

AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BERRY CREEK RANCH FILINGS NOS. 1, 2, 3, AND 4

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April 26, 2004*

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**AMENDED AND RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
BERRY CREEK RANCH FILINGS NOS. 1, 2, 3, AND 4**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS.

CONDITIONS, AND RESTRICTIONS ("DECLARATION") was approved by resolution of the Board of Directors of the Berry Creek Metropolitan District on the ____ day of _____, 1995, and shall become effective upon completion of the requirements state in the prior declarations for their amendment.

WITNESSETH:

WHEREAS, there exists certain Declaration of Protective Covenants for Berry Creek Ranch Filing No. 1, recorded November 3, 1978 in Book 278 at Page 72, and an Amendment thereto, recorded November 27, 1978 in Book 278 at. Page 908; and certain Declaration of Protective Covenants for Berry Creek Ranch Filing No. 2, recorded April 10, 1979 in Book 283 at Page 979, and an Amendment thereto, recorded September 27, 1979 in Book 291 at Page 619; and certain Declaration of Protective Covenants for Berry Creek Ranch Filing No. 3 recorded February 27, 1980 in Book 299 at page 324; and certain Declaration of Protective Covenants for Berry Creek Ranch Filing No. 4 recorded February 27, 1980 in Book 299 at Page 322, and an Amendment thereto, recorded October 24, 1980 in Book 493 at Page 695 (collectively, the "Prior Declarations"), the Prior Declarations being recorded in the office of the Clerk and Recorder, Eagle County, Colorado; and

WHEREAS, there exists within the Properties currently subject to the Prior Declarations a commonality of present conditions concerning the dominant Residential character of the Properties, and a commonality of needs to preserve such dominant Residential character, recognizing that use certain Properties within the area and subject to the Prior Declarations for commercial and recreational purposes is not inconsistent with the dominant Residential character of the Properties, provided that such use are at an appropriate level and subject to appropriate conditions; and

WHEREAS, amending the Prior Declarations into a consolidated Declaration applicable to all Properties currently subject to the Prior Declarations will advance the purposes of the Prior Declarations and will more easily allow the purposes for which this Declaration is enacted to be met with greater consistency between areas; and

WHEREAS, the Prior Declarations require written consent of the owners of fifty-one (51%) of the land within the Properties and approval of the Board of County Commissioners of Eagle County, Colorado to amend, terminate, or abandon such Prior Declarations; and,

WHEREAS, the undersigned, constituting the owners of more than fifty-one percent (51%) of the land included within the boundaries of each of the Subdivisions referred to in the Prior Declarations, desire to amend and restate the Prior Declarations in their entirety; and

WHEREAS, the undersigned intend to seek the approval of the Board of County Commissioners of Eagle County of this Declaration.

NOW, THEREFORE, the Prior Declarations are hereby terminated and cancelled in their entirety and replaced and amended by the contents of this Declaration for the purposes of:

1. Consolidating the covenants, conditions and restrictions previously found in the Prior Declarations into a single Declaration to be applicable to all Properties currently subject to the Prior Declarations;

2. Creating and maintaining a reasonably quiet, desirable and pleasant Residential area while allowing within certain areas commercial and recreational uses which are properly restricted and not inconsistent with the Residential character of the area;

3. Protecting the appearance, health, safety, and convenience of the Residential area;

4. Guaranteeing the value, desirability, safety, attractiveness, and salability of the Properties;

5. Guaranteeing that the general plan and scheme for construction, improvement, development, use, and occupancy are maintained within the Properties; and

6. Ensuring that any and all new construction and uses are compatible with the intent to preserve the Residential character of the Properties, suitable and harmonious in architectural design with existing styles, and complementary to the natural environment of said Properties.

7. Providing for the creation of the Singletree Property Owners Association to administer and enforce the provisions of these Covenants.

AND FURTHER, all of the Properties described on the attached Exhibit A, which is incorporated herein by this reference (which are the same Properties described in and subject to the Prior Declarations), shall be owned, held, sold, leased, transferred, used, improved, occupied, resided upon, hypothecated upon, and conveyed in accordance with and subject to all of the easements, restrictions, covenants, conditions, provisions, limitations, and agreements set forth in this Amended and Restated Declaration, all of which shall run with the land and be binding on and inure to the benefit of all parties having any right, title or interest in the above described Properties or any part thereof, their heirs, successors and assigns, whether or not it shall be expressed in the instrument or document through which their interest arises.

ARTICLE I DEFINITIONS

Section 1. “Abandoned or Inoperable Automobiles or Vehicles” shall mean any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation.

Section 2. “Articles of Incorporation” shall mean the Articles of Incorporation of the Association.

Section 3. “Association” shall mean the Singletree Property Owners Association, a Colorado nonprofit corporation, its successors and assigns, as formed pursuant to the Articles of Incorporation, filed on , 1995, as such Articles are amended from time to time and incorporated herein by reference; such Association being organized to pursue the purposes of this Declaration and perform all duties and powers provided for in this Declaration.

Section 4. “Bed and Breakfast” shall mean a business which accommodates guests in a Dwelling Unit in which the Bed and Breakfast proprietor, host, or manager jives on premises and is in residence during the Bed and Breakfast use.

Section 5. “Board” shall mean the Board of Directors of the Association, except as specifically used in reference to another entity.

Section 6. “Bylaws” shall mean the Bylaws of the Association.

Section 7. “Clubhouse Tract” shall mean a tract within the Subdivision on which may be constructed buildings relating to recreational and health activities such as golf, tennis, swimming and racquetball and handball. Said buildings may contain a restaurant and bar, pro shop, toilet and locker rooms and other related uses. In addition to said buildings, drives and parking areas, tennis courts and swimming pools may be constructed upon the clubhouse tract.

Section 8. “Committee” shall mean the Design Review Committee of the Association created pursuant to this Declaration.

Section 9. “Duplex Unit Residential Lot” shall mean a Lot which may be used solely for Residential purposes and upon which not more than one (1) building containing not more than two (2) Dwelling Units, together with not more than two (2) attached garages may be constructed.

Section 10. “Dwelling Unit” shall mean one (1) or more rooms in a building designed to be used and occupied by one (1) family living independently of any other family, having not more than one (1) indoor kitchen and cooking facility, to be used solely for Residential occupancy.

Section 11. “Garage” shall mean a permanent part of a main building used for storage of the private vehicles or boats of the occupant and which is totally enclosed.

Section 12. “Golf Course Tract” shall mean a tract within the Subdivision which can be used solely for the conduct of the game of golf and related golfing activities. A golf course tract may have constructed thereon buildings such as shelters, toilets, pump houses and other accessory structures related to the activity. Other recreation activities such as hiking, jogging, fishing and horseback riding are prohibited within said tract except as specifically permitted and approved in writing by the Berry Creek Metropolitan District and the Golf Course Owner.

Section 13. “Landscaping Tract” shall mean a tract within the Subdivision which may remain in its natural and undisturbed state or may be landscaped with grasses arid plant material indigenous to the site.

Section 14. “Lot” shall mean any plot of land delineated upon the most recent, valid, applicable recorded subdivision map including all or a portion of the Properties, with the exception of public streets.

Section 15. “Member” shall mean every person or entity who holds membership in the Association.

Section 16. “Membership Property” shall mean each Vacant Lot, Park and Recreation Tract, constructed Dwelling Unit, or Golf Course Tract. Where an Owner owns more than one Dwelling Unit on the same Lot, such ownership shall constitute only a single Membership Property.

Section 17. “Multiple Unit Residential Lot” shall mean a lot which can be used solely for multiple family residential purposes including condominiums, town house and apartments, and, upon which the number of dwelling, condominium, apartment units to be constructed and the number of buildings to be so constructed upon each such lot shall not exceed fifteen (15) living units per acre. Time-sharing, or the creation of time share estates or a fractional fee, as defined in the applicable statutes, laws, rules or regulations of the State of Colorado or the County of Eagle, Colorado, of any dwelling unit constructed on a Multiple Unit Residential Lot is expressly prohibited.

Section 18. “Owner” shall mean the record Owner, whether one (1) or more persons or entities, of fee simple title to any Membership Property located within the Properties, including contract sellers, but excluding those having such an interest merely as security for the performance of an obligation. This Section does not prohibit an Owner from assigning his Member's interest in the Association, including voting rights, to the holder of a first mortgage as security.

Section 19. “Park and Recreation Tract” shall mean a tract within the Subdivision which can be used solely for recreation purposes such as bicycling, hiking, picnicking, athletic games and related activities, but within which equestrian activities are prohibited. A park recreation tract may have constructed thereon structures associated with such recreational uses.

Section 20. “Properties” shall mean that certain real property described on Exhibit A, together with such additions thereto as may hereafter be brought within the jurisdiction of the Association in accordance with the terms and provisions of this Declaration.

Section 21. “Residential” shall mean being characterized by, or used for, dwellings or homes in which families live on a regular and non-temporary basis.

Section 22. “Single Unit Residential Lot” shall mean a lot which can be used solely for residential purposes and upon which not more than one building containing not more than one dwelling unit, together with not more than one attached garage, may be constructed.

Section 23. “Subdivision” shall mean the lands included within Berry Creek Ranch Filing No. 1, No. 2, No. 3, and No. 4; as listed in Exhibit A.

Section 24. “Vacant Lot” shall mean a Lot which does not have a completed Dwelling Unit constructed thereon and is also not a Open Space, Park and Recreation, Golf Course or Landscaping Tract.

ARTICLE II SINGLETREE PROPERTY OWNERS ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Membership Property within the Properties shall be a Member of the Association and shall be subject to the Articles of Incorporation and Bylaws as they exist and may be amended from time to time; said. Articles of Incorporation, having been filed on February 22, 1995, and Bylaws being incorporated herein by reference. Membership shall be appurtenant to and may not be separated from ownership of any Membership Property.

Section 2. Classes of Membership. The Association shall have one (1) class of voting membership. All Owners shall be entitled to one (1) vote for each Membership Property owned. When more than one (1) person holds an interest in any Membership Property, all such persons shall be Members and the vote for such Membership Property shall be exercised as they determine but in no event shall more than one (1) vote be cast with respect to any such Membership Property, nor shall one (1) vote be entitled to be voted in fractions. The vote for a Membership Property held by more than one (1) person shall be voted only pursuant to a valid proxy signed by all partial owners. No person may vote more than one Proxy.

Section 3. Meetings and Elections. Meetings and Elections of the Association, the Board, and the Committee shall be held pursuant to the Articles of Incorporation and Bylaws.

ARTICLE III USE REGULATIONS

Section 1. Land Uses. All Lots in the Properties shall, as provided in the Prior Declarations, fall within one (1) of the following six (6) land use categories. All Lots shall be categorized as denoted below:

DEFINITION

LOT DESCRIPTION

**Duplex Unit
Residential Lot**

Berry Creek Ranch Filing No. 1

Lots 1-50, incl..
Berry Creek Ranch Filing No. 2
 Lots 18-26, incl, Blk 1;
 Lots 17-26, incl, Blk 2;
 Lots 1-28, incl, Blk 3;
 Lots 1-28, incl, Blk 4;
 Lots 48 and. 49, Blk 4;
 Lots 6-19, incl, Blk 5;
 Lots 1-36, incl, Blk 6.
Berry Creek Ranch Filing No. 3
 Lots 1-30, incl, Blk 1;
 Lots 1-58, incl, Blk;2
 Lots 1-21, incl, 31 Blk 3.
Berry Creek Ranch Filing Lots 4
 Lots 2-54, incl, Blk 1;
 Lots 1-57, incl, Blk 2;
 Lots 1-49, incl, Blk 3;
 Lots 1-57, incl, Blk 5.

Golf Course Tract *Berry Creek Ranch Filing No. 2*
 Tracts A,B,C,D,E,F and G.
Berry Creek Ranch Filing No. 3
 Tracts B and H.
Berry Creek Ranch Filing No. 4
 Tracts A,B,C,K,L and N.

Clubhouse Tract *Berry Creek Ranch Filing No. 2*
 Tract H.

Landscaping Tract *Berry Creek Ranch Filing No. 1*
 Tracts B and G.
Berry Creek Ranch Filing No. 2
 Tracts I, J and M.
Berry Creek Ranch Filing No. 3
 Tracts E and I.
Berry Creek Ranch Filing No. 4
 Tracts D, F, G and J.

**Multiple Unit
 Residential Lot** *Berry Creek Ranch Filing No. 1*
 Lot 97.
Berry Creek Ranch Filing No. 2
 Lots 29 and 30, Blk 3;
 Lot 49, Blk 6.
Berry Creek Ranch Filing No. 3
 Lot 22 Blk 3.
Berry Creek Ranch Filing No. 4
 Lot 1, Blk 1.

Open Space Tract *Berry Creek Ranch Filing No. 3*
Tracts A,C,D and F.
Berry Creek Ranch Filing No. 4
Tracts E,M,O and P.

Park and Recreation Tract
Berry Creek Ranch Filing No. 1
Tracts A, C, D, E, F and H.
Berry Creek Ranch Filing No. 2
Tracts K, L, N, O and P.
Berry Creek Ranch Filing No. 3
Tract G.
Berry Creek Ranch Filing No. 4
Tracts H and I.

Single Unit Residential Lot
Berry Creek Ranch Filing No. 1
Lots 51-96, incl.,
Berry Creek Ranch Filing No. 2
Lots 1-17, incl, Blk 1;
Lots 1-16, incl, Blk 2;
Lots 27-36, incl, Blk 2;
Lots 29-47, incl, Blk 4;
Lots 1-5, incl, Blk 5;
Lots 20-31, incl, Blk 5
Lots 37-48, incl, Blk 6.
Berry Creek Ranch Filing No. 4
Lots 1-48, incl, Blk 4

Section 2. Public Recreation Use. Notwithstanding the other provisions of this Article any Lots or other Property owned by the Berry Creek Metropolitan District may be used for public recreational purposes.

Section 3. Use Restrictions and Setbacks. Except as otherwise permitted by law, each Lot shall be subject to the use restrictions, setback requirements, and other requirements adopted by the Board of County commissioners from time to time (the "PUD Guidelines") to the extent that such PUD Guidelines are more restrictive or require a higher standard of conduct than that required under Article IV below.

Section 4. Changes in Land Use Categories. The use category applicable to any Lot may be changed by a majority vote of the Board provided that such change is requested or approved by the owner of the Lot, notice of such proposed change is given to the Owners of all adjacent Lots prior to a hearing by the Board to consider the change, and a hearing held by the Board at which all interested persons may appear and address the Board on the proposed change. Any changes in the land use categories applicable to the various Properties shall be recorded with the Clerk and Recorder of Eagle County.

ARTICLE IV DESIGN REVIEW COMMITTEE

Section 1. Composition of Committee. The Design Review Committee ("Committee"), created by the Singletree Property Owners Association, shall consist of five (5) persons, all of whom shall be resident Owners, to be appointed by the Board. The Committee may avail themselves of advice of technical consultants as they see fit, subject to Board approval. The Committee shall appoint a chairperson who shall preside over all meetings and who shall coordinate and direct the Committee's work.

The Committee goal is to create a compatible and homogeneous architectural quality harmonious with the rural character of the Valley for the subdivision. The Committee may from time to time revise design guidelines setting forth the design requirements for original construction or any improvements; which, among other things, interpret or implement the provisions of this Declaration. The Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping, and alterations to structures and on lands within the Properties conform to and harmonize with existing surroundings and structures and fulfill the purposes for which this Declaration is enacted.

Section 2. Review by Committee. No building or other structure shall be constructed, erected, or maintained on any Lot, nor shall any addition thereto or alteration or change, including any attachment to an existing structure, a tennis court, a swimming pool, fence, wall, barrier, exterior lighting facility, athletic facility, or other similar improvement or attachment, shall be constructed upon the Properties; no alteration of the exterior of a structure shall be made, including change of color, no significant landscaping or substantial change in landscaping, and no change in the final grade shall be made, until complete plans and specifications (including, but not limited to, a color rendering and/or a model; floor plans; elevations, site and grading plans; provisions for off street parking and locations of driveway access; landscaping plan; the specification of principal exterior material, color schemes and the location and the method of utilization of all utilities) have been submitted to the Committee and approved by it in writing. No construction, for sale, or any other sign may be erected on any property unless it is in full compliance with the Design Review Committee guidelines.

Section 3. Procedures. The Committee shall in writing approve or disapprove all plans, or request additional information of clarification, within forty-five (45) days after submission. In the event that the Committee fails to approve or disapprove such design and location, or disapprove pending receipt of additional information or clarification, within forty-five (45) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with, except that any variances from guidelines created by the Committee pursuant to Section 1 above must be approved in writing by the Committee. Eagle County's issuance of a building permit shall be contingent upon receipt of plans bearing the approval of the Committee.

Section 4. Vote. A majority vote of the Committee is required to approve any proposed action subject to the Committee's review, unless the Committee has designated a representative to act for it, in which case the decision of the representative shall control. However, any decision

by the representative of the committee may be changed or modified by a majority vote of the Committee upon reconsideration at its next regular meeting.

Section 5. Records. The Committee shall maintain written records of all applications submitted to it and of all actions taken by it thereon and such records shall be available to owners as provided in the Bylaws.

Section 6. Liability. The Committee and the Members thereof shall not be liable in damages to any person submitting requests for approval or to any owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 7. Variance. The Committee may grant reasonable variances from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and prevent unreasonable hardships arising by reason for the application of the restrictions contained herein. Variances or adjustments may be granted only when such variances or adjustments are not materially detrimental or injurious to the other property or improvements in the neighborhood, and shall not militate against the real intent and purpose hereof.

Section 8. Fees. The Committee shall be authorized to levy and collect a reasonable fee for the review of plans and specifications, to be paid at the time approval is applied for.

Section 9. Landscaping. Before beginning any construction on a Lot, each Owner shall deposit with the Committee sufficient funds or a performance bond to provide for landscaping of the Lot, in accordance with the plans submitted, in the event the Owner fails to complete such landscaping. Landscaping shall be completed concurrent with or immediately following construction of improvements, or, if prohibited by weather, as soon thereafter as possible; but in no event later than 9 months after completion of the structure. If any Owner fails to timely complete landscaping, the Association may, after giving the Owner thirty (30) days written notice, complete the landscaping consistent with the approved landscaping plan and utilize the deposit or performance bond to pay for such work. The Association shall not undertake any landscaping if within the thirty (30) days notice period the Owner commences such landscaping work and proceeds with diligence to completion.

If, for any reason, the construction is abandoned, the Owner shall restore the Lot to its original condition. If an Owner fails to restore, the Committee may so restore and use the deposit or performance bond to pay for the same. Any excess costs shall be paid by the Owner.

Upon the owner's request, the deposit shall be returned, after verification by the Committee that construction and landscaping has been completed in accordance with the approved plans and sufficient time has passed to reasonably assure initial survival of vegetation. The Committee shall not be obligated to pay any interest on such deposits.

In order to receive approval of the Committee, landscape plans must:

1. Minimize disruption of the natural terrain by grading.
2. Provide for re-vegetation and restoration of ground cover disturbed by grading.
3. Use only those elements that blend with or complement the natural landscape.

4. Use existing or natural drainage paths whenever possible.
5. Provide for adequate snow storage and control of surface runoff.
6. Conserve and. protect topsoil, vegetation, rock formations, and unique landscape features.
7. Use native vegetation, low water consuming vegetation, and high efficiency irrigation devices as much as practicable.

Section 10. Reconsideration, Review, and Appeal. An Owner may appeal a decision of the Committee, or its authorized representative, disapproving plans submitted under this Article to the Board by submitting a written request to the Board within twenty (20) days of the date of mailing the written notification of the Committee's decision. An appeal to the Board shall be considered at the next regularly scheduled. meeting of the Board, provided that written notice of such appeal is received by the Board seven (7) days prior to such meeting. The decision of the Board shall be binding upon the committee and the Owner.

The following specific restrictions shall govern construction on any Lot:

- a. **SITE COVERAGE AND DENSITY:** Buildings situated on a Single Unit Residential Lot or Duplex Unit Residential Lot, within the Subdivision shall not exceed 25% lot coverage; nor shall the total habitable area of the proposed building exceed 25% of the area of the Lot. Buildings situated on a Multiple Unit Residential Lot shall not exceed 25% lot coverage; nor shall the total habitable area of the building exceed 40% of the area of the site. Excluded from the habitable areas are garages, patios, porches, decks and non-habitable basements.
- b. **SET BACK REQUIREMENTS** Minimum setbacks for the location of structures with relations to property lines shall be the greater of 25 feet from the road right of way or 12 feet 6 inches from the Road Maintenance Easement, 15 feet from the rear property line and 12 feet 6 inches from side property lines.
- c. **BUILDING HEIGHT:** No structure located within the Subdivision on a single family, Duplex or Multifamily lot shall exceed at any point on the structure, three stories or thirty-five feet in height, which ever is less.
- d. **PARKING REQUIREMENTS:** Off street vehicle parking shall be provided based upon the current Eagle County parking standards at time of issuance of the building permit by Eagle County, Colorado. Required vehicle parking in the Subdivision may be wholly on grade, partly below grade, or within an underground parking structure. All driveways and. parking areas on grade in the Subdivision shall be paved. 11 All required vehicle parking in the Subdivision shall be paved.
- e. **NATURAL DRAINAGE:** No Owner or contractor shall interfere with or direct the natural course of any drainage and runoff nor construct any improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter the drainage pattern or runoff from its natural flow into or across the land of another except to the extent such alteration in drainage pattern is approved in writing by the Committee and any other public authorities having jurisdiction.

f. **ACCESS AND DRIVEWAY CULVERTS:** No vehicle entrance to any lot in the Subdivision from any dedicated road or street shall be constructed or use unless serviced by a constructed drainage culvert located and sized in a manner which shall first be approved in writing by the Committee. The Committee's action in reviewing such drainage plans shall be guided by the recommendations of the Board Superintendent of Eagle County, Colorado. The centerline, width and grade requirements which may be set forth on the final plat for the Subdivision shall be advisory only and the Committee is specifically authorized, upon request by any lot owner, to determine the final location and grade of any driveway or other access to individual lots. In authorizing any such request, the Committee may impose such additional conditions, restrictions and requirements as the Committee deem appropriate.

g. **IRRIGATION:** In order to retain the rural character of the Subdivision, irrigation ditches will be maintained throughout the development for the maintenance of meadows, and open space. Certain ditches will cross private lots within dedicated easements. The Berry Creek Metropolitan District will be granted the right to maintain these ditches within said easements.

h. **EASEMENT:** Easements and rights of way are hereby reserved as shown or described on the final plats for the Subdivision. There are in addition (i) easements reserved in the right of way of each road for water and all other utilities; (ii) utility and drainage easements seven and one-half feet in width reserved along each side of every lot in the Subdivision not fronting on a dedicated street or road; (iii) irrigation easements fifteen feet in width measured along the center line of irrigation ditches.

i. **FENCES:** Design and location of fencing shall be submitted to and approved by the Committee prior to installation. In areas which may affect the migration or movement of deer, or other large game, fences shall be constructed in compliance with the standards for same as established by the Colorado Division of Wildlife.

j. **REFLECTIVE FINISHES:** Reflecting or contrasting finishes are not acceptable, and all exposed metals such as fascias, flashing, wall and roof vents, metal enclosures, and other items shall be painted an approved color. Reflecting glass windows are not permitted.

k. **SCREENING:** Fuel tanks, electric meters, garbage areas, clotheslines, air conditioning equipment, television and radio antennae and other related features (if permitted in writing by the Committee), must be screened, buried or enclosed from view from surrounding properties.

l. **SPARK ARRESTORS:** Spark arrestors are mandatory on all chimneys.

m. **OUTDOOR LIGHTING:** All outdoor lighting comes under the jurisdiction of the Committee. The light source from any outdoor lighting shall not be visible from surrounding properties. Floodlights are not permitted.

n. **CONTINUITY OF CONSTRUCTION:** All structures commenced in the Subdivision shall be prosecuted diligently to completion. and shall be completed within twelve months of commencement unless some exception is granted in writing by the Committee.

o. **PARKING AREAS:** Construction crews and other construction personnel shall not park on public roads or use other lots or tracts for parking purposes during construction.

p. **CONSERVATION OF LANDSCAPE MATERIALS:** Owners and contractors are apprised of the fact that lots and tracts contain fragile native plants and other landscape materials that should be salvaged before and during construction, such as topsoil, rock outcroppings and native shrubs, grasses and trees. Materials that cannot be removed should be marked by flagging and protected by barriers.

q. **RESTORATION OR REPAIR OF OTHER PROPERTY DAMAGED:** Damage or scarring to other property, including but not limited to other lots or tracts, roads, driveways, or other improvements is not permitted. If any such damage occurs, it will be repaired promptly at the expense of the person causing the same.

r. **CONDUCT AND BEHAVIOR:** All lot owners in the Subdivision shall be responsible for the conduct and behavior of their representatives, builders, contractors and subcontractors.

s. **SPECIAL REVIEW PERMIT:** Prior to the commencement of construction of improvements on lots with a slope of 30% or more as hereinafter enumerated, the owner must apply for and obtain a Special Review Permit from the Board of County Commissioners for Eagle County, Colorado (the "Commissioners"). Factors which the Commissioners will take into consideration prior to granting said permit are the applicants satisfactory solution to conditions of driveway and parking access, existing slope stability, drainage, elevation and snow removal. The maximum permissible driveway grade is 10%. Building sites which are subject to the Special Review Permit are as follows:

Berry Creek Ranch Filing No. 4
Blk 1; Lots 7, 8, 9, 10, 12, and 15,
Blk 2, Lots 5, 6, 8, 9 and 22,
Blk 3, Lots 18, 19, 20, 22, 24 ,25, 37 and 42,
Blk 4; Lot 28,
Blk 5; Lots 19,20 and 40.

ARTICLE V EXTERIOR MAINTENANCE

Section 1. General. The structures and grounds of each Lot shall be maintained in good repair and in a neat, attractive, sanitary, and safe manner by the Owner thereof so as to fulfill the purposes for which this Declaration is enacted.

Section 2. Failure to Maintain. Upon the failure of any Owner to maintain the exterior of any structure or grounds on his Lot, including Vacant Lots, the Board may at its option, after giving the Owner thirty (30) days prior written notice, take such actions, including but not limited to making repairs and improvements, reasonably necessary to bring such structure or grounds in compliance with this Declaration. Maintenance requirements contemplate by this Section include, but are not limited to, the provisions of Article VI. Any costs incurred under this Article shall be considered a part of the regular assessment and subject to the filing and foreclosure of a lien on the Lot.

ARTICLE VI RESTRICTIONS

Section 1. Use. No Lot shall be used for any purpose other than that allowed for such Lot in accordance with the categories set forth in Section 1 of Article III above, and as such may be changed from time to time, or be used in any way inconsistent with the requirements or purposes of this Declaration.

Section 2. Animals. No animals of any kind or number shall be kept on any of the Properties for commercial purposes. No dangerous animals of any kind may be kept or brought onto the Properties. Only domestic animals normally associated with Residential family living may be kept on the Properties. The number of animals associated with any Lot or Dwelling Unit must be limited in number and kind in keeping with a reasonably quiet Residential atmosphere of the Properties and not rural or farm living. No animal shall be kept on the Property which make loud, disturbing, or objectionable noises or otherwise constitute a nuisance or inconvenience to any other residents of adjacent property. Every owner which permissibly keeps an animal shall maintain strict control over the animal and prohibit it from behaving in a manner reasonably annoying to other owners. Animals shall be kept on a leash when not in the residence or within a fenced yard. All animals must be kept in compliance with all existing local ordinances.

Section 3. Temporary Structures. No structure of a temporary character shall be used or permitted to be kept or stored on any portion of the Properties at any time, either temporarily or permanently, including any house, trailer, motor home, tent, garage, or other outbuilding. No pet enclosure, cage, or kennel, either of a temporary or a permanent nature, shall be placed on the Properties unless specifically approved by the Association; such approval shall be granted only if the Association can impose conditions which reasonably assure that such pet enclosure, cage, or kennel is concealed from view from adjacent Lots and public areas. No Dwelling Unit shall be occupied in any manner at any time prior to its being fully completed (except for landscaping) in accordance with approved plans, nor shall any Dwelling Unit when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth. However, during the actual construction or alteration of a building, necessary temporary

buildings for storage of materials may be erected and maintained by the person doing such work, if previously approved in writing by the Committee.

Section 4. Miscellaneous Structures. No advertising, billboards, or signs of any character shall be erected, placed, permitted, or maintained on any Lot unless the prior written consent of the Association has first been obtained. Real Estate signs shall be allowed as regulated by the Committee Guidelines.

Section 5. Property to be Maintained. All Lots, including Vacant Lots, shall at all times be kept in a clean, sightly, safe, and sanitary condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber, or other building materials shall be visible from any neighboring Lot or public area. Machinery, lumber, or other building materials may be stored as necessary during the period of construction provided they are kept in an orderly fashion. All weeds and other growth on a Vacant Lot shall be kept trimmed and neat so as not to cause any unsightliness, in the opinion of the Association. All enclosed structures shall comply with the rules and regulations of the Committee as in effect from time to time. No rubbish, refuse, trash, plant litter, or garbage shall be allowed to accumulate, nor any fire hazard to exist.

Section 6. Underground Utility Lines. All electric, television, radio, telephone and other utility line installations and connections from an Owners property line to a residence or other structures shall be placed underground.

Section 7. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon the Properties, nor shall anything be done or placed on any of the Properties which is or may become, in the judgment of the Association, a nuisance. No nuisance shall be allowed on any of the Properties, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Properties.

Section 8. No Hazardous Activities. No activities shall be conducted on the Properties or on improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Properties. No open fires shall be lighted or permitted on the Properties except in a contained barbecue unit. while attended and in use for cooking purposes or within a safe and well' designed interior fireplace, or except such campfires or picnic fires on property designated for such by the Association.

Section 9. No Annoying Light, Sounds, or Odors. No light shall be emitted from any Lot, Dwelling Unit, or building which is unreasonably bright or causes unreasonable glare; no sound shall be emitted on any Lot or in any Dwelling Unit or building which is unreasonably loud or annoying; and no odor shall be emitted on any Lot or Dwelling Unit or building which is noxious or offensive.

Section 10. Restriction on Parking and Storage. No Lot, streets, private streets, drives, or parking areas, unless specifically designated by the Association, shall be used as a parking, storage, display, or accommodation area for any type of commercial vehicle, house trailer, camping trailer, boat trailer, livestock trailer, hauling trailer, boat or accessories thereto, truck larger than a 3/4-ton pickup truck, or any type of motor home except as a temporary expedience

for loading, delivery, emergency, etc. (however this restriction shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of structures), unless the same shall be stored, parked, or maintained wholly within a Garage area of a Dwelling Unit or building with the Garage door in a closed position.

Section 11. Abandoned Vehicles. No Abandoned or Inoperable Automobile or Vehicle shall be stored on the Properties except if wholly enclosed within a Garage. A written notice describing the Abandoned or Inoperable Vehicle and requesting the removal thereof may be personally served upon the Owner or posted on the unused vehicle by the Association, and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Board shall have the right to remove the same without liability, and the expense thereof shall be charged against the owner. If the Owner of the vehicle is a Member of the Association, the cost of removal shall be added to his next assessment due.

Section 12. Vehicle Repair. No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of vehicles of any kind may be performed on any Lot unless it is done within a completely enclosed Garage or other structure which screens the sight and sound of the activity from adjoining property and public areas. No car or other vehicle shall be placed upon blocks on any Lot, except in a enclosed Garage, with the door in a closed position. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, motor home, boat, trailer, or motor driven cycle together with those activities normally incident and necessary to such washing and polishing. The restrictions of this Section and Sections 10 and 11 are not meant to constrain or prohibit activities normally associated with the permissible uses to which a non- Residential Lot is actually put, except to the extent that such activities unreasonably impact adjacent Residential Lots.

Section 13. Clotheslines and Storage. No clotheslines, drying yards, service yards, or storage areas shall be so located on any Lot so as to be visible from a public area.

Section 14. Garbage and Refuse. No garbage, refuse, rubbish, plant litter, or cuttings shall be deposited on any street or on any Lots unless placed in a suitable container suitably located. No garbage container shall be placed on or near a. street except on the day scheduled for pick-up for such garbage. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

No person shall deposit, throw, or leave any refuse on any public or private property including but not limited to the right-of-way or any road or highway, body of water or water course, parks playground, recreation area, building, refuse container or receptacle provided for private use. However, refuse and garbage may be deposited in an area designated by law for such disposal when authorized by the proper public authority; or in a receptacle or container installed for such use and as authorized by ownership or tenancy or in writing or by the personal direction of the owner, provider, or maintainer of the receptacle or container.

Section 15. Tanks. No tanks of any kind, except for small portable tanks associated with an outdoor gas cooking grill, either elevated or buried, shall be erected, placed or permitted upon any Lot without the prior written approval of the Committee.

Section 16. Wood Storage. Firewood storage is only permitted on the Lot owned by the Owner of such firewood and also only in the event same is neatly stacked or stored.

Section 17. Trees. No trees naturally existing prior to the commencement of any construction on a Lot or required as a part of an approved landscaping plan shall be cut or trimmed without the express, prior written approval of the Association. The Association shall not prohibit removal of any dead trees unless a clear showing is made that leaving such dead trees poses no safety hazard and there are reasons for leaving such trees which outweigh the benefits of removal; however, in any case the Association may require replacement of any dead tree with new vegetation as a condition of approval.

Section 18. Utilities. Each Dwelling Unit shall connect with the water and sanitation facilities of the Berry Creek Metropolitan District and the Upper Eagle Valley Sanitation District, or any successor districts, and no private wells or private sewage systems shall be allowed on the Properties.

Section 19. Mechanical Equipment. All boilers, air conditioning, cooling or heating equipment, and other mechanical equipment, excluding only solar collection devices, shall be concealed from public view. Exterior mounted, exposed television or radio antenna will not be permitted within the Subdivision, unless permitted in writing by the Committee.

Section 20. Commercial and Business Activities. No commercial or business activities of any character may be conducted within the Properties except on Clubhouse Tracts or Park and Recreational Tracts (only to the extent such activities are related to permissible golf and recreational uses).

Section 21. Temporary Accommodations. It is the intent of this Section to maintain the Residential character of Lots which may be used solely for Residential purposes. It is recognized that the division of Dwelling Units into multiple temporary accommodations increases vehicle traffic, parking congestion, and the need for privately and governmentally provided services and is generally inconsistent with the use of Property for Residential purposes. Therefore, no portion of a Residential Dwelling Unit which is less than the Whole Dwelling Unit shall be used for non-resident guest accommodations for compensation, and no Residential Dwelling Unit shall be used or divided so as to be used for accommodations for more than a single family. Nor shall any hotel, motel, or Bed and Breakfast be allowed.

Section 22. Rules and Regulations. The Board may from time to time, create such other rules and regulations which shall be enforceable by the Board which they deem necessary to provide for the purposes for which this Declaration is adopted.

ARTICLE VII COVENANT FOR ASSESSMENTS

Section 1. Obligation for Assessments. Each Owner shall pay to the Association: (1) annual and regular assessments or charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided. All assessment charges may be collected on a monthly or quarterly basis if so elected by the Board. Any assessments and charges not paid within twenty (20) days after they become due and payable shall be deemed delinquent. The

Board may assess a late charge thereon in an amount not to exceed twenty-five percent (25%) of the delinquency to cover the extra cost and expenses involved with such delinquency.

Section 2. Assessment Lien. The annual and special assessments, together with interest thereon, all costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Property against which each assessment is made. Such costs and reasonable attorney's fees incurred in regard to default in payment of any assessments shall be in addition to the delinquency fee noted in Section 1. To evidence such lien, the Board shall prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner, and a description of the Property. Such a notice shall be signed by the President of the Association or one of the Directors, and shall be recorded in the office of the Clerk and Recorder of the County of Eagle, Colorado. Such lien may be enforced by foreclosure of the defaulting Owner's Property by the Association in like manner as a mortgage on real property upon the recording of a notice or claim thereof. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien, and all reasonable attorney's fees. Each such assessment, together with interest thereon, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass to the Owner's successors. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the benefits derived from assessments or abandonment of his Membership Property.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the purposes for which this Declaration is enacted and to cover expenses of administration and enforcement of this Declaration. It is specifically understood that the Association shall have the right and authority to provide services to the Owners such as garbage collection, security, maintenance and transportation, and to charge fees therefore.

Section 4. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Membership Property sufficient to meet the expected needs of the Association. No special assessments in excess of Fifty Dollars (\$50.00) per Membership Property per year may be assessed without the consent of at least fifty-one percent (51%) of the votes present and entitled to be cast at a special meeting or the annual meeting at which such matter is presented for a vote. Such Fifty Dollar (\$50.00) limit on special assessments shall be adjusted annually based on the consumer price index for the Metropolitan Denver area as reported by a recognized national authority.

Section 5. Date of Commencement of Annual Assessments. The initial and all subsequent annual assessments shall commence on the first day of such month as determined by the Board, and shall be made due and payable in monthly or quarterly installments as elected by the Board. The amount of such annual assessment shall be determined by the Board at the first meeting of the Board held after notice of the proposed budget is given. A proposed budget shall be made available to the Owners at least thirty (30) days prior to such meeting. Any owner purchasing a Membership Property between installment due dates shall pay a pro rata share of the last installment due.

Section 6. Additional Costs. Any costs incurred by the Association of any nature, including but not limited to construction plan review fees, maintenance costs, landscaping, or

restoration costs, attributable to a specific Lot or Lots shall be added to and become a part of the regular assessment or charge to which such Lot is subject and shall constitute a lien on the Lot and may be filed with the Clerk and Recorder of Eagle County, Colorado and foreclosed in a like manner, as set forth in this Article.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage. The lien of the assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado. Transfer of actual or constructive possession of any Property shall not affect the assessment liens. However, the transfer of title or actual or constructive possession of any Property pursuant to mortgage foreclosure of such a first mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such transfer of title or actual constructive possession. No transfer of title or actual or constructive possession shall relieve such Membership Property from liability for any assessments thereafter becoming due or from the lien thereof. .

Section 8. Exemption. Property owned by the State of Colorado and its political subdivisions shall be exempt from levy and assessment.

ARTICLE VIII GENERAL PROVISIONS

Section 1. Enforcement. The Association or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Access at Reasonable Hours. For the sole purposes of performing maintenance, landscaping, restoration or removal of Abandoned or Inoperable Automobiles or Vehicles, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

Section 3. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 4. Conflict of Provisions. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration shall control.

Section 5. Duration, Revocation, and Amendment. Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be abandoned, amended or revoked by an instrument approved in writing by the owners of not less than fifty-one percent (51%) of the land included within the boundaries of the Subdivision. Such abandonment, amendment or revocation shall be effective when duly recorded; provided, however, that any

abandonment, amendment or revocation must comply with the statutes of Colorado and the resolutions and ordinances of the County of Eagle, Colorado.

Section 6. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notice, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board, the Committee, or the Association shall be sent by certified mail, postage prepaid, to P.O. Box _____, Edwards, Colorado 81632, until such address is changed by a notice of change of address mailed to each Owner by the Association. Every person becoming an owner shall immediately furnish to the Board a photocopy or a certified copy of the recorded instrument vesting in that person such ownership, which instrument shall remain in the files of the Association.

Section 7. Leases. Any lease agreements between an owner and a lessee for any Membership Property shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration and the Articles of Incorporation and Bylaws., and that any failure by the lessee to comply with the terms and provisions of such documents shall be a default under the lease. Further, all leases shall be in writing. No owner may lease less than his entire Dwelling Unit.

Section 8. Notice. Any notice required or provided for by this Declaration be in writing and shall be deemed given when mailed, certified mail, postage prepaid, to the person or entity to which such notice is required to be given. Any notice provided for or required by this Declaration shall, unless specifically noted otherwise, require notice thirty (30) days prior to taking the action of which notice is being given.

Section 9. Approval. Any time approval by the Association, the Board, or the Committee is required or provided for in this Declaration, unless otherwise specifically state, such decision shall be based upon the ability to further the stated purposes for which this Declaration is enacted.

Section 10. Section References. References in this Declaration to a specific Section shall mean the number Section within the same Article of this Declaration in which the reference is contained, unless otherwise specifically noted.

Section 11. Counterpart Signatures. This instrument may be executed in one (1) or more counterparts and/or one (1) or more counterpart signature pages, and all counterparts and counterpart signature pages of this Declaration shall be deemed to constitute one (1) instrument.

Section 12. Governmental Regulations. To the extent any subject or matter contained in this Declaration is also the subject of any applicable governmental regulation or restriction of whatever nature, the more restrictive provision or provision requiring a higher standard of conduct shall apply. Such other governmental regulations are hereby incorporated into this Declaration and may be enforced in any manner available for enforcement of this Declaration.

**CONSENT AND APPROVAL
OF THE
AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF BERRY CREEK RANCH SUBDIVISION
FILINGS NOS. 1, 2, 3, AND 4**

IN WITNESS WHEREOF, the undersigned have hereunto set their hands as of the day and year first above written.

I, (We) hereby affirm that I (We) are the Owner's of Lot ___ Block _____, Filing No, _____ of Berry Creek Ranch Subdivision, Eagle County, Colorado, AND HEREBY APPROVE this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Berry Creek Ranch Subdivision Filings Nos. 1,2,3, and 4.

NOTARY:

The foregoing instrument was acknowledged before me in the County of _____, State of _____.

Witness my hand and official seal.

Notary Public
My Commission expires _____

NOTE: THIS FORM MAY BE DUPLICATED IF ADDITIONAL SIGNATURES ARE REQUIRED.

EXHIBIT A

All properties subject to the following plats, as amended, recorded in the office of the Clerk and Recorder, Eagle County) Colorado:

1. Berry Creek Ranch Filing No. 1 in Eagle County, Colorado, the plat of which was filed under Reception Number 174482, and recorded November 3, 1978 in Book 278 at Page 72, Map Case 2, Drawer B of the records of the Clerk and Recorder's Office for Eagle County, Colorado.
2. Berry Creek Ranch Filing No. 2 in Eagle County, Colorado, the plat of which was filed under Reception Number 180384, and recorded April 10, 1979 in-Book 283 at Page 979, Map Case 2, Drawer B of the records of the Clerk and Recorder's Office for Eagle County, Colorado.
3. Berry Creek Ranch Filing No. 3 in Eagle County, Colorado, the plat of which was filed under Reception Number 195714, and recorded February 27, 1980 in Book 299 at Page 324, Map Case 2, Drawer B of the records of the Clerk and Recorder's Office for Eagle County, Colorado.
4. Berry Creek Ranch Filing No. 4 in Eagle County, Colorado, the plat of which was filed under Reception Number 195712, and recorded February 27, 1950 In Book 299 at Page 322, Map Case 2, Drawer B of the records of the Clerk and Recorder's Office for Eagle County, Colorado.