has been conveyed by Declarant by recorded deed, and thereafter until the Transfer of Control Date, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. If any error or omission is made in this Declaration, any such error or omission may be corrected by a written amendment to this Declaration signed by Declarant at any time Declarant owns one or more Lots in the Property.

Section 10.4 Amendment of Declaration by Members. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time after the Transfer of Control Date and from time to time thereafter upon approval of the amendment or repeal by Members with at least seventy-five percent of the voting power of the Association. For purposes of this Section 10.4, all Members shall be entitled to vote.

Section 10.5 Required Consent or Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment nor repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Property has been conveyed by Declarant to an Owner other than Declarant.

Section 10.6 Priority of First Mortgage Over Assessments. Each lender who recorded its mortgage or deed of trust before Assessments have become delinquent and who obtains title to the Lot encumbered by the First Mortgage, whether pursuant to the remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such First Mortgagee acquires title.

Section 10.7 Remedies Cumulative. Each remedy provided under the Association Documents is cumulative and not exclusive.

Section 10.3 Costs and Attorneys' Fees. In any action or proceeding under the Association Documents, the party which seeks to enforce the Association Documents and prevails, shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fee and expert witness fees.

Section 10.9 Limitation on Liability. The Association, the Board of Directors, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law, in accordance with and subject to the terms and limitations contained in the Bylaws.

Section 10.10 Governing Law. The Association Documents shall be construed and governed under the laws of the State of Colorado.

Section 10.11 Severability. Each of the provisions of the Association documents shall be deemed independent and severable, and the invalidity or unenforceability or partial invalidity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 10.12 Number and Gender. Unless the context requires a contrary construction, as used in the Association documents, the singular shall include the plural and the plural the singular, and the use of any gender shall include all genders.

Section 10.13 Captions for Content. The titles headings and captions used in the Association Documents are intended solely for convenience of reference and are not intended to affect the meaning of any provisions of this Declaration.

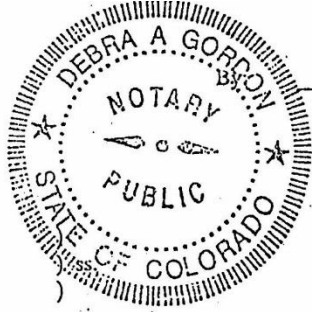
Section 10.14 Mergers or Consolidation. The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions mid restrictions established by this Declaration governing the Property together with the covenants and restrictions established upon any other property, as one plan.



Section 10.15 Conflicts in Documents. In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

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

RED CREEK RANCH OF COLORADO, INC.,  
a Colorado corporation



JMRG VP.

STATE OF COLORADO  
COUNTY OF Pueblo

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of February, 2000,  
by Joseph Robrea, as Vice President of Red Creek Ranch of Colorado, Inc.

Witness my hand and official seal.

My commission expires: 6/15/2002

Debra A. Gordon  
Notary Public