

**DECLARATION  
OF  
COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
AGATE CREEK PRESERVE**

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**DECLARATION  
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FOR  
AGATE CREEK PRESERVE**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR AGATE CREEK PRESERVE** (the "Declaration") is made as of \_\_\_\_\_, 1999, by Humble Ventures LLC, a Colorado Limited Liability Company ("Declarant").

**RECITALS**

- A. Declarant is the owner of that certain real property located in Routt County, Colorado, more particularly described on the attached Exhibit A (the "Property").
- B. Declarant desires to create a Planned Community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes 38-33.3-101, et. seq. (the "Act") on the Property, the name of which is Agate Creek Preserve.

**ARTICLE 1  
DECLARATION AND SUBMISSION**

Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following covenants, restrictions, and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

**ARTICLE 2  
DEFINITIONS**

The following words when used in this Declaration or any supplemental Declaration, unless inconsistent with the extent of this Declaration, shall have the following meanings:

Section 2.1 "Access Easement Area" shall mean that easement which runs along the roads of Agate Creek Preserve as defined in Section 9.8 herein below.

Section 2.2 "Agate Creek Preserve" means the planned community created by this Declaration, consisting of the Property, its related easements and the Lots, and any other improvements constructed thereon.

Section 2.3 "Annual Assessment" means the Assessment levied annually.

Section 2.4 “Architectural Review Committee” (“ARC”) means and refers to the Architectural Review Committee defined in and created pursuant to Article 18 below.

Section 2.5 “Architectural Review Fee” that fee which is accessed for the review of the submitted plans by an outside consulting architect.

Section 2.6 “Articles” mean the Articles of Incorporation for the Association on file with the Secretary of State, and any amendments, which may be made to those Articles from time to time.

Section 2.7 “Assessments” means the Annual, Special, and Default Assessments levied pursuant to Article 11 below. Assessments are further defined as a Common Expense Liability as defined under the Act.

Section 2.8 “Association” means Agate Creek Preserve Homeowners’ Association, Inc., a Colorado Nonprofit corporation, and its successors and assigns.

Section 2.9 “Association Documents” means this Declaration, the Articles, the Bylaws and the Association Rules and any procedures, rules, regulations, or policies adopted under such documents by the Association.

Section 2.10 “Association Rules” means the rules and regulations adopted by the Association as provided in Section 4.9.

Section 2.11 “Blanket Utility Easement Area” is defined in Section 9.6.1 hereinbelow.

Section 2.12 “Building Envelope” is defined in Section 15.1.1 hereinbelow.

Section 2.13 “Building Fee” is defined in Article 18 Section 18.7 hereinbelow.

Section 2.14 “Bylaws” means the Bylaws adopted by the Association, as amended from time to time.

Section 2.15 “Common Area” means all the real property, easements and improvements thereon, in which the Association owns or has a real property interest for the common use and enjoyment of all of the Owners on a non-exclusive basis (such as estates in fee, for terms of years, or easements), including but not limited to, all Roads and access Easements, Trails, Utility Easements, Water Tank Site, and Remainder Parcel C all as illustrated on the Plat, and the Easement for Ground Water Wells recorded in Book \_\_\_\_ at page \_\_\_\_ in the office of the Routt County Clerk and Records, Routt County, Colorado . The term Common Area shall have the same meaning as the term Common Elements as defined in the Act.

Section 2.16 “Common Expense” means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws; (ii) all other expenses of the administering, servicing, conserving, managing, improving, maintaining, repairing, or replacing to Common Area; (iii) all expenses to be incurred by the Association in fulfilling its obligations or Functions under this Declaration; (iv) insurance premiums for the insurance carried under Article 10; and (v) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.17 “County Documents” means those certain development approvals for Agate Creek Preserve granted by Routt County, Colorado.



Section 2.18 "Declarant" means Humble Ventures LLC, a Colorado Limited Liability Company and its affiliates, successors and assigns.

Section 2.19 "Declaration" means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements for Agate Creek Preserve as amended and supplemented from time to time.

Section 2.20 "Default Assessment" means the Assessments levied by the Association pursuant to Article 11, Section 11.7 below.

Section 2.21 "Design Guidelines" means the guidelines and rules published and amended and supplemented from time to time by the Architectural Review Committee.

Section 2.22 "Director" means a member of the Executive Board.

Section 2.23 "Executive Board" means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Subdivision and all improvements on the Subdivision.

Section 2.24 "Fiscal Year" means from September 01 through August 31, over which all accounting and budget projections are conducted.

Section 2.25 "Function" means any activity, function or service required under this Declaration to be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

Section 2.26 "Lot" means a separately described and subdivided part of the Subdivision designated as a Lot by a number on the Plat, including all appurtenances and improvements now existing or hereafter constructed thereon. Each of the Lots is a "Unit" as that term is defined in the Act. The term Lot does not include the Remainder Parcels or the parcels described as Lot 17 and Lot 18 as shown on the Plat. The boundaries of each Lot are shown on the Plat.

Section 2.27 "Management Agreement" means any contract or arrangement with a person or entity that provides management services entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance and management of the Common Area and/or the performance of Functions.

Section 2.28 "Managing Agent" means a person, firm, corporation, or other entity employed or engaged as an independent contractor pursuant to the Management Agreement.

Section 2.29 "Map" or "Maps" means and includes any engineering survey or surveys of a portion of the Property (whether titled as a map, plat or otherwise and whether in two or three dimensions) together with other drawings or diagrammatic plans and information regarding any portion of the Property as recorded in the Office of the Clerk and Recorder of Routt County, Colorado. The definition of "Map" in this Declaration shall include those documents defined as a "map" and a "plat" under the Act.

Section 2.30 "Owner" means the owner of record, whether one or more persons or entities, or fee simple title to any Lot, but excludes those having such interest in a Lot merely as security for the performance of an obligation, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

Section 2.31 "Paving Assessment" means a Special Assessment levied on all Owners of Agate Creek Preserve to pave Humble Road.

Section 2.32 "Person" means a natural person, a corporation, a partnership, a trustee or other legal entity.

Section 2.33 "Plat" means the subdivision plat or plats depicting the Property subject to this Declaration and recorded in the records of the Clerk and Recorder of Routt County, Colorado.

Section 2.34 "Private Trail" means that 20' wide easement which shall be owned by the Association for use by the Owners. The Private Trail easement shall be part of the Common Area as shown on the Plat.

Section 2.35 "Property" means and refers to that certain real property described on Exhibit A.

Section 2.36 "Remainder Parcel" means the separately described part of the Property identified and labeled as a Remainder Parcel by Letter on the Plat (Remainder Parcel A, Remainder Parcel B and Remainder Parcel C) including all appurtenances and improvements now existing or hereafter constructed thereon. The Remaining Parcels are subject to certain limitations and restrictions more particularly set forth in the Agate Creek Preserve Land Preservation Subdivision Exemption Development Agreement between the Declarant and Routt County, Colorado. The Remainder Parcels are not subject to the provisions of this Declaration except as expressly provided herein.

Section 2.37 "Roads" means (i) the private drive and utility easement within Lots 1 through 16 as shown on the plat and labeled "Humble Road"; (ii) the private drive and utility easement within Lot 11 as shown on the Plat and labeled "Sweetwater Road"; (iii) the private drive and utility easement within Lot 13 as shown on the Plat and labeled "Water Tank Easement"; (iv) the nonexclusive drive and utility easement within Remainder Parcel A, as shown on the Plat and labeled "Elk Lane"; and including all roadway improvements now existing or hereafter constructed within such easements.

Section 2.38 "Secondary Unit" means a dwelling unit other than the primary dwelling unit on a Lot that is restricted in size and number of occupants.

Section 2.39 "Special Assessment" means an assessment levied pursuant to Article 11, Section 11.6 below on an irregular basis.

Section 2.40 "Subdivision" means Lots 1 through 16, Agate Creek Preserve, and the Common Area owned by the Association. The term Subdivision does not include Lot 17, Lot 18 or Remainder Parcel A and B.

Section 2.41 "Successor Declarant" means any party or entity to whom Declarant specifically assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded in the Office of the Clerk and Recorder of Routt County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

Section 2.42 "Upland Parcel Easement Area" means that easement within the Property which is reserved by Declarant to access Remainder Parcel B and those lands west of Remainder Parcel B.

Section 2.43 "Water Tank Easement" means that easement which is a continuation from Sweetwater Drive to the Water Tank Site as shown on the Plat.

Section 2.44 "Water System" means all of the facilities and elements of the water diversion, treatment, pumping, storage, and distribution of water, within or outside of the Property, by which a central water supply is diverted, treated, stored, and delivered to the Lots for use by the Owners, whether no existing or hereafter constructed. The Water System includes, but is not limited to, wells and infiltration galleries or other water supply sources, pumps, water lines, treatment and filtration facilities, water storage tanks, water trunklines, fireplugs, valves, pumps, water meters, curb valves, and all other water supply facilities, together with the Special Use Permits and structures allowed pursuant to such Special Use Permits for the Water System, water rights, well permits, the Yampa Gathering Field located on the Easement for Ground Water Wells, the Well Tank Site, other easements, licenses, and other property used in or related to the provision of potable water to Lots 1 through 16. The Water System will be constructed by Declarant and will be owned, managed, operated, repaired, maintained, and replaced by the Association.

Section 2.45 "Water Tank Site" means the easement shown on the Plat as the "Water Tank Site".

Section 2.46 "Yampa Gathering Field" means those two well gathering sites located on that easement known as "Easement for Ground Water Wells" located on the east side of County Road 14 for the purposes of a residential water source.

Each capitalized term not otherwise defined in this Declaration or in the Plats shall have the same meanings specified or used in the Act.

### **ARTICLE 3 LOT OWNERSHIP**

Section 3.1 Lots. The number of Lots to be developed on the Subdivision is sixteen (16), being Lots 1 through 16, inclusive. The term Lot or Lots does not include the Remainder Parcels of the parcels described as Lot 17 and Lot 18 as shown on the Plat.

Section 3.2 Identification of Lots. The Identification number of each Lot is shown on the Plats or shall be shown on the Map of the Project which contains the Lot.

Section 3.3 Description of Lots.

3.3.1 Each Lot shall be inseparable and may be developed for residential purposes in accordance with the restrictions applicable to a particular Lot contained on the Plats and in the County Documents. No Lot shall be further subdivided.

3.3.2 Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all duties and responsibilities of an Owner with respect to the Lot in which he owns an interest. For all purposes herein, there shall be deemed to be only one Owner for each Lot. The

Parties, if more than one, having the ownership of a Lot shall agree between themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

3.3.3 Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed. Accordingly, the Common Area shall not be assessed separately but shall be assessed with the Lot as provided pursuant to Colorado Revised Statutes Subsection 39-1-103 (10) and 38-33.3-105 (2).

3.3.4 No Owner of a Lot shall be entitled to bring any action for partition or division of the Common Area.

3.3.5 As provided below, each Lot shall be used and occupied solely for dwelling or lodging purposes. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules, regulations from time to time in effect.

## **ARTICLE 4 ASSOCIATION FUNCTIONS AND DUTIES**

Section 4.1 Subdivision Maintenance Function. The Association shall provide for the care, operation, management, maintenance, improvement, repair, and replacement of all Common Areas including the Private Trail. Moreover, the Association may provide for the care and maintenance of other areas of the Subdivision if the Executive Board, in its reasonable discretion, deems such care and maintenance to be necessary. The Executive Board shall be the sole judge as to the appropriate maintenance, operation and management of the Common Areas and other areas of the Subdivision consistent with intent of this Declaration.

Section 4.2 Fences, Construction and Maintenance. The Association is responsible for construction, maintenance, repair, improvement and replacement of all fences along the boundary of the Subdivision in accordance with the terms and conditions of the County Documents and certain other agreements with neighboring landowners, and the cost of such maintenance, repair, improvement and replacement shall be a Common Expense.

Section 4.3 Public Health and Safety Function. The Association may provide public health and safety services within Agate Creek Preserve, including, but not limited to, security personnel, security systems, fire protection facilities and a fire water system which may include periodic fire inspections and equipment certifications. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE SUBDIVISION. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR FOR THE INEFFECTIVENESS OF ANY SECURITY MEASURE UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT

THE ASSOCIATION AND ITS EXECUTIVE BOARD, DECLARANT AND ANY SUCCESSOR DECLARANT, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDELINES ESTABLISHED BY THE DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS, AND TO THE CONTENTS OF LOTS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS EXECUTIVE BOARD AND COMMITTEES, DECLARANT OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE SUBDIVISION.

#### Section 4.4 Roads.

4.4.1 The Association is responsible for maintenance of the Roads, the Association shall maintain and keep the Roads in good repair, and the cost of such maintenance shall be deemed a Common Expense. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement of the Roads (which shall include without limitation snow removal services). The Association's responsibility for the Road maintenance under this Section applies whether or not such Roads lie in a Common Area, on an easement created by this Declaration across any Lot, or some other area of the Property. In the event the Association does not maintain or repair the Roads, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. The Association may contract for these services with any public or private entity.

4.4.2 With respect to Roads owned by the Association, if any, if the Executive Board deems it advisable, the Association may, at any time, enter into a written agreement to dedicate or convey the Roads to Routt County. In the event a dedication to Routt County is made under this Section, the Roads must meet all Routt County road and trail plan standards applicable at the time of such dedication. ROUTT COUNTY SHALL HAVE NO OBLIGATION TO ACCEPT THE OWNERSHIP OF THE ROADS OR THE RESPONSIBILITY TO MAINTAIN THE ROADS. After any dedication made pursuant to this Section, the responsibility for the maintenance and upkeep of the Roads shall be that of the entity to which the Roads are dedicated.

4.4.3 The Association shall pave the Roads within Agate Creek Preserve during the year 2000 by use of a Special Paving Assessment to each Owner, payable no later than May 1, 2000 in accordance with Section 11.6 below.

Section 4.5 Water System. The Association is responsible for maintenance of the Water System, the Association shall maintain and keep the Water System in good repair, and the cost of such maintenance shall be deemed a Common Expense. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement of the Water System. The Association's responsibility for the Water System maintenance under this Section applies whether or not such Water System lies in a Common Area, on an easement created by this Declaration across any Lot, or some other area of the Property. In the event the Association does not maintain or repair the Water System, Declarant shall have the right, but not the obligation, to do so at the expense of the Association. The Association may contract for these services with any public or private entity.

Section 4.6 Animal Control Function. The Association may provide for regulations, facilities, personnel and funds to enforce animal control or exclude animals from all or any portion of Agate Creek Preserve and may cooperate with the appropriate governmental body regarding enforcement of animal control regulations.

Section 4.7 Exterior Maintenance Function.

4.7.1 Subject to Article 19, each Owner shall be responsible for all landscaping, maintenance and repair of his Lot and of the exterior and interior of his residence, including all fixtures and improvements and all utility lines and equipment located therein or in, on or upon his Lot and is required to maintain the Lot and any improvements located thereon in a condition of good order and repair. No Owner shall unreasonably damage the value of other Lots such as by shoddy upkeep of such Owner's Lot or any structures located on the Lot.

4.7.2 Owner's shall be responsible for all maintenance and repairs of utility services lines, connections, facilities and related equipment providing service only to such Owner's Lot (and to no other Lot) and the residence and other buildings and improvements constructed upon such Lot, and which are located within such Owner's Lot, with such responsibility to begin at the point where a utility provider ceases responsibility for maintenance and repair for a particular utility. All such expenses and liabilities shall be borne solely by the Owner of such Lot.

4.7.3 If any Owner fails to maintain his Lot or fails to perform any acts of maintenance or repair required under this Declaration, the Association may provide, by the affirmative vote of the majority of the members of the ARC or a majority of the members of the Executive Board, exterior maintenance and repair upon such property after thirty (30) days' notice of such failure to the Owner of such Lot. In addition, the Association may, without notice, make such emergency repairs and maintenance as may in its judgement be necessary for the safety of any person or to prevent damage to any other property. The cost of such exterior maintenance and repairs of a Lot shall be assessed against the Owner of such Lot and shall be a lien and obligation of the Owner pursuant to Article 11. The cost of such maintenance or repairs shall be assessed against all Owners of Lots and shall be a lien and obligation of such Owners pursuant to Article 11. For the purpose of performing the exterior maintenance authorized by this Section,

the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon such Lot during reasonable hours on any day. The Association and the ARC and their designees are hereby granted an irrevocable license over all property in Agate Creek Preserve in order to determine whether any maintenance or repair is necessary under this Section.

4.7.4 Neither Declarant, the Association, nor any of their respective directors, members, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Lot or improvements or portion thereof or to repair or maintain the same. Declarant, the Association or any member of the general public, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by an act or omission in the repair or maintenance of any Lot or improvements or portion thereof.

Section 4.8 Telephone Function. The Association may provide for the installation, operation, maintenance, improvement, repair and replacement of telephone or other communication lines and related equipment and facilities.

Section 4.9 Right to Make Rules and Regulations. The Association shall be authorized to and shall have the power to adopt, amend and enforce Rules and Regulations applicable within Agate Creek Preserve with respect to any Common Area or Function, and to implement the provisions of this Declaration, including but not limited to, rules or regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate animals; to protect wildlife; to regulate signs; to regulate weed and pest control on the Lots; to regulate use of any and all Common Area to insure fullest enjoyment of use; to promote general health, safety and welfare of persons residing, visiting and doing business within Agate Creek Preserve; and to protect and preserve property and property rights. The Executive Board may, by a majority of the voting Directors, make and amend reasonable rules and regulations governing the use and operation of the Common Area. All rules and regulations shall comply with the Association Documents and Supplemental Declarations of land use and restrictions for Agate Creek Preserve. The rules and regulations shall be reasonable and shall be uniformly applied. In addition, such rules and regulations shall, when applied to each of the Lots, be equitable and reasonable as applied to the Lot with respect to the use thereof. The Association may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines and penalties, through exclusion of violators from Common Area or from enjoyment of any Functions or otherwise. Each Owner, lessee, guest and member of the general public shall be obligated to and shall comply with or abide by such rules and regulations and such unpaid fines and penalties shall be enforceable in accordance with Article 11.

4.9.1 The Executive Board may, by a majority of the voting Directors, make and amend reasonable rules and regulations governing the Design Guidelines as provided in Article 19. Such amendments must be properly executed by the Directors and recorded at the office of the Routt County Clerk and Recorder.

Section 4.10 Charges for Functions. Notwithstanding the provisions of Section 4.11, the Association may establish charges for providing any service as required or permitted by

any Function on a regular or irregular basis to an Owner, lessee, guest or member of the general public to assist the Association in offsetting the costs and expenses of the Association, including depreciation and capital expenses. All charges established under this Section shall be reasonable and shall be uniformly applied. Each Owner, lessee, guest and member of the general public shall be obligated to and shall pay such charges for use.

Section 4.11 Taxes. The Association shall pay all ad valorem real estate taxes, special improvement or other assessments (ordinary and extraordinary), ad valorem personal property taxes and all other taxes, duties, charges, fees, and payments required to be made to any governmental or public authority which shall be imposed, assessed or levied upon, or arise in connection with, any Common Area or Function.

Section 4.12 Right to Dispose of Common Area. Subject to provisions of Section 4.14.9 below, the Association shall have the full power and authority to sell, lease, grant easements, rights-of-way, licenses, leases or concessions in or to, transfer, encumber, abandon or dispose of any Common Area. The Association shall be entitled to contract with third parties, including without limitation, other residential or recreational associations or individuals, allowing such persons the use and enjoyment of all or a portion of the Common Area under such terms and for charges as may be acceptable to the Executive Board.

Section 4.13 Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with Section 38-33.3-316(8) of the Act concerning statements of unpaid assessments. All financial and other records shall be made available for examination by any Owner or such Owner's authorized agents during normal business hours and under other reasonable circumstances. The Association shall make available for inspection by Owners, upon request, during normal business hours and under other normal circumstances current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

Section 4.14 Implied Rights of the Association. The Association shall give and may exercise any right or privilege given to it expressly in this Declaration or, except to the extent limited by the terms and provisions of this Declaration, given to it by law and shall have and may exercise every other right, privilege, power and/or authority necessary or desirable to fulfill its obligations under this Declaration, including without limitation the rights to:

4.14.1 adopt and amend the bylaws and rules and regulations of the Association;

4.14.2 adopt and amend budgets for revenues, expenditures and reserves and collect assessments, including without limitation assessments for Common Expenses, from Owners;

4.14.3 hire and terminate Managing Agents and other employees, agents and other independent contractors. The Managing Agent shall not have the authority to make expenditures except upon prior approval and direction of the Executive Board. The Executive Board shall not be liable for any omission or improper exercise by a Managing



Agent of any duty, power or Function so delegated by written instrument executed by or on behalf of the Executive Board;

4.14.4 institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Agate Creek Preserve;

4.14.5 establish the ARC as provided in Article 18 and regulate the construction, reconstruction and alteration of any improvements located or to be located on the Subdivision;

4.14.6 make contracts and incur liabilities;

4.14.7 regulate the use, improvement, maintenance, repair, replacement and modification of the Common Area;

4.14.8 cause additional improvements to be made as part of the Common Area, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Lots, Owners, lessees, guests and members of the general public, including without limitation, streets, mountain access roads and other limited access roads, paths, walkways, snowmelt systems, sidewalks and trails; any facilities necessary or useful for transit purposes; bus stops and related structures and signage; mailbox structures; newspaper racks; gardens, sprinkler systems and other landscaping changes, improvements (including without limitation, removal of trees and other vegetation) and appurtenances; ponds and water tanks; drainage facilities; monuments; recreational areas and facilities; parking areas; ducts, shafts and flues; conduit installation areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road supports; lighting; signage; and the additional right to construct any and types of structures.

4.14.9 acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property; provided, however, that the fee interest of a Common Area may not be conveyed or subject to a security interest unless (a) such action receives approval of Owners holding a majority of the total voting interest in the Association or any greater level of approval if required by the Act; (b) such action is evidenced by a written agreement, or a written ratification of an agreement, executed in the same manner as a deed by the required number of Owners; and (c) such action does not deprive any Lots of its rights of ingress, egress and support;

4.14.10 impose and receive any payments, fees and charges for the use, rental or operation of Common Area;

4.14.11 impose and receive charges for late payments of Assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Association Documents;

4.14.12 impose and receive reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments;

4.14.13 provide for indemnification of the Association's Officers and Directors' and officers' liability insurance;

4.14.14 assign its rights to further income, including without limitation, its right to receive Assessments;

4.14.15 obtain and pay for legal, accounting and other professional services;

4.14.16 perform any Function by, through or under contractual arrangements, licenses, or other arrangements with any governmental, quasi-governmental or private entity as may be necessary or desirable;

4.14.17 and exercise any other power or authority which similar associations may now or hereafter enjoy or exercise in the State of Colorado.

4.14.18 Change the location of the Private Trail from its current proposed location in case of topographic or vegetation obstacles as long as the Private Trail does not pass within 200' of an existing building envelope without the written consent from the Lot Owner.

Section 4.15 Association Documents. Each Owner shall comply with and may benefit from each term, provision, covenant, condition, restriction, reservation and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association touch and concern the Subdivision and are, and shall be, covenants running with each Lot for the benefit of all other Lots and the Common Area.

Section 4.16 Indemnification. The Association shall be obligated to and shall indemnify and defend and hold him harmless from all liability, loss, cost, damage and expense, including without limitation, attorneys' fees and disbursements, arising with respect to any operations of the Association or any Common Area or any Functions undertaken by the Association pursuant to this Declaration.

Section 4.17 Owner's Negligence. In the event that the need for maintenance, repair or replacement of all or any portion of the Common Area is caused through or by the negligent or willful act or omission of an Owner or an Owner's guest or lessee then the expenses incurred by the Association for such maintenance, repair or replacement shall be a personal obligation of such Owner and, if an Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default Assessment determined and levied against such Lot, enforceable by the Association in accordance with Section 11.7, Section 11.8 and Section 11.9 below.

Section 4.18 Enforcement of Association Documents. The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with the Association Rules and with other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by the law.

Section 4.19 Cooperation with Other Associations. The Association may contract or cooperate with other homeowners' associations or entities as convenient or necessary to provide repair, maintenance and reconstruction of Elk Lane as well as other services and privileges and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their lessees and guests. The costs associated with such efforts

by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

Section 4.20 Agricultural Land. Without limiting the generality of any other Function enumerated in this Declaration, the Association may hold Common Area which may be used for agricultural purposes pursuant to easements or leases to parties who may conduct farming and/or ranching operations thereon. In addition, the Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by, or under common control with Declarant) and Declarant's successors and specific assigns, the Association and its successors and assigns, and their respective officers, agents, employees, and assigns may own property which may be used for agricultural purposes pursuant to easements or leases to parties who may conduct farming and/or ranching operations thereon. Each Owner, by taking title to his Lot, hereby acknowledges and understands that certain farming, ranching and other agricultural activities will be conducted on property near or adjacent to his Lot and that such activities represent a unique and desirable amenity to the Subdivision. The farming, ranching and other agricultural operations may include many rear-round activities; as such, the farming, ranching and other agricultural activities may generate, pursuant to their legal and authorized operation, an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating thereto. The activities associated with the farming, ranching and other agricultural operations include, without limitation: (i) traffic congestion and/or delays on the Roads on or within Agate Creek Preserve which may arise from the movement of livestock and/or the transportation of slow-moving agricultural vehicles and equipment; (ii) activities relating to the construction, operation, improvement and maintenance of facilities necessary or useful in farming, ranching or other agricultural operations, including without limitation, barns, houses, fences and the like; and (iii) the straying of livestock into the Lots and/or Common Area and the retrieval of such strayed livestock from such Lots and/or Common Area pursuant to the easements therefor granted pursuant to Article 9 of this Declaration.

Section 4.21 LIMITATION OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR THE COMMON AREA, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 10, THE ASSOCIATION AND DECLARANT SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR OF THE COMMON AREA, CAUSED BY ANY LATENT CONDITION OF THE COMMON AREA TO BE MAINTAINED OR REPAIRED BY THE ASSOCIATION OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

Section 4.22 Association Standard of Care. The duty of care which the Association owes to the Owners is that of a landowner to a licensee, notwithstanding the interest which the Owners hold in the Common Area through their membership in the Association.

Section 4.23 Fiscal Year. The Fiscal Year shall be September 01 through August 31. The Executive Board shall have the right to change the Fiscal Year should the Association practice subsequently necessitate such change.

Section 4.24 Annual Meeting. The Association shall hold an annual meeting at such place, date and time that the Executive Board may determine appropriate.

## **ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS**

Section 5.1 The Association. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The vote for such Lot shall be exercised by one person or alternate persons (who may be tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote on any one matter. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

Section 5.2 Transfer of Membership. An Owner shall not transfer, pledge, encumber or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to purchaser or mortgagee of his Lot.

Section 5.3 Membership and Voting. When more than one person holds an interest in any one Lot, all such persons shall be Members. Each Lot shall be allocated one (1) vote on Association matters.

Section 5.4 Compliance with Association Documents. Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots and for the benefit of Declarants adjacent properties.

## **ARTICLE 6 OWNER RIGHTS**

Section 6.1 Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

6.1.1 This Declaration and any other applicable covenants;

6.1.2 Any restrictions, limitations or easements contained in any deed conveying such property to the Association;

6.1.3 The right of the Executive Board to adopt rules regulating the use and enjoyment of the Common Areas, including rules limiting the number of guests who may use the Common Area;

6.1.4 The right of the Executive Board to suspend the right of an Owner to use facilities within the Common Areas (i) for any period during which any charge or Assessment against such Owner's Lot remains delinquent, and (ii) for a period not to exceed ninety (90) days for a single violation or for a longer period in the case of any continuing violation of the Declaration, any applicable Supplemental Declaration, the Bylaws or the Association Rules;

6.1.5 The perpetual non-exclusive easement by the Owners of Remainder Parcel A and Remainder Parcel B to access Remainder Parcel C, for the purposes set forth in Section 9.3 herein.

6.1.6 Any governmental or quasi-governmental rules, regulations or statutes;

6.1.7 The perpetual non-exclusive easement by the Owners of Remainder Parcel A and Remainder Parcel B to access the Private Trail.

6.1.8 ALL PERSONS INCLUDING ALL OWNERS, ARE HEREBY ADVISED THAT NO REPRESENTATIONS OR WARRANTIES, EITHER WRITTEN OR ORAL, HAVE BEEN MADE OR ARE MADE BY DECLARANT OR ANY OTHER PERSON WITH REGARD TO THE NATURE OR SIZE OF IMPROVEMENTS TO, OR THE CONTINUING OWNERSHIP OR OPERATION OR CONSTRUCTION OF, THE PRIVATE TRAILS, NO PURPORTED REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, IN REGARD TO THE PRIVATE TRAILS SHALL EVER BE EFFECTIVE WITHOUT AN AMENDMENT HERETO EXECUTED OR JOINED INTO BY DECLARANT.

6.1.9 Any Owner may extend his or her right to use and enjoyment to the members of his or her immediate family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Executive Board. An Owner who leases his or her Lot shall be deemed to assign all such rights to the lessee of such Lot.

Section 6.2 Secondary Units. All Owners within Agate Creek Preserve are entitled to a Secondary Unit incorporated within the main residence pursuant to Routt County requirements.

Section 6.3 No Dedication to the Public. Nothing in this Declaration or the other Association Documents will be considered as a dedication to public use, or grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.

## **ARTICLE 7 THE EXECUTIVE BOARD**

The Association shall be governed by the Executive Board as provided in the Articles of Incorporation and Bylaws of the Association.

## **ARTICLE 8 MECHANIC'S LIENS**

Section 8.1 No Liability. If any Owner shall cause any material to be furnished to his Lot or any labor to be performed therein or thereon, no Owner of any other Lot shall under any circumstances be liable for the payment of any such expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his or her Lot. Nothing herein contained shall authorize any Owner or any person dealing

through, with or under any Owner to charge the Common Area or any Lot other than the Lot of such Owner with any mechanic's lien or other lien or encumbrance whatsoever. On the contrary (and notice is hereby given) the right and power to charge any lien or encumbrance of any kind against the Common Area or against any Owner or any Owner's Lot for work done or materials furnished to any other Owner's Lot is hereby expressly denied.

Section 8.2 Indemnification. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Area or against any other Owner's Lot or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and save all other Owners and the Association harmless from and against any and all costs, expenses, claims losses or damages including without limitation, reasonable attorneys' fees resulting therefrom.

Section 8.3 Association Action. Labor performed or materials furnished for the Common Area, if duly authorized by the Association in accordance with this Declaration or the Bylaws, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to law against the Common Area. Any such lien shall be limited to the Common Area and no lien may be effected against an individual Lot or Lots.

## **ARTICLE 9 EASEMENTS AND RESERVATIONS BY DECLARANT**

Section 9.1 Owner's Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot. Every Owner shall have a right of access to and from his Lot which shall be appurtenant to and shall pass with the title to every Lot. No owner shall hinder or permit his guest to hinder reasonable access by any other Owner and his guest or other permittees to the Lots.

Section 9.2 Recorded Easements. The Subdivision shall be subject to all easements, licenses, covenants and restrictions as shown on any recorded plat affecting the Subdivision including any other easements of record or of use as of the date of recordation of this Declaration and any easements mentioned herein. All easements and licenses to which the Subdivision is presently subject are set forth on Exhibit B. In addition, the Subdivision is subject to those easements set forth in this Article.

Section 9.3 Elk Lane, Elk Lane Trail and Primitive Mountain Trail Easements. Declarant hereby grants, sells, conveys, reserves and declares a perpetual non-exclusive easement and perpetual right of ingress and egress over, under, upon, above, across and through the area shown on the Plat as Elk Lane, Elk Lane Trail and Primitive Mountain Trail as the same may be relocated from time to time for the benefit of Declarant and Declarant's successors and assigns the Association and the Association's successors and

assigns, and any Public or utility companies for the purpose of (i) providing Declarant and Declarant's successors and assigns with pedestrian, equestrian and vehicular access to the real property west of the Subdivision for any and all ranching and agricultural activities, including, but not limited to, the transfer of livestock and providing pedestrian, equestrian and vehicular activities for any and all recreational activities, including, but not limited to, access to the cabins to be located on the real property west of the Subdivision, sleigh rides and hay rides and for ingress and egress of construction and maintenance vehicles for construction, operation, maintenance, repair and/or replacement of the cabins and other improvements to be located on the real property west of the Subdivision, and of the roadway located on said easement.; and(ii) providing Declarant and Declarants successors and assigns, the Association and the Association's successors and assigns, and Public Utility Companies access for the construction, operation, maintenance, repair and/or replacement of water, sewer, gas, electric, irrigation, telephone, cable television and/or other utility systems and drainage systems and other facilities related to any of such systems. Section 9.3.1 Easement to Yampa Valley Electric Association. Declarant hereby grants, sells, conveys and declares a perpetual non-exclusive easement to Yampa Valley Electric Association as shown on the Plat and labeled "15' wide overhead utility easement" and "15' wide underground utility easement" for the purpose of installation, operation, maintenance, repair and replacement of electrical lines and appurtenances to service the Subdivision.

Section 9.4 Easement Across Remainder Parcel C. Declarant hereby, reserves and declares a perpetual non-exclusive easement and perpetual right of ingress and egress over, under, upon, above, across and through Remainder Parcel C for the Benefit of Declarant and Declarant's successors and assigns for the purpose of (i) providing pedestrian, equestrian and vehicular access to the real property west of the Subdivision for any and all ranching and agricultural activities, including but not limited to, the transfer of livestock; and (ii) providing pedestrian, equestrian and vehicular activities for any and all recreational activities, including, but not limited to, sleigh rides and hay rides.

Section 9.5 Declarant's Rights Incident to Construction. Declarant, for itself and its successors and specific assigns, and their respective officers, agents, employees, and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Area, together with the right to store materials on the Common Area, to build and maintain temporary walls, and to make such other use of the Common Area as may be reasonably necessary or incident to any construction of improvements on the Subdivision or other real property owned by the Declarant, or other properties abutting and contiguous to the Subdivision; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Lots in Agate Creek Preserve by the Owners.

Section 9.6 Utility Easements.

9.6.1 Blanket Utility Easement Area. Declarant hereby grants, reserves and declares a perpetual non-exclusive easement twenty feet (20') in width along all boundaries of each lot and forty feet (40') on each side of the centerline of Humble and

Sweetwater Road, and the Water Site Tank Easement as shown on the Plat, for the benefit of Declarant, Declarant's successors and specific assigns, the Association and its successors and assigns, and any public or quasi-public utility or entity to which Declarant may grant, delegate or dedicate all or any portion of its rights hereunder and their respective officers, agents, employees, and assigns, for the purpose of (i) construction, operation, maintenance, repair and/or replacement (and access to said facilities for such purposes) of water, sewer, gas, electric, irrigation, telephone, cable television and/or other utility systems and drainage systems, including, without limitation, underground utility lines, meter boxes, vaults, transformers, pump stations, and other facilities related to the provision of any of such utility services, and storm drainage facilities and ditches (notwithstanding the rights reserved herein, each Owner acknowledges that natural gas and cable television service are not currently provided to the Lots and Declarant does not intend to provide them to the Lots), (ii) for the drainage of waters, and (iii) for the ingress and egress of construction and maintenance vehicles and equipment, whether or not related to the utilities and facilities described herein.

9.6.2 Water System Easements. Declarant hereby grants, sells, conveys, reserves and declares the following perpetual non-exclusive easements for the benefit of Declarant and Declarant's successors and assigns, and the Association and its successors and assigns: (i) the Water Tank Site Easement located in Lot 11 as shown and labeled on the Plat as "Water Tank Site Easement" for the purpose of drilling water wells, installation of well casing and surface pipe for wells, and for construction, installation, maintenance, repair and replacement of a Pumphouse, underground water storage tanks, underground utility lines and appurtenances; (ii) Parcel C Well Site Easement located on the Plat as "Remainder Parcel C" for the purpose of drilling water wells, installation of well casing and surface pipe for wells, and construction, installation, maintenance, repair and replacement of a Pumphouse, underground utility lines and appurtenances; (iii) Water System Utility Easements located in the easement areas as shown and labeled on the Plat as "Humble Road," "Sweetwater Road," "Water Tank Easement," and "Elk Lane and Elk Lane Trail" for the purpose of construction, installation, maintenance, repair and replacement of underground utility lines and appurtenances; and (iv) the Easement for Ground Water Wells recorded in Book \_\_\_\_ at page \_\_\_\_ in the office of the Routt County Clerk and Recorder, Routt County, Colorado for the purposes stated therein.

Section 9.7 Support Easements. Each Lot is subject to a blanket easement for support and a blanket easement for the maintenance of the structures and improvements presently situated, or to be built in the future, on each such Lot and all other Lots.

Section 9.8 Access Easement.

9.8.1 Declaration of Access Easements. Declarant hereby grants, reserves and declares a perpetual non-exclusive easement and right-of-way over, under, upon, above, across and through that portion of the Subdivision defined as the Roads as shown on the Plat (the "Access Easement Area") for the benefit of Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant), Declarant's successors and specific assigns, the Owners from time to time of the Lots, the Association and its successors and specific assigns, and their respective officers, agents, employees, and assigns, for the purposes of construction,



operation, maintenance, repair and/or replacement of said Roads within the Access Easement Area.

9.8.2 Construction of Roads. Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant), Declarant's successors, and specific assigns, for the purposes of construction, operation, maintenance, repair and/or replacement of a Road (collectively, the "Constructing Parties") and their respective officers, agents, employees, and assigns, may at any time hereafter and from time to time construct, maintain, operate, repair and/or replace a Road or Roads within the Access Easement Area and all improvements related to the Road(s) must be fully located within the Access Easement Area.

Section 9.9 Trail Easement. Declarant hereby grants, reserves and declares a non-exclusive twenty foot (20') easement and right-of-way over, under, upon, above, across and through the Property as shown on the Plat, for the benefit of Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant), Declarant's successors and specific assigns, the Association and its successors and assigns, and their respective guests, officers, agents, employees and assigns, for the purposes of use, construction, operation, maintenance, repair and/or replacement of a trail. Trail use shall be limited to pedestrian, equestrian, nordic skiing, walkways and pathways. No motorized vehicles will be allowed except for construction purposes. The grant, reservation and declaration of this Trail Easement shall not obligate Declarant to construct the aforementioned trail.

Section 9.10 General Maintenance Easement. An easement is hereby reserved to Declarant for the benefit of the Declarant, Declarant's affiliates (defined as persons or entities controlling, controlled by or under common control with Declarant), Declarant's successors and specific assigns, the Association, and any member of the Executive Board or the Managing Agent, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Subdivision and a right to make such use of the Subdivision as may be necessary or appropriate to make emergency repairs or to perform the duties and Functions which the Association is obligated or permitted to perform pursuant to the Association Documents.

Section 9.11 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Lot, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution in the Owner's name, place and stead to deal with the Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provisions of this Article and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment. No Owner shall have any rights against the Association or Declarant or any of their officers or Directors with respect thereto except in the case of fraud or gross negligence.

Section 9.12 Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area to the members of his immediate family, his tenants, guests, licensees, and

invitees, but only in accordance with and subject to the limitations of the Association Documents.

Section 9.13 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Subdivision in the proper performance of their duties.

Section 9.14 Easements for Encroachments. To the extent that any improvement or utilities whether presently existing or hereafter constructed within the Common Area (including, without limitation, any portion of the Roads) encroaches on any Lot, either currently existing or as result of any addition or improvement pursuant to this Declaration, a valid easement for such encroachments and for maintenance of same, so long as they exist, shall and does exist. In the event any such improvement is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of such rebuilt improvements shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist so long as the improvements shall stand.

Section 9.15 Easement for Agricultural Activities.

9.15.1 Every Lot and the Common Area are burdened with an easement permitting strayed livestock to come upon the Lots or Common Area in the vicinity of any property used for agricultural purposes pursuant to Section 4.20 of this Declaration and for any person who has the right to use and occupancy of such agricultural land by lease or otherwise at reasonable times and in reasonable manner to come upon the exterior portions of a Lot or Common Area, to retrieve or recover stray livestock. Under no circumstances shall any of the following persons be liable for any damage or injury resulting from strayed livestock or the exercise of this easement: the Association and Declarant and their respective successors, successors-in-title to the agricultural land described in Section 4.20, or assigns; any Successor Declarant, or any other Person or entity submitting property to this Declaration; any builder or contractor (in their capacities as such); any officer, director, partner, shareholder, member or employee of any of the foregoing, or any officer, director, shareholder, member or employee of any partner.

9.15.2 The Owner of the agricultural land desired in Section 4.20 and any person entitled to the use and occupancy thereof by lease or otherwise, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary for the improvement, operation, maintenance, repair and replacement of such agricultural land. Each Owner hereby acknowledges that livestock may from time to time be moved upon the Roads within or near Agate Creek Preserve and that certain inconveniences may arise as a result of the use of the Roads for such purpose.

Section 9.16 Declarant's Rights of Assignment. Declarant reserves the right to assign any or all of its rights, obligations, or interest as Declarant by recording an assignment or deed of record executed by both Declarant and the transferee or assignee in the Office of the County Clerk and Recorder of Routt County, Colorado designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

## **ARTICLE 10**

### **INSURANCE AND FIDELITY BONDS**

Section 10.1 General Insurance Provisions. The Association shall maintain to the extent reasonably available:

10.1.1 Property insurance on the Common Area for broad form covered causes of loss; except that the total amount of insurance must not be less than the full insurable replacement costs of the insured property less reasonable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, foundations, paving areas, landscaping and other items normally excluded from property policies; and

10.1.2 Commercial general liability insurance, including, without limitation, medical payments insurance, insuring the Association, and its officers, members of the Executive Board, any Managing Agent, and the employees and agents of the Association and the Managing Agent against liability for death, bodily injury, slander, false arrest, invasion of privacy and property damage arising out of or in connection with the ownership, maintenance and use of the Common Area and other areas, if any, under the supervision of the Executive Board. Limits of liability will be determined by the Executive Board and will be at least \$5,000,000 for any injuries or death sustained by any person in any single occurrence, and at least \$1,000,000 for property damage resulting from each occurrence. Such policy will include coverage for contractual liability, liability for non-owned and hired automobiles, and such other risks as are customarily covered with respect to developments similar to Agate Creek Preserve in construction, location and use. The Owners will be included as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

10.1.3 The Association shall carry insurance covering the acts or omissions of officers, directors, employees or agents of the Association and such other and further insurance that the Executive Board considers appropriate.

Section 10.2 Cancellation. If the insurance described in Section 10.1 is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 10.3 Policy Provisions. Insurance policies carried pursuant to Section 10.1 must, to the extent available, provide that:

10.3.1 Each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association;

10.3.2 The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

10.3.3 No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

10.3.4 If, at any time of loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 10.4 Insurance Proceeds. Any loss covered by the property insurance policy described in Section 10.1 must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners as their interest may appear. Subject to the provisions of Section 10.7 below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association and Owners are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or the regime created by this Declaration is terminated.

Section 10.5 Association Policies. The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 10.6 Insurer Obligation. To the extent the following is available, an insurer that has issued an insurance policy for the insurance described in Section 10.1 shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner. To the extent reasonably available, unless otherwise provided by the statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association and to each Owner to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

Section 10.7 Repair and Replacement.

10.7.1 Any portion of the Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

10.7.1.1 The Common Interest Community created by this Declaration is terminated;

10.7.1.2 Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

10.7.1.3 More than fifty percent of the Owners vote not to rebuild;  
or

10.7.1.4 Prior to the conveyance of any Lot to a person other than Declarant, the party holding a deed of trust or mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

10.7.2 The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Area is not repaired or replaced,

the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of Agate Creek Preserve, and except to the extent that other persons will be distributees, the insurance proceeds must be distributed to all the Owners, as their interests may appear in proportion to the Common Expenses liabilities of all the Lots.

Section 10.8 Common Expenses. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 10.9 Fidelity Insurance. Fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its directors, officers, trustees, and employees and on the part of all others who handle or are responsible for handling the funds belonging to or administered by the Association in an amount not less than two months' current assessments plus reserves as calculated from the current budget of the Association. In addition, if responsibility for handling funds is delegated to a Managing Agent, such bond may be obtained for the Managing Agent and its officers, employees and agents, as applicable. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

Section 10.10 Worker's Compensation Insurance. The Executive Board shall obtain worker's compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

Section 10.11 Other Insurance. The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Executive Board may obtain insurance against such other risks of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties.

Section 10.12 Insurance Obtained by Owners. Each Owner shall obtain and at all times maintain physical damage and liability insurance for such Owner's benefit, at such Owner's expense, covering the full replacement value of the Owner's residence and personal property and personal liability insurance in a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury or death to any number of persons arising out of one accident or disaster, or for damage to property, and if higher limits shall at any time be customary to protect against tort liability such higher limits shall be carried. In addition, an Owner may obtain such other and additional insurance coverage on the Lot and residence and the Common Area or as such Owner in their sole discretion shall conclude to be desirable; provided, however, that none of such insurance coverage obtained by the Owner shall operate to decrease the amount which the Executive Board, on behalf of all Owners, may realize under any policy maintained by the Executive Board or otherwise affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners, including Declarant, should

Declarant be the Owner of any Lot. No Owner shall obtain separate insurance policies on the Common Area.

## **ARTICLE 11 ASSESSMENTS**

Section 11.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (i) the Annual Assessments imposed by the Executive Board as necessary to meet the Common Expenses of maintenance, operation, and management of the Common Area and to perform the Functions of the Association; (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration; and (iii) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents. No Owner may waive or otherwise escape personal liability for the payment of the assessments provided for in this Declaration by not using the Common Area or the facilities contained in the Common Area or abandoning or leasing his Lot.

Section 11.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of Lots 1 through 16, Agate Creek Preserve, for the improvement and maintenance of the Common Area and other areas of Association responsibility referred to herein, as more fully set forth in this Article below.

Section 11.3 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Executive 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 to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting Owners representing more than fifty percent (50%) of all votes entitled to be cast on Association matters reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified in accordance with this Section must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote as provided herein no less frequently than annually. the Executive Board shall levy and assess the Association's annual Assessments in accordance with the annual budget.

Section 11.4 Annual Assessments. Annual Assessments for Common Expenses made shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners, subject to Section 11.3 above. Estimated Common Expenses shall include, but not be limited to, the cost of repair, maintenance and operation of the Roads, the Water System and all other property that is part of the Common Area; expenses of management; and insurance premiums for insurance coverage as required herein or deemed desirable or necessary by the Association; landscaping and care of the grounds within the Common Area; routine repairs and renovations within the Common Area; wages; common water and utility

charges for the Common Area; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any default remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for maintenance, repairs, and replacement of improvements within the Common Area on a periodic basis, as needed.

Annual Assessments shall be payable on a prorated basis each year in advance and shall be due on the first day of September. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the Owners from their obligation to pay the same. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year. In the alternative, the Executive Board may elect to allocate any such excess of the actual Assessments to an Association working capital fund or to an Association reserve fund.

Section 11.5 Apportionment of Annual Assessments. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided equally among the sixteen Lots.

Section 11.6 Special Assessments. In addition to the Annual Assessments authorized above, the Executive Board may at any time from time to time determine, levy and assess in any fiscal year (without the vote of the members of the Association, except as provided in the Act and in this Section below) a Special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine). Any amounts determined, levied and assessed pursuant to this Section shall be assessed to the Lots in the same manner as described with respect to Annual Assessments in Section 11.5 above. Special Assessments shall be based on a budget adopted in accordance with Section 11.3 prior to levying a Special Assessment. Such Special Assessment(s) shall be due and payable as determined by the Executive Board.

Section 11.7 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

Section 11.8 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid within thirty (30) days after its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

11.8.1 Assess a late charge for each delinquency in such amount as the Association deems appropriate;

11.8.2 Assess an interest charge from the date of delinquency at the yearly rate of three points above the prime rate charged by the Association's bank, or such other

rate as the Executive Board may establish, not to exceed eighteen percent (18%) per annum;

11.8.3 Suspend the voting rights of the Owner during any period of delinquency;

11.8.4 Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and

11.8.5 Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot. The Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the costs and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien.

The Association shall have the power to bid on a Lot at a foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association.

The lien of the Assessments will be superior to and prior to any homestead exemption provided now or in the future by the law of the State of Colorado, and to all other liens and encumbrances except liens and encumbrances recorded before the date of the recording of this Declaration, and liens for real estate taxes or governmental assessments or charges imposed against a Lot by a Colorado governmental or political subdivision or special taxing district or any other liens made superior by statute.

Section 11.9 Personal Obligation. The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of the same. No owner may exempt himself from liability for the Assessment by abandonment of his Lot by waiver of the use or enjoyment of all or any part of the Common Area. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 11.10 Successor's Liability for Assessments. The provisions of the Act shall govern and control the obligations of successors to the fee simple title of a Lot on which Assessments are delinquent. Notwithstanding the foregoing or any contrary provision herein, the lien of the Assessments shall represent a prior and senior lien and shall enjoy priority over any mortgage, deed of trust or other security instrument recorded subsequent to the recording of this Declaration, except as provided in the Act.

Section 11.11 Statement of Status of Assessment Payment. Upon payment of a reasonable fee set from time to time by the Executive Board and written request to the Managing Agent or the Association's registered agent, any Owner or prospective



purchaser of an Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party (in which the event date of posting shall be deemed the date of delivery) within fourteen (14) calendar days, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

## **ARTICLE 12 ASSOCIATION AS ATTORNEY-IN-FACT**

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 10 upon their damage or destruction as provided in Article 13, or a complete or partial taking as provided in Article 14 below. Acceptance by a grantee of a deed or other instrument of conveyance from Declarant or any other Owner conveying any portion of the Subdivision shall constitute appointment of the Association as the grantees attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

## **ARTICLE 13 DAMAGE OR DESTRUCTION**

Section 13.1 The Role of the Executive Board. In the event of damage to or destruction of all or part of any Common Area improvement, or other property covered by insurance written in the name of the Association under Article 10, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 10 is sometimes referred to as the "Association-Insured Property").

Section 13.2 Estimate of Damage or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Association-Insured Property, the Executive Board shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and Reconstruction" as used in Article 13 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Executive Board or the Insurance Trustee, if any, determines to be necessary.

Section 13.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to

the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Any repair and reconstruction of damaged or destroyed Roads shall, at a minimum, meet all standards approved by Routt County for the Agate Creek Preserve project. Assessments of the Association shall not be abated during the period of insurance and repair and reconstruction.

Section 13.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Article 11, Section 11.6 but subject to applicable law, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

Section 13.5 Disbursement of funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment for the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs for repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot, if any, to the Owners thereof, as their interests appear or, in the reasonable discretion of the Executive Board, the balance may be paid to any maintenance or working capital reserve, maintained by the Executive Board.

## **ARTICLE 14 CONDEMNATION**

Section 14.1 Rights of Owners. Whenever all or any part of the Common Area shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Area is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying. The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 14.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for those Owners for whom use of the Common area was conveyed and, unless otherwise required under the Act, the Award shall be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty days after such taking Declarant and Owners who represent more than fifty percent (50%) of the votes of all the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board and the ARC. If such improvements are to be repaired or restored, the provisions in Article 13 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Lot among the Owners, as their interests appear.

Section 14.3 Complete Condemnation. If all of the Subdivision is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the common interest community created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Area shall be distributed as provided in Article 13, Section 13.5 above.

## **ARTICLE 15**

### **SUBDIVISION USE RESTRICTIONS**

Section 15.1 General Restriction. Subject to Declarant's rights under Section 15.3, the Subdivision will not be used for any purpose other than as set forth in these covenants, as permitted by any applicable ordinances of Routt County and the laws of the State of Colorado and the United States, and as set forth in the Association Documents or other specific recorded covenants affecting all or any part of the Subdivision.

15.1.1 Building Envelopes. No structures or other improvements of any kind shall be constructed or allowed to exist on any Lot except within the area described and shown on the Plats as "Building Envelope" ("Building Envelope"), except for (i) driveways, entrance monuments, leach fields, and trails, all as approved by the ARC, and (ii) roads, trails and utility improvements to be constructed hereunder by or at the instance of Declarant, unless a variance is obtained from the ARC. Declarant reserves the right, as to any Lot(s) of which it is the record Owner, to amend the Building Envelope of such Lot(s) by executing and filing for record an amendment to this Declaration, which amendment need be signed by Declarant only.

15.1.2 Use of Lots. Excepting the provisions of Section 15.7 which permits certain business use of a Lot, each Lot may be used only for residential purposes in accordance with the restrictions applicable to a particular Lot contained in the Plats and in the County Documents.

15.1.3 Excavation. No excavation will be made within the Subdivision except in connection with improvements approved as provided in these covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land which results in removal of earth, rock, trees or other substance, excluding a soils test.

15.1.4 Wells. No well from which water, oil or gas is produced will be dug, nor will storage tanks, reservoirs, or the installation of power, telephone or other utility lines (wire, pipe or conduit) be made or operated anywhere on the Lots or Common Area except in connection with water wells and works operated by the Association, provided, however, that the foregoing will not prevent the drilling of or installation of additional water wells by Declarant or its assigns.

15.1.5 Antennae. To the extent allowed under current Federal Communications Commission regulations and other applicable laws, no exterior radio, television, microwave or other antennae or signal capture and distribution device will be permitted without the prior written consent of the ARC and appropriate screening, and satellite dishes shall be appropriately regulated by the ARC.

15.1.6 Signs. No signs of any kind will be displayed to the public view on or from any portion of the Subdivision except signs of Declarant or its affiliates, assigns or designees established during the period of Declarant control of the Executive Board (including, without limitation, certain informational, directional and project signs) or signs required by law or signs approved by the ARC. No "For Sale" sign may be posted on any Lot or the Common Area, except as provided in the Design Guidelines.

15.1.7 Animals and Pets. No Owner shall keep, raise or breed any animals, livestock, or poultry of any kind on any portion of the Subdivision, except dogs, cats or other household pets (the kind and number of which may be regulated, permitted or prohibited from time to time by the Association Rules). Each Owner understands and acknowledges that certain farming, ranching and other agricultural activities are or may be conducted upon property described in Section 4.20 of this Declaration and that the Lots and the Common Area are burdened by easements in favor of such agricultural operations as described in Section 9.15 of this Declaration.

15.1.8 Containment. Household pets, such as dogs and cats, may not be permitted to run at large at any time. Those pets which, in the sole discretion of the Executive Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to, the occupants of other Lots or wildlife shall be removed upon request of the Executive Board as further set forth in the Association Rules. If the pet owner fails to honor such request, the Executive Board may remove the pet.

15.1.9 Drainage. No Owner will do or permit any work, place any landscaping or installment any other improvements or suffer the existence of any condition whatsoever which will alter or interfere with the drainage pattern for the Subdivision, except to the extent such alteration and drainage pattern is approved in writing by the ARC or the Executive Board, and except for rights reserved to Declarant to alter or change drainage patterns.

15.1.10 Construction Regulations of the Design Guidelines. All Owners and contractors will comply with the portions of the Design Guidelines regulating construction activities. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owner's representatives on the Subdivision at any time; the conservation of landscape materials; and fire protection.

15.1.11 Blasting. If any blasting is to occur, the ARC and Declarant will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. No blasting shall occur without the prior written approval of the ARC. Notwithstanding the foregoing, no approval of any blasting by Declarant or other ARC will in any way release the person conducting the blasting from all liability in connection with the blasting, nor will such approval in any way be deemed to make Declarant or the ARC liable for any damage which may occur from blasting, and the person doing the blasting will defend and hold harmless and hereby indemnifies Declarant and the ARC from any such expense or liability. Declarant or the ARC may impose any reasonable conditions and restrictions, including time and date restrictions, on all blasting.

15.1.12 Temporary Structures. No temporary structures will be permitted except as may be determined to be necessary during construction and as specifically authorized by the ARC.

15.1.13 No Conversion. No Owner shall construct or convert any carport, garage, attic or other unfinished space, other than a basement, to finished space for use as an apartment or other integral part of the living area on any residence without approval of the ARC, the Association and the Routt County Building Department.

15.1.14 Motorized Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailer, boats or boat trailers or similar vehicles other than passenger automobiles or pickup or utility trucks with a capacity of three-quarter ton or less or any other motorized vehicles will be parked, stored or in any manner kept or placed on any portion of the Subdivision except in an enclosed garage. This restriction, however, will not be deemed to prohibit commercial and construction vehicles and construction mobile offices, in the ordinary course of business, from making deliveries or otherwise providing services to the Subdivision or for Declarant or the other Owners. Guests will also be entitled to a two-week visitation right as it relates to motor home or motor coach parking.

15.1.15 Parking and Auto Repair. No automobiles or other vehicles will be parked in any street or upon any portion of the Subdivision except within garages, carports or designated parking areas except as provided herein. No work on automobiles or other vehicle repair will be performed in any visible or exposed portion of the Subdivision except in emergencies.

15.1.16 Abandoned Inoperable or Oversized Vehicles. No abandoned or inoperable vehicles of any kind will be stored or parked on any portion of the Subdivision, other than within enclosed garages, except as provided below. "Abandoned or inoperable Vehicle" is defined as any vehicle which has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this will not include vehicles parked by Owners while on vacation or residing away from Agate Creek Preserve. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within seventy-two (72) hours after notice has been given, the Association will have the right to remove the vehicle without liability, and the expense of removal will be a Default Assessment charged against the Owner as

provided in Section 11.7 All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Executive Board to be stored at a designated location or locations. "Oversized" vehicles, for purposes of this Section, will be vehicles which are too high to clear the entrance to a residential garage.

15.1.17 Outside Burning. There will be no exterior fires, except barbecues, fire pits, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the ARC. No Owner will permit any condition upon its portion of the Subdivision which creates a fire hazard or is in violation of fire prevention regulations. No Owner shall emit from his Lot any noxious or offensive smoke or fumes.

15.1.18 Noise. No exterior horns, whistles, bells or other sound devices except security devices used exclusively to protect the security of the Subdivision or improvements, will be placed or used on any portion of the Subdivision.

15.1.19 Lighting. All exterior lighting of the improvements and grounds on the Subdivision shall be shaded and will be subject to regulation by the ARC.

15.1.20 Obstructions. There will be no obstruction of any walkways or bike paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests, and invitees are granted non-exclusive easements to use the walkways and paths within the Subdivision. That use will be subject to the Association rules adopted by the Executive Board from time to time.

15.1.21 Camping and Picnicking. Camping will be allowed within each Owner's Lot for the enjoyment of his immediate family, his tenants and guests as long as no tent is permanent and shall be removed after each use. No camping will be allowed in the Common Area or Remainder Parcels A, B and C.

15.1.22 House Numbers. Each dwelling Lot will have a house number with a design and location established by the ARC.

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

15.1.24 Wildlife. Each Owner will abide by any wildlife regulations imposed by the Association rules or by any agency or authority having jurisdiction over the Subdivision.

15.1.25 Hazardous Materials. No Owner will dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Subdivision or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

Section 15.2 General Practices Prohibited. The following practices are prohibited at Agate Creek Preserve:

15.2.1 Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the ARC;

15.2.2 Removing any rock, plant material, topsoil or similar items from any property of others;

15.2.3 Use of surface water for construction;

15.2.4 Careless disposition of cigarettes and other flammable materials;

15.2.5 Capturing, trapping, harassing or killing of wildlife within the Subdivision, except in circumstances posing an imminent threat to the safety of persons using the Subdivision.

Section 15.3 Use of Subdivision During Construction. It will be expressly permissible and proper for any Owner acting with the prior written consent of the ARC and for Declarant, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Subdivision or other real property owned by Declarant, to perform such activities and to maintain upon portions of Agate Creek Preserve as they deem necessary such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Subdivision. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage area, construction yards, management offices and equipment and signs. However, no activity by any Owner will be performed and no facility will be maintained on any portion of the Subdivision in such a way as to unreasonably interfere with or disturb any Owner of an Lot, or to unreasonably interfere with the use, enjoyment or access of such Owner or his tenants or guests of and to his Lot. If any Owner's use under this provision is deemed objectionable by the ARC, then the ARC, in its sole discretion, may withdraw this permission.

Section 15.4 Partition or Combination of Lots. No part of a Lot may be partitioned or separated from any other part thereof. The Owner of two or more contiguous Lots may build one single family dwelling Lot on the contiguous Lots, upon complying with all applicable requirements of Routt County, and with all applicable Design Guidelines, including without limitation, procedures for adjusting building sites otherwise drawn for the Lots to accommodate a larger dwelling Lot, minimum and maximum limitations of living area that may be constructed on any given number of contiguous Lots, and measures necessary to preserve any easements reserved with respect to the contiguous Lots.

15.4.1 The fact that two or more contiguous Lots may be owned by one person and developed with one single family dwelling Lot will not affect the number of votes or the amount of Assessments allocated to the Lots. If the Owner is required by the Routt County or other governmental authority to replat the Lots in order to construct improvements thereon, the number of votes and the allocation of Assessments to the Lots after replatting will equal the sum of the votes and Assessments allocated to the Lots before replatting. Each Lot will be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Common Area, and with the appropriate allocation of

voting rights and liability for Assessments established for the Lot as provided in this Declaration.

Section 15.5 No Timeshare. No timesharing, fraction-sharing, or similar program whereby the right to exclusive use of a Lot rotates among participants in the program on a fixed or floating time schedule over a period of years shall be created with respect to any Lot.

Section 15.6 Leasing. The Owner of a Lot will have the right to lease his Lot, subject to the following conditions:

15.6.1 All leases will be in writing.

15.6.2 The lease shall be specifically subject to the Association Documents and any failure of a tenant to comply with the Association Documents will be a default under the lease, enforceable by the Association. The lease shall contain a provision which states that it shall be subject to the Association Documents and that breach of the same shall be an event of default under the lease enforceable by the Association.

15.6.3 Any default by the Owner's tenant under any provision of the Declaration, the bylaws or the Association Rules shall be deemed a default by the Owner thereunder and shall entitle the Association to all remedies for such default as provided for in this Declaration as against the Owner and the Owner's tenant. The Owner shall be liable for any violation of the Association Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect any sums paid by Owner on behalf of the tenant.

Section 15.7 Businesses. An Owner or occupant residing on a Lot may conduct typical "home-office" business activities within the residence so long as (a) the existence or operation of the business activity is undetectable to the senses of sight, sound or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the property; (c) the business activity may be carried out within the confines of the residence and is free from regular visitation of the residence by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Subdivision; and (d) the business activity is consistent with the residential character of the Subdivision. Without limiting the generality of the foregoing, in no event shall any Lot be used for any mechanical repair business, manufacturing business, or other similar industrial use.

Section 15.8 Compliance with Laws. Subject to the rights of reasonable contest, each Owner will promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Subdivision, including, without limitation, the County Documents.

Section 15.9 Enforcement. Notwithstanding anything in the foregoing to the contrary, the Executive Board may prohibit any activity, business or otherwise, which, in the sole discretion of the Executive Board, constitutes a nuisance, or a hazard or offensive use, or threatens the value of the Subdivision or any Lot or the security, safety, or quiet enjoyment of other residents of the Subdivision. The Association may take such action, as it deems advisable to enforce these covenants as provided in this Declaration. In addition, the Association will have a right of entry on any part of the Subdivision for the



purposes of enforcing these covenants, and any costs incurred by the Association in connection with such enforcement (including, without limitation, attorneys' and legal assistants fees and expenses and cost of suit) which remain unpaid thirty (30) days after the Association has given notice to the Owner and otherwise complied with the Act will be subject to interest at the default rate from the date of the advance by the Association through the date of payment in full by the Owner, and will be treated as a Default Assessment enforceable as provided in Article 11.

## **ARTICLE 16**

### **DURATION OF COVENANTS AND AMENDMENT**

Section 16.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

Section 16.2 Amendment. This Declaration, or any provision of it, may be amended at any time by the Owners holding more than fifty percent (50%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose, or by written consent, or by a mail-in election; provided, however, matters not requiring Owner approval as described in C.R.S. 38-33.3-217(1) may be handled by the Executive Board; and provided further, however, that any provision of this Declaration requiring a vote of more than 50% of the total voting interest in the Association to be effective may only be amended by the written consent, or by a vote of the applicable aggregate voting interest stated in such provision. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment. No amendment to the Declaration which affects the rights of Declarant reserved hereunder shall be valid without the written consent of Declarant. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and/or the Plats to the fullest extent permitted under the Act including, without limitation, to correct clerical, typographical or technical errors, or to comply with the requirements, standards, or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association.

Section 16.3 Revocation. This Declaration shall not be revoked or terminated, except as provided in Article 14 regarding total condemnation, without the consent of Owners holding more than sixty-seven percent (67%) of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose, evidenced by a written instrument duly recorded.

## **ARTICLE 17**

### **GENERAL PROVISIONS**

Section 17.1 Restriction on Declarant Powers. Notwithstanding anything to the contrary herein, no rights or powers reserved to the Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any

Provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 17.2 Enforcement. Except as otherwise provided in this Declaration, the Executive Board, Declarant, or any Owner (provided the Executive Board fails to take action after reasonable notice is given to the Executive Board by such Owner) shall have the right to enforce, by a 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 Executive Board of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any legal action arising under this Declaration shall be entitled to reimbursement of all costs of such action including, without limitation, reasonable attorneys' fees.

Section 17.3 Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any of the provisions which shall remain in full force and effect.

Section 17.4 Conflicts Between Documents. In case of conflict between this Declaration and the Articles and the Bylaws, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

## **ARTICLE 18 ARCHITECTURAL REVIEW COMMITTEE FUNCTIONS AND DUTIES**

Section 18.1 Architectural Review Committee. There is hereby established a Architectural Review Committee (the "ARC"), which will be responsible for the establishment and administration of Design Guidelines to facilitate the purpose and intent of this Declaration.

Section 18.2 Purpose and General Authority. The ARC will review, study and either approve or reject proposed improvements on the Subdivision, all in compliance with this Declaration and as further set forth in the Design Guidelines and such rules and regulations as the ARC may establish from time to time to govern its proceedings. No improvement will be erected, placed, improved reconstructed, replaced, or otherwise altered, nor will any construction be commenced until plans for the improvements shall have been approved by the ARC; provided, however, that improvements that are completely within a dwelling structure may be undertaken without such approval.

Section 18.3 Board Discretion. The ARC will exercise its best judgement to see that all improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the building site, height, grade and finished ground elevation, landscaping, and the schemes and aesthetic considerations set forth in the Design Guidelines and other Association Documents. The ARC, in its sole discretion but in compliance with County Documents and other restrictions and easements to which the Subdivision is subject, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and

permit compliance with different or alternative requirements. The approval by the ARC of improvements on the Subdivision shall carry no precedential weight when reviewing subsequent requests for approvals, and the ARC shall not be required to approve requests for the same or similar improvements.

Section 18.4 Design Guidelines. The Design Guidelines may include, among other things, at the sole discretion of the ARC, the restrictions and limitations set forth below:

18.4.1 Procedures and necessary fees for making application to the ARC for design review approval, including the documents to be submitted and the time limits in which the ARC must act to approve or disapprove any submission.

18.4.2 Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.

18.4.3 Landscaping regulations, with limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the type and use of plants, and other practices benefiting the protection of the environment, conservation of water, aesthetics and architectural harmony of Agate Creek Preserve.

18.4.4 General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation or utility lines or conduits on the Subdivision, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

The Design Guidelines will be binding on all Owners and other persons governed by this Declaration. Notwithstanding the foregoing, the ARC is empowered in its discretion to grant variances from the requirements of the Design Guidelines under unique and unusual circumstances.

Section 18.5 Architectural Review Committee Membership. The ARC will be represented by one member of the Executive Board or an Owner appointed by the Executive Board together with one independently hired consultant who will review the submitted materials.

Section 18.6 Term. Term of office of each member of the ARC will be one year, commencing September 1 of each year, and continuing until his successor shall have been appointed. Should an ARC member die, retire or become incapacitated, or in the event of temporary absence of a member, a successor may be appointed by the Executive Board.

Section 18.7 Expenses. The ARC will have the right to charge a Building Fee for each application submitted to it for review, in an amount which may be established by the ARC from time to time, and such fees will be collected by the ARC and remitted to the Association to help defray the expenses of road maintenance. The Building Fee shall be \$2,000 which will be refunded should the ARC fail to approve the plans or if construction does not occur.

Section 18.8 Other Requirements. Compliance with the Association's design review process is not a substitute for compliance with Routt County building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Further, the establishment of the ARC and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and improvements as otherwise required under the Association Documents.

Section 18.9 Limitation of Liability. The ARC will use reasonable judgement in accepting or disapproving all plans and specifications submitted to it. Neither the ARC nor any individual ARC member will be liable to any person for any official act of the ARC in connection with submitted plans and specifications, except to the extent the ARC or any individual ARC member acted with malice or wrongful intent. Approval by the ARC does not necessarily assure approval by the appropriate governmental body or commission for the Routt County. Notwithstanding that the ARC has approved plans and specifications, neither the ARC or any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Executive Board, the ARC, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions the Association Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the ARC will be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the ARC's decisions. The Association, however, will not be obligated to indemnify each member of the ARC to the extent that any such member of the ARC is adjudged to be liable for malice or wrongful intent in the performance of his duty as a member of the ARC, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

#### Section 18.10 Enforcement.

18.10.1 Any member or authorized consultant of the ARC, or any authorized officer, Director, employee, agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Lot to determine whether the improvements have been or are being built in compliance with the Association Documents and the plans and specifications approved by the ARC.

18.10.2 If the construction and landscaping is not completed as scheduled, the ARC may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Association for the failure of the Owner to comply with these covenants, including without limitation the remedies set forth in this Section.

18.10.3 Every violation of these covenants is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by

law or equity against a Member will be applicable. Without limiting the generality of the foregoing, these covenants may be enforced as provided below:

18.10.3.1 The ARC may adopt a schedule of fines for failure to abide by the ARC rules and the Design Guidelines, including fines for failure to obtain any required approval from the ARC.

18.10.3.2 The Association, upon request of the ARC and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of these covenants. The Owner of the improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within thirty (30) days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the default rate from the date of the advance by the Association through the date of reimbursement in full, and all such sums and interest will be a default Assessment enforceable as provided in Article 11.

18.10.3.3 All improvements commenced on the Subdivision will be prosecuted diligently to completion and will be complete within eighteen (18) months after commencement, unless an exception is granted in writing by the ARC. If construction is not completed within the required eighteen (18) month period, then after notice and opportunity for hearing, the Association may impose a fine of \$50.00 per day (or such other reasonable amount as the Association may set) to be charged against the Owner of the Lot until the improvement is completed, as applicable, unless Owner can prove to the satisfaction of the Executive Board that such noncompletion is due to circumstances beyond the Owner's control. Such charges will be a default Assessment and lien as provided in Article 11.

Section 18. 11 Binding Effect. The actions of the ARC in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it or with respect to any other matter before it, will be the conclusive and binding on all interested parties.

## **ARTICLE 19 DESIGN GUIDELINES**

*The architectural theme for Agate Creek Preserve is directed at establishing a compatibility between buildings and the natural environment, fulfilling the expectations of visitors as a retreat to the mountains, respecting the historic precedent of mountain buildings and resort communities in Colorado and encouraging energy and water conservation techniques.*

Section 19.1 Driveways. All driveways shall be completed using asphalt, unit pavers, or other hard surface material within one year of completion of construction. Homesites shall be limited to one access point off of the adjacent roadway. In order to ensure safe and convenient access, recommended driveway grades are 3-4% for the first twenty feet (20') of driveway and no more than ten percent (10%) grade on other portions of the

driveway. Driveways should be designed to align with roadways at no less than a ninety degree (90°) angle with a flared apron where it intersects the roadway pavement.

Section 19.2 Parking and Garages. Each homesite shall contain a minimum of two enclosed parking spaces, plus one enclosed space for a Secondary Unit (if applicable). Garages may be physically separated from the main residence, but in all cases shall be compatible with the architecture and materials of the main residence. Garages should be designed to accommodate all vehicles, recreational vehicles, secondary vehicles, and animal trailers.

Section 19.3 Exterior Equipment and Satellite Dishes. All outdoor mechanical and electrical equipment such as metering devices, transformers, and air conditioning units shall be concealed from view of adjacent homesites. Wall mounted utility meters and connections shall be enclosed, incorporated into the design of the home, or screened from view by walls or landscaping. All satellite dishes shall be located out of view from other homesites and from roadways.

Section 19.4 Easements and Utilities. Owners are responsible for providing utility service lines (including transformers) to their home. All utility lines that serve individual units shall be located underground.

Section 19.5 Signage. The following signs shall be permitted within any Lot:

1. Signs required by legal proceedings.
2. Signs required for building permits.
3. Signs of the type usually used by contractors, subcontractors and tradesmen may be erected during the authorized time of construction and must be removed by the respective individuals, general contractor or Owner once construction is complete.
4. The Association shall furnish Homesite identification numbered posts. Any other residential identification sign shall be constructed of materials which are compatible with the architecture of the area, and these shall be subject to the jurisdiction of the ARC. Such signs shall not exceed 18 inches by 32 inches and shall not exceed 6 feet from grade. This sign may be illuminated by a light which casts all light downward. No transparent or translucent fixtures are permitted.
5. "For Sale" signs shall be furnished by the Homeowner's Association, with a deposit, to any real estate broker or homeowner who wishes to sell their Lot or home.
6. All other real estate, vendor, financing, or other business signs are not permitted on the Lot.

Section 19.6 Home Size. The minimum floor area requirement for all single-family homes is 2,500 square feet and the maximum floor area is 12,000 square feet. Floor area is defined as:

19.6.1 The sum of all enclosed floor space of a building, exclusive of attic space, as measured from the interior face of exterior walls. Garage space necessary to provide for enclosed parking shall not be included as part of the calculation of floor area.

19.6.2 Any Secondary Unit must be attached to the main residence pursuant to Routt County requirements. In all cases the secondary unit shall not exceed 800 square feet.

Section 19.7 Building Height and Massing. Building massing should emphasize horizontal shape and form. Building scale should be reinforced by varied building heights, offsets in building elevations, decks and balconies, and architectural detailing. Offsets or indentations in wall planes create visual interest and depth via shadow lines. An offset should be more substantial than simply changing the texture of an exterior material, it should be structural.

19.7.1 Low level one to two story building mass is encouraged, balancing the desire to minimize building envelope disturbance.

19.7.2 Buildings should be designed as a composition of additive forms; large structures and continuous unbroken building forms should be avoided. The maximum height of any portion of a building shall not exceed two stories unless building forms are offset by at least 15'.

19.7.3 Consideration should be given to homesites designed as a composition of smaller building forms clustered around outdoor spaces such as courtyards, porches, or verandas.

19.7.4 Building forms should step with the existing natural contours of the site and be designed to nestle into the existing terrain.

Building height is calculated as follows:

Buildings will be limited in height to 35 feet above existing (original) grade. The building height shall be determined as the distance measured in a vertical plane between the highest ridge of the roof and the existing (original) grade. This vertical plane should be understood as a slice through the building that is parallel to the existing (original) contour lines of the given topography. The intended result will be a building profile that steps in conjunction with the natural land forms. In addition to the height limit established by the definition above, buildings must also comply with the building height limits as defined by Routt County. In most cases, buildings that comply with the height definition above will also comply with the Routt County height definition. Owners and their design team should consult Routt County Land Use Regulations for additional information on how Routt County calculates building height.

Section 19.8 Roofs. Roofs will be the most prominent visual element of homes in Agate Creek Preserve. In order to assure visual coherence throughout Agate Creek Preserve, all roofs should be comprised of relatively simple forms and should utilize similar materials and colors that integrate the building with the site and the surrounding area.

19.8.1 Large continuous roof planes should be avoided, smaller segmented roof forms consistent with the additive form of the home, or a composition of primary and secondary roof forms shall be used.

19.8.2 Primary roof forms shall be limited to low-pitched gable, shed, or double-pitch roofs in the range of 4:12 to 12:12. The minimum allowable pitch is 3:12 and the maximum allowable pitch for a primary roof plane is 12:12.

19.8.3 Appropriate materials for primary roof forms include composition shingles with a 40 year rating or any other material approved by the ARC.

19.8.4 Roof overhangs are encouraged in order to provide shade and add interest to building elevations.

**Section 19.9 Exterior Walls.** Exterior materials should generally be natural materials that blend and are compatible with the native landscape of the specific homesite. The predominant exterior materials shall consist of stone and wood. The allowable wood materials include shingles, beveled or tongue-in-groove board siding, logs, board-on – board or board and batten siding. Plywood siding is prohibited. Stone must be laid in random pattern. Unit masonry is not allowed.

As a major structural element of a building, the type and composition of exterior wall materials should convey an authentic expression of structural integrity. Stone should be applied to reflect the structural massing of the building and the natural forces of gravity should be considered in the placement and composition of all wall materials. The design, materials, and color of exterior walls should relate to the natural colors and textures of the site in order to reinforce the sense that the building is an outgrowth of its surroundings.

Walls should be comprised of no more than three materials consistent with the specific guidelines outlined below. Exposed concrete or unfinished foundation walls are prohibited.

19.9.1 **Stone.** All buildings shall include some stone. At a minimum, no less than 10% of exterior wall surfaces shall be stone. “Exterior Wall Surfaces” include all exterior walls of a building with the exception of chimneys. When stone is applied to chimneys, such stone shall count toward satisfying the minimum 10% requirement. In order to visually tie a building to its site, stone should be used around the base of all buildings. A minimum of 75% of all stone used on a building shall be comprised of a single primary stone material. Mortar joints shall be well fitted and raked deeply. The use of boulders and large rocks to visually “anchor” corners and ground levels of rock walls, fireplaces, and landscape improvements is encouraged. Stone should have the appearance of being self-supporting through the natural forces of mass and gravity. This can best be achieved by using larger stones or boulders at the bottom of walls, portraying a horizontal stacking and avoiding small “in-fill” rubble stones. It is suggested that all stone faces terminate, whenever possible, on the inside edge of a corner rather than an outside edge.

19.9.1.1 Stone should generally be laid in an informal horizontal coursing with deep rake mortar joints. Stone should have irregular rectangular shape and larger pieces should generally be laid below smaller pieces.

19.9.1.2 Other complimentary stone may be used in order to add accent and variety to a building. Complementary stone shall comprise no more than 25% of all stone used on a building. Applications of complimentary stone include lintels, band courses, wall caps or integrated with the primary stone material.



19.9.2 Siding. Western red cedar, redwood, pine, or spruce may be used as siding material. All siding shall be stained with transparent or semi-transparent stains in the amber, buff, putty and gray color ranges. Siding may be shiplap, tongue and groove, board and batt, hand-finished slabs or square timbers, and should be 6" to 12" inches in width. Cedar shingles may be used as an accent element on dormer or gable ends. Any home with exterior walls comprised exclusively of stone shall include exposed timbers or logs to express roof, porch or other ancillary framing.

19.9.3 Rough Hewn Timbers. All timbers and logs shall have a rough hand-hewn finish. Timbers and logs should convey an authentic expression of the building's structural form, the size of timbers and logs should accurately convey the structural load carried by the timber. The use of exposed timbers and logs for roof and porch framing, columns, lintels and sills is strongly encouraged.

19.9.4 Logs. Logs may be used as tacked load bearing walls, but when expressed on the building exterior, logs must be set on a stone base. Logs should express a massive, hand-hewn appearance. Typical minimum dimension of at least 14 inches in diameter is encouraged. Logs are to be hand-hewn to reflect the natural shape, grain and inconsistencies of timber. Logs may be hewn round or rectangular and joints may have chinking or may be fitted into an interlocking profile without chinking.

19.9.5 Prohibited Wall Materials. Use of the following exterior wall materials is prohibited:

- Imitation Stone
- Stucco
- Plastic and metal
- Exposed concrete or cinder block
- Plywood or composite siding including T-111 or other hardboard materials
- Asphalt shingle or shakes

Section 19.10 Windows and Doors. Openings should be located to optimize view opportunities and be designed in proportion to the overall structure and form of the residence. Windows and doors in mass walls shall be deeply recessed (six to eight inches) or be trimmed in profiled wood (minimum 2" X 6") in order to provide interest and relief to building elevations. The use of timber or stone for lintels and sills is encouraged. Window and door trim should be selected in concert with other building materials. Colors used on window casing, window trim, and door trim provides an opportunity to add interest and individual expression to a building. Trim colors should be selected to provide an accent element to a building.

Section 19.11 Lighting. The principal objective of these standards is to be certain that Agate Creek Preserve does not contribute to regional light pollution and furthermore, to be certain that light trespass is not allowed to originate from any homesite, as many as possible should be treated in a rural, unlit fashion. Where lighting is required for purposes of safety or other justified reasons, every effort must be made to mask and screen unwanted spill from impacting neighboring properties. One overly bright front porch light can change the feel of an entire neighborhood. Lighting the exterior of a building as an accent or for any other reason is prohibited. Consistent with considerations for safety

and security, the desire is to maintain a rural feeling by keeping the night landscape as dark as possible.

19.11.1 Security lighting and flood lighting is prohibited except for those activated by a motion detector for a limited time and only when specifically approved as to location, appearance and coverage. Exterior wall and building mounted light fixtures must be integrated into the architectural composition of the house. Light fixtures enclosures shall be constructed to conceal or substantially diffuse the light source.

19.11.2 Uplighting of any kind is prohibited. Vapor lights of any kind, including but not necessarily limited to sodium or mercury vapor, will not be allowed.

19.11.3 Landscape lighting is allowed only in small quantities, when limited in area and in intensity.

Section 19.12 Chimneys and Flues. Chimneys should be designed in proportion to the main residence and reflect a simple understated design. All chimneys shall be constructed of stone consistent with stone used on other portions of the building. Chimneys may not be encased in wood. On a log building the stone chimney shall count to satisfy the 10% minimum requirement for stone on every exterior elevation.

19.12.1 Routt County wood burning regulations limit the type and number of wood burning devices permitted in a residence. A copy of these regulations may be obtained from Routt County.

Section 19.13 Balconies and Decks. The introduction of porches, terraces, patios, courtyards and similar on-grade features as primary outdoor living spaces is encouraged.

19.13.1 Balconies and above grade decks should be understated in scale and designed as an integral element of the home.

19.13.2 Balconies and above grade decks should be designed within the mass of the building or as a cantilevered element of the building supported either by angled braces, by building mass below, or by substantial building elements such as stone columns or arches that visibly tie the deck to the ground. In no cases shall projecting decks or balconies be supported by narrow posts or columns.

19.13.3 The underside of balconies and above grade decks shall be treated to be compatible with the building.

19.13.4 Consideration should be given to protecting balconies and above grade decks from snow shedding from overhead roofs.

19.13.5 Balcony railings offer an opportunity to express individual character within the context of the design theme. Balcony railings would be light in appearance with a significant portion of the area left open by using narrow pickets or railing patterns. Wood or metal railings may be used.

Section 19.14 Accessory Buildings and Uses. In order to ensure cohesive unified development, all accessory structures such as gazebos, kennels, storage buildings and other similar features shall be physically and architecturally integrated with the main residence.

19.14.1 Accessory structures should be physically and visually connected with the main residence with the use of structural elements, site walls, covered walkways or landscaping.

19.14.2 All accessory structures shall use building materials, colors, architectural style and form consistent with the main residence.

19.14.3 Enclosed areas shall be provided for trash containers, maintenance and recreational equipment, and the storage of seasonal equipment such as patio furniture.

19.14.4 Dog runs up to 500 square feet in size are allowed, however, they must be located within the building envelope contiguous to the main residence and be out of site from the adjacent properties and roadways.

Section 19.15 Energy Conservation. Buildings within Agate Creek Preserve should be designed to conserve energy throughout the life of the structure based on a “life-cycle cost” approach. The following principles should be incorporated in the architectural design:

- Solar Heating – Passive design should consider window size, orientation and shading devices. Direct solar gain surfaces should be considered for south facing areas.

- Exterior walls should have at least R-19 insulation value.

- Roofs should have at least R-30 insulation value.

Section 19.16 Retaining Walls and Fences. An underlying goal for Agate Creek Preserve is to create a sense of openness throughout the community. For this reason, fences will not be permitted with the exception of the dog runs described in Section 19.14.4.

19.16.1 Fencing required for agrarian/ranching purposes shall be allowed on the perimeter of the community’s Subdivision lines and shall be constructed and maintained by the Association.

19.16.2 All retaining walls shall be constructed of stone or stone veneer consistent with stone used on the home or with stone used on retaining walls along roadways located adjacent to the site.

19.16.3 When feasible, retaining walls should be designed as an architectural extension of the residence in order to visually tie the building to the ground.

Section 19.17 Terraces, Porches, and Outdoor Living Spaces. Terraces, verandas, patios, porches, courtyards, and other similar outdoor spaces should be an integral element of the design of homes. Porches or other similar covered outdoor spaces are an important element of the design style and all homes in Agate Creek Preserve.

19.17.1 Porches and other covered outdoor spaces shall be confined to the building envelope. Materials used for patios, courtyards and on-grade decks shall be consistent with materials used on the main residence.

19.17.2 The most appropriate manner for creating porches and covered outdoor spaces is to extend the roof over the outdoor space. In such cases, the use of a double-pitched roof should be considered and in all cases the structure of the roof

extension shall be expresses with the exposed rafter tails. Porches and covered outdoor spaces may also be created by trellises and other similar roof features.

19.17.3 Outdoor spaces on sloping sites should be terraced in order to minimize the need for retaining walls or site grading. When retaining walls are required, they shall be constructed of the same stone used on the main residence.

Section 19.18 Septic System. A septic system or other approved waste disposal system must be provided for each residence. The system must be approved by Routt County.

Section 19.19 Trails. A trail may be developed throughout Agate Creek Preserve as shown on the final Plats. This trail will pass through the Lots, but will not be constructed within the building envelope. As part of the site planning for each Lot, connecting trails from the building envelope to the common trails may be developed by the Lot Owner.

Section 19.20 Propane Gas Storage Tanks. The homes and buildings of Agate Creek Preserve are not served by natural gas. Therefore, if gas heating is desired it will require the installation of propane gas storage tanks. All propane tank storage facilities must be installed underground and approved by the ARC. The installation must conform to Routt County Building Department regulations specific to underground storage tanks.

Section 19.21 Natural Gas. It is suggested that all homes provide the proper pipe sizing to facilitate the installation of natural gas in case the same should be introduced into the area at a later date.

Section 19.22 Water Meters All homes are required to install a remote water meter comparable to a Badger Readomatic Model 70 to measure all water consumption, including irrigation, on the Lot.

Section 19.23 Irrigation All landscaping requiring irrigation shall be required to install an underground irrigation system with an automatic timer.

Section 19.24 Backup Power It is suggested that Owners consider a power back-up generator, using propane as the fuel source, as a consideration for long-term power outages. Implementation of such a system is cost effective at the time of design and construction, rather than at a later date.

## **ARTICLE 20**

### **DESIGN REVIEW PROCESS**

Section 20.1 Submittal of Plans Before Construction. No dwelling or other improvements including road, retaining walls, foundation, path or fill dirt shall be constructed, erected, placed, altered, maintained or permitted on any Lot or on the Common Area, nor shall any construction or excavation whatsoever be commenced or materials, equipment or construction vehicles be placed on any Lot until plans and specifications with respect thereto (in manner and form satisfactory to the ARC showing

the proposed improvements, plot layout and all exterior elevations, materials and colors, landscaping, grading, easements and utilities, and such other information as may be requested by the ARC) have been submitted to and been approved in writing by the ARC.

## Section 20.2 Application Items.

20.2.1 Building Fee. Owner shall submit a \$2,000 Building Fee which shall be refunded should ARC not approve the plans or if construction does not occur.

20.2.2 Architectural Review Fee. Owner shall submit to the Association a \$300 Architectural Review Fee which is non-refundable regardless of ARC approval, denial or cancellation by Owner.

20.2.3 Site Plan. Indicating proposed building footprint, building envelope, site boundaries and easements, existing and proposed contours, utility locations, site drainage, retaining walls, proposed driveways and grades, parking areas, walkways, patios, terraces, utility lines and connections, and any other proposed improvements.

20.2.4 Floor Plans. Dimensioned plans room sizes and total square footage of the residence by floor level.

20.2.5 Exterior Elevations. Indicating exterior appearance of all elevations, roof plans and chimneys including roof pitch, overhangs, materials and colors, fenestration, textures and finishes, architectural details, shadow patterns and finished grade.

20.2.6 Exterior Finish. Samples indicating type, color and texture of all exterior materials.

20.2.7 Landscape Plan. Landscape plans defining the extent of the landscaped area, associated lighting fixture placement and wattage, satellite dish placement, type and general placement of grass, trees and other vegetation and designation of areas to be irrigated.

Section 20.3 Routt County Review and Approval. The Agate Creek Preserve design review and construction process is required of all development within Agate Creek Preserve. This process complements, rather than supplements, the plan review and approval process of Routt County, Colorado. Approval of project design and/or construction methods by the Agate Creek Preserve Architectural Review Committee shall not substitute for, or be misconstrued as, approval by Routt County. Accordingly, the Owner/architect/builder shall be responsible for meeting all requirements and regulations of Routt County related to project development. Specific requirements may be obtained from the Routt County Regional Building Department.

## **ARTICLE 21 CONSTRUCTION REGULATIONS**

Final Plan approval granted by the Architectural Review Committee is valid for one year. If construction does not commence within one year from the date of the final

approval by the ARC, said approval shall expire and the Building Fee (excluding the Architectural Review Fee) will be refunded.

**Section 21.1 Start and Completion of Construction.** NO ROADS, EXCAVATION, RETAINING WALLS, FOUNDATIONS, PATHS, FILL DIRT OR ANY OTHER CONSTRUCTION WHATSOEVER SHALL BE STARTED PRIOR TO THE WRITTEN APPROVAL OF THE ARC and having proper permits in place through Routt County. Construction shall be deemed to have begun on the first occurrence of road construction, fill dirt deposits or excavation of whatever kind, excluding any soils test required for the building site, (hereinafter called the Start Date). All construction shall be completed within eighteen (18) months of the Start Date. Completion shall be defined as the date the Certificate of Occupancy as issued by Routt County and the fulfillment of all aspects of the approved plans (except for landscaping which must be completed by the next growing season) as described and submitted pursuant to Article 20 and approved by the Association.

**Section 21.2 Protection of Natural Features and Vegetation.** A certain amount of site disruption is to be expected during the construction process. Nonetheless, every effort shall be made to protect and preserve the natural site features not directly impacted by the placement of buildings, driveways or structures on a Lot. No trees outside of the construction area and driveway shall be removed.

**Section 21.3 Erosion Control and Revegetation.** All land surface disturbed by construction or soil erosion must be satisfactorily revegetated with plant materials that establish immediate soil stabilization and blend with the adjacent landscape areas. Specific methods of erosion control should be determined based on the specific characteristics of the site, but in all cases shall include the following:

- Temporary measures to retain all eroded soil material on site during construction.
- Measures to permanently stabilize all disturbed slopes and drainage features upon completion of construction.

**Section 21.4 Vehicles and Parking Areas.** Construction vehicles, heavy equipment and construction worker's vehicles shall be parked only on one side of the road. The general contractor shall be responsible for maintaining a clean job site at all times. All construction material shall be stored in a designated materials storage area. At the end of each day of construction, all debris and related material shall be deposited in dumpsters or other suitable storage device. Said dumpsters shall be emptied on a weekly or as needed basis. The location of the materials storage area and dumpster shall be located to minimize the visual impact from adjacent properties and roadways. Contractors are subject to all dog regulations enforceable at the time of construction in Agate Creek Preserve.

**Section 21.5 Noise.** Although construction hours will not be controlled, loud noise such as heavy equipment operation is prohibited between 6:00 p.m. and 7:00 a.m. and at all times on weekends. The general contractor shall be responsible for controlling noise at all times from the construction site. Loud music shall not be permitted. Notification shall be provided to the ARC a minimum of 24 hours in advance of any blasting operations and in

all cases blasting shall occur between 9:00 a.m. and 6:00 p.m. Permission from the ARC shall be obtained prior to blasting.

Section 21.6 Temporary Structures. A small field office, or temporary construction trailer may be placed on the site during construction. In addition, a temporary storage shed or out-building may be used for storage of materials and supplies while the project is under construction. Contractors are responsible for delivery, unloading and storage of all construction materials. Temporary buildings shall be in good condition and may not be used at any time for a residence, either temporary or permanent.

21.6.1 Site Maintenance. The general contractor shall be responsible for providing temporary enclosed chemical toilets during the construction process. Portable toilets shall be located on the site and should be screened from view and located away from neighbors.

21.6.2 In order to minimize impacts on existing roadways, temporary driveway constructed of road base or gravel shall be installed at each construction site at the commencement of construction.

21.6.3 All temporary structures shall be removed from the site within 30 days after completion of the permanent building and prior to the issuance of a final Certificate of Occupancy.

Humble Ventures LLC  
a Colorado Limited Liability Company:

By: \_\_\_\_\_

Ed Trousil - Manager

STATE OF COLORADO        }  
  }ss.  
COUNTY OF ROUTT        }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
By Ed Trousil as Manager of Humble Ventures LLC, a Colorado Limited Liability Company.

WITNESS MY HAND AND OFFICIAL SEAL.  
MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public



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THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR AGATE CREEK PRESERVE, A LAND  
PRESERVATION SUBDIVISION EXEMPTION

THIS THIRD AMENDMENT ("Third Amendment") to the Declaration of Covenants, Conditions, Restrictions and Easements for Agate Creek Preserve, a Land Preservation Subdivision Exemption (the "Subdivision") is made this 3 day of OCTOBER, 2005.

RECITALS

WHEREAS, the Declaration of Covenants, Conditions, Restrictions and Easements for Agate Creek Preserve was originally recorded on June 25, 14999, in Book 759 at Page 840 and Reception No. 512333 of the Routt County records (the "Original Declaration") and has been previously amended by the First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Agate Creek Preserve, a Land Preservation Subdivision Exemption, recorded on February 25, 2000 at Reception No. 523841 of the Routt County records (the "First Amendment"), and amended by the Second Amendment to Declaration of Covenants, Conditions, Restrictions, and Easements for Agate Creek Preserve, recorded June 05, 2003 at Reception No. 584365 of the Routt County records (the "Second Amendment"). (The Original Declaration, the First Amendment and the Second Amendment are collectively referred to herein as the "Declaration").

WHEREAS, the Owners desire to amend the Declarations in accordance with the provisions of Section 16.2 of the Declaration.

NOW THEREFORE, it is hereby declared that all real property in the Subdivision, as shown on the Plat of Agate Creek Preserve at File No. 12760 and Reception No. 512332 of the Routt County records, shall be held, sold and conveyed subject to the Declaration as amended by this First Amendment which is for the purpose of protecting the value and desirability of, and shall run with all such real property and be binding on all parties having any right, title or interest in such property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner.

AMENDMENTS

The Declaration is hereby amended as follows:

1. Section 19.7 is hereby deleted in its entirety and the following is substituted therefor:

Section 19.7 Building Height and Massing. Building massing shall emphasize horizontal shape and form. Building scale shall be reinforced by varied building heights, offsets in building elevations, decks and balconies, and architectural detailing. Offsets or indentations in wall planes create visual interest and depth via shadow lines. An offset shall be more substantial than simply changing the texture of an exterior material, it shall be structural.





19.7.1 Low level one to two story building mass is encouraged, balancing the desire to minimize building envelope disturbance.

19.7.2 Buildings shall be designed as a composition of additive forms, large structures and continuous unbroken building form shall be avoided. The maximum height of any wall plane of a building shall not exceed two stories provided that this does not prohibit buildings with a height not to exceed 35 feet as provided in subsection 19.7.4 below.

19.7.3 Consideration should be given to homesites designed as a composition of small building forms clustered around outdoor spaces such as courtyards, porches, or verandas.

19.7.4 Building forms should step with the existing natural contours of the site and be designed to nestle into the existing terrain. Building height is calculated as follows:

Buildings will be limited in height to 35 feet above original or final grade (whichever is more restrictive). The building height shall be determined as the distance measured in a vertical plane between the highest ridge of the roof and the original or final grade (whichever is more restrictive). This vertical plane should be understood as a slice through the building that is perpendicular to the contour lines of the given topography. The intended result will be a building profile that steps in conjunction with the natural land forms. The maximum allowable building height is not intended to imply that all or a substantial portion of a building may be built to or close to the maximum building height limit, rather, buildings must be designed and constructed with a low profile understated appearance which should blend into the landscape and huge, massive, monolithic structures shall be avoided. In addition to the height limit established by the definition above, buildings must also comply with the building height limits as defined by Routt County. In most cases, buildings that comply with the height definition above will also comply with the Routt County height definition. Owners and their design team should consult Routt County Land Use Regulations for additional information on how Routt County calculates building height.

2. Section 19.8 is hereby deleted in its entirety and the following is substituted therefor:

Section 19.8 Roofs. Roofs will be the most prominent visual element of homes in Agate Creek Preserve. In order to assure visual coherence throughout Agate Creek Preserve, all roofs shall be comprised of relatively simple forms and shall utilize similar materials and colors that integrate the building with the site and the surrounding area.

19.8.1 Large continuous roof planes shall be avoided, smaller segmented roof forms consistent with the additive form of the home, or a composition of primary and secondary roof forms shall be used.

19.8.2 Primary roof forms shall be limited to low-pitched gable, shed, or double-pitch roofs in the range of 4:12 to 12:12. The minimum allowable pitch is 3:12 and the maximum allowable pitch for a primary roof plane is 12:12.



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19.8.3 The materials for roofs shall be composition shingles with a 40-year rating unless an alternative material is determined by the ARC to be equal to or better than such shingles, and approved in writing by the ARC.

19.8.4 Roof overhangs are encouraged in order to provide shade and add interest to building elevations.

In the event of any inconsistencies between this Third Amendment and the Declaration, this Third Amendment shall control.

IN WITNESS WHEREOF, the President of the Agate Creek Preserve Homeowners Association has executed this Third Amendment as of the date and year first above written.

Agate Creek Preserve Homeowners Association,  
a Colorado nonprofit corporation

By: Russell E. Atha

Title: President

Russell E. Atha, III

STATE OF COLORADO )  
 )  
COUNTY OF ROUTT )

The foregoing instrument was acknowledged before me this 28<sup>TH</sup> day of FEBRUARY, 2006, by Russell E. Atha, III as President of the Agate Creek Preserve Homeowners Association, a Colorado nonprofit corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

MY COMMISSION EXPIRES: 3-1-07



Christine A. Denney  
Notary Public PO Box 773027, ST. LOUIS, MO 63117



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## CERTIFICATE OF APPROVAL

The undersigned, as Secretary of the Agate Creek Preserve Homeowners Association, does hereby certify that, in accordance with Section 16.2 of the Declaration of Covenants For Agate Creek Preserve, the foregoing Third Amendment To Declaration of Covenants, Conditions, Restrictions and Easements For Agate Creek Preserve was approved by the vote of more than fifty percent (50%) of the votes possible to be cast under said Declaration of Covenants.

Secretary of the Agate Creek Preserve  
Homeowners Association, a Colorado  
nonprofit corporation

ALBERT R. DOWDEN

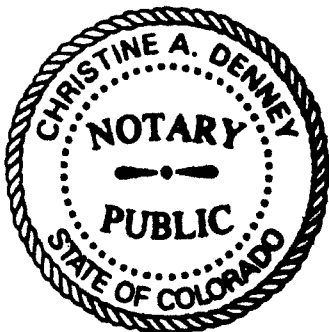
STATE OF COLORADO )

) ss

COUNTY OF ROUTT )

The foregoing instrument was acknowledged before me this 28<sup>TH</sup> day of FEBRUARY, 2006 by ALBERT R. DOWDEN, as Secretary of the Agate Creek Preserve Homeowners Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 3-1-07

Notary Public BY 723627, STATE OF CO  
80477

Routt County Combined Court  
E-Filing

Date 12-03-01 Time 4:37 PM

DISTRICT COURT, WATER DIVISION NO. 6,  
COLORADO  
522 Lincoln Ave, P.O. Box 773117  
Steamboat Springs, Colorado 80477  
(970) 879-5020

CONCERNING THE APPLICATION FOR WATER  
RIGHTS OF HUMBLE VENTURES, LLC, ACTING  
ON ITS OWN BEHALF AND ON BEHALF OF  
AGATE CREEK PRESERVE HOMEOWNERS  
ASSOCIATION

IN ROUTT COUNTY

▲ COURT USE ONLY ▲

Case Number: 00CW14

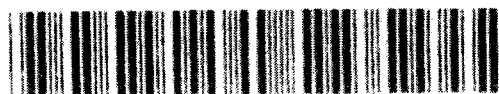
**FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE REFEREE AND  
AMENDED DECREE OF THE COURT**

This matter has come before the Court upon the application of Humble Ventures, LLC acting on its own behalf and of behalf of Agate Creek Preserve Homeowners Association ("applicant") for a ruling and decree confirming an underground water right and approving a plan for augmentation. Having made such investigations as are necessary to determine whether or not the statements in the application are true, and being fully advised with respect to the subject matter of the application, the Court enters the following Findings of Fact, Conclusions of Law, Ruling of the Referee and Amended Decree of the Court:

**FINDINGS OF FACT**

1. The application in this case was filed with the Water Clerk for Water Division No. 6 on March 31, 2000.
2. The name, address, and telephone number of the applicant is:

Humble Ventures, LLC  
c/o Ed Trousil, Manager  
31569 Willow Creek - Dakota Ridge  
P. O. Box 776290  
Steamboat Springs, CO 80477  
(970) 870-6494



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3. Timely and adequate notice of the application was given in the manner required by law. None of the land or water rights involved in this application is located in a designated groundwater basin. The Court has jurisdiction over the subject matter of this proceeding and over all persons who have standing to appear as parties, whether they have appeared or not.
4. No statements of opposition were filed, and no person or entity has sought to intervene. The time for filing statements of opposition has expired.
5. The Division Engineer filed a summary of consultation dated June 29, 2000. The Court has duly considered the summary of consultation pursuant to C.R.S. § 37-92-302(4).

**APPROVAL OF UNDERGROUND WATER RIGHT**

6. The Court finds that applicant has presented the following evidence in support of its claim for an underground water right and that the claim should be granted based on such evidence:
  - a. Name of well and permit, registration, or denial number: Agate Creek Preserve Well No. 1. The well is an infiltration gallery. The permit number is 053287-F, replacing the permit previously issued under Permit No. 52561-F, which previous permit has been cancelled.
  - b. Legal description of well: At or within 200 feet of a point in the SE1/4, SE1/4, Section 32, Township 6 North, Range 84 West, 6<sup>th</sup> P.M., Routt County, Colorado, 6 feet from the South section line and 1235 feet from the East section line.
  - c. Source: Groundwater, tributary to the Yampa River.
  - d. Depth: Approximately 17 feet.
  - e.
    - i. Date of appropriation: May 11, 1999.
    - ii. How appropriation was initiated: Field investigation of well site; granting of easement for well; planning and design of well facilities; engineering investigation of water uses to be served by well; filing application for, and receiving approval of, well permit.
    - iii. Date water applied to beneficial use: Not applicable.
  - f. Amount claimed: 100 gpm, conditional. The proposed annual pumping amount is approximately 19.5 acre-feet per year. However, applicant claims the right to pump more than that amount provided such pumping is within the terms of the above-



described permit and provided any required augmentation water is available hereunder.

- g. Proposed use: Domestic, irrigation, firefighting, and storage as necessary for water supply regulation and/or peaking, firefighting, and other emergency purposes. Approximately 2.75 acres of lawns and gardens are proposed to be irrigated. The acreage is located within Area Nos. 1 and 2 described below in paragraph 7.e.

#### **APPROVAL OF PLAN FOR AUGMENTATION**

7. The Court finds that applicant has presented the following evidence in support of its claim for approval of an augmentation plan and that the claim should be granted based on such evidence:

- a. Name of structure to be augmented: Agate Creek Preserve Well No. 1, described above in paragraph 6. There are no other water rights diverted from this structure.
- b. Water rights to be used for augmentation: Up to 20 acre-feet per year of water from Stagecoach Reservoir is available hereunder pursuant to a February 9, 2000 Agreement between Upper Yampa Water Conservancy District and Agate Creek Preserve Homeowners Association. The maximum amount of augmentation water estimated to be required hereunder is approximately 6.5 acre-feet per year, plus an additional amount to compensate for instream transit losses as determined by the Division Engineer.
- c. Previous decrees for water rights to be used for augmentation:
- i. Various decrees associated with the Stagecoach Reservoir water rights have been entered by the District Court, Water Division No. 6, and/or by the Routt County District Court. Such decrees and water rights include, without limitation, the water rights for the Four Counties Ditch No. 1 and No. 3, Priority Nos. 40 through 40-O granted by the decree in C.A. 3538 entered on March 30, 1964 and later amended; the water rights for the Four Counties Ditch No. 3 Enlargement and Extension, Priority Nos. 45 through 45M granted by the decree in C.A. 3926 entered on May 30, 1972 and later amended; the decree entered in Case No. W-1091-76 on May 19, 1978 authorizing diversion and storage of water in Stagecoach Reservoir under the above-described water rights for the Four Counties Ditch Nos. 1 and 3 and the Four Counties Ditch No. 3 Enlargement and Extension; the Bear Reservoir (renamed Stagecoach Reservoir) water right granted by the decree in C.A. 3538; the Bear Reservoir Enlargement water right granted by the

decree in Case No. W-414-72 entered on October 29, 1973; the Pleasant Valley Reservoir water right granted by the decree in C.A. 3926, as modified by the decree entered on September 28, 1979 in Case No. W-946-76 granting alternate places of storage including Bear Reservoir; the Pleasant Valley Feeder Canal water right granted by the decree in C.A. 3926, as modified by the decree entered in Case No. W-946-76 granting alternate places of storage including Bear Reservoir; the decree entered on March 18, 1998 in Case No. 94CW149 confirming the right to store water in Stagecoach Reservoir for, among other things, augmentation purposes pursuant to the water rights for the Little Morrison Diversion and Little Morrison Diversion Alternate Point; the decree entered on May 11, 1998 in Case No. 95CW78 confirming the right to store water in Stagecoach Reservoir for, among other things, augmentation purposes pursuant to the water rights for the Yellow Jacket Ditch, Union Ditch, and Little Chief Ditch; and the decree entered with an effective date of December 26, 2000 in Case No. 97CW84 confirming the right to store water in Stagecoach Reservoir for, among other things, augmentation purposes pursuant to the Stagecoach Reservoir Second Filling water rights.

- ii. Legal description of point(s) of diversion or place of storage: The point of diversion for Bear Reservoir (renamed Stagecoach Reservoir) is at a point on the right abutment of the dam for said reservoir, whence the West 1/4 Corner of Section 32, Township 4 North, Range 84 West, of the 6<sup>th</sup> P.M., bears South 47°35' West, a distance of 4633 feet. Bear Reservoir is located in the SE1/4, Section 29, Township 4 North, Range 84 West, 6<sup>th</sup> P.M. The dam for Bear Reservoir Enlargement is located in the SW1/4 SE1/4, Section 29, Township 4 North, Range 84 West, 6<sup>th</sup> P.M., Routt County, Colorado. The southern terminus of the dam embankment at the right abutment is located 269.15 feet North 77°57' East of the south quarter corner of Section 29. The centerline of the dam bears North 18°30' East from said southern terminus at the right abutment a distance of 800 feet. All bearings are referenced to the south line of Section 29 which bears North 87°14'59" West. The legal description of the points of diversion for the water rights for the Four Counties Ditch Nos. 1 and 3 and the Four Counties Ditch No. 3 Enlargement and Extension are stated in the decrees in C.A. 3538, C.A. 3926, and W-1091-76. The legal description of the points of diversion for the water rights for the Little Morrison Diversion and Little Morrison Diversion Alternate Point are described in the decree in Case No. 94CW149. The legal description of the points of diversion for the water rights for the Yellow Jacket Ditch, Union Ditch, and Little Chief Ditch are described in the decree in Case No. 95CW78.



- iii. Source: Yampa River and its tributaries.
- iv. Amount: The physical capacity of Stagecoach Reservoir is approximately 33,275 acre-feet. Pursuant to the above-referenced February 9, 2000 Agreement, 20 acre-feet per year of Stagecoach Reservoir water is the amount available for use in this augmentation plan. There are various decreed direct flow rates and storage volumes associated with the Stagecoach Reservoir water rights. See decrees in C.A. 3538, C.A. 3926, Case No. W-1091-76, Case No. W-414-72, Case No. W-946-76, Case No. 94CW149, Case No. 95CW78, and Case No. 97CW84.
- v. Appropriation dates: September 30, 1961 and October 21, 1971 are the appropriation dates associated with the Stagecoach Reservoir storage rights known as Bear Reservoir and Bear Reservoir Enlargement. June 2, 1958 is the appropriation date associated with the water rights for the Four Counties Ditch No. 1 and No. 3. May 20, 1963 is the appropriation date associated with the water rights for the Four Counties Ditch No. 3 Enlargement and Extension. June 29, 1959 is the appropriation date for the water rights for the Pleasant Valley Reservoir and Pleasant Valley Feeder Canal. See also the decrees in Case Nos. 94CW149, 95CW78, and 97CW84 concerning the appropriation dates for other water rights associated with Stagecoach Reservoir.
- vi. Decreed uses: Water stored in Stagecoach Reservoir under some or all of the decrees described above in paragraph 7.c.i. is decreed for domestic, municipal, irrigation, industrial, generation of electric power and energy, mining, recreation, stockwatering, piscatorial, and all other beneficial uses. Under the decree entered in Case No. W-1091-76, water diverted and stored in Stagecoach Reservoir pursuant to the water rights for the Four Counties Ditch Nos. 1 and 3 and the Four Counties Ditch No. 3 Enlargement and Extension is subject to reuse and successive uses until 100% of such water has been consumptively used. In Case Nos. 90CW165 (Dakota Ridge Homeowners Association) and 97CW78 (Priest Creek Ranch, LLC), the water rights for the Four Counties Ditch No. 1 and No. 3, the Four Counties Ditch No. 3 Enlargement and Extension, Bear Reservoir, Bear Reservoir Enlargement, Pleasant Valley Reservoir, and Pleasant Valley Feeder Canal were included as augmentation sources. Additionally, water stored in Stagecoach Reservoir pursuant to the decrees in Case Nos. 94CW149, 95CW78, and 97CW84 may be used for, among other things, augmentation purposes. An application was filed by Upper Yampa Water Conservancy





District and the City of Steamboat Springs on June 29, 2001 in Case No. 01CW41, District Court, Water Division No. 6, seeking confirmation of the right to include augmentation, among other things, as a use of water stored in Stagecoach Reservoir pursuant to the water rights for the Four Counties Ditch No. 1 and No. 3, the Four Counties Ditch No. 3 Enlargement and Extension, Bear Reservoir, Bear Reservoir Enlargement, Pleasant Valley Reservoir, Pleasant Valley Feeder Canal, Yellow Jacket Ditch, Union Ditch, Little Chief Ditch, Little Morrison Diversion, Little Morrison Diversion Alternate Point, and Stagecoach Reservoir Second Filling.

- vii. Water used for augmentation purposes hereunder may come from Stagecoach Reservoir storage under some or all of the decrees described above in paragraph 7.c.i. and/or from the decree, if any, entered in Case No. 01CW41 described above in paragraph 7.c.vi.
- d. Historic use: The water rights associated with Stagecoach Reservoir have been used for generation of electric power and for municipal, industrial, irrigation, and other uses within the boundaries of the Upper Yampa Water Conservancy District. *See, e.g.,* decrees in Case Nos. 92CW26 and 95CW116, District Court, Water Division No. 6 (in which some of the water rights associated with Stagecoach Reservoir were made absolute).
- e. Statement of plan for augmentation:

The Agate Creek Preserve Well No. 1 (sometimes referred to herein as "the well") will be used to supply in-house and outside water uses associated with development of a portion of lands known as the Agate Creek Preserve. Said lands consist of approximately 600 acres located in Section 5, Township 5 North, Range 84 West, and Sections 30, 31, and 32, Township 6 North, Range 84 West, 6<sup>th</sup> P.M., Routt County, Colorado. The water uses proposed to be served by the Agate Creek Preserve Well No. 1 are located within areas referred to herein as "Area No. 1" and "Area No. 2". ("Area No. 2" is also known as and referred to herein as the "Main Ranch site"). Area No. 1 is located predominantly within the E1/2, Section 31, and the NW1/4 SW1/4, Section 32, Township 6 North, Range 84 West, 6<sup>th</sup> P.M., Routt County, Colorado, and is depicted on Attachment 1 attached to the application. The Main Ranch site is located within the NE1/4 NW1/4, Section 5, Township 5 North, Range 84 West, and the SE1/4 SW1/4, Section 32, Township 6 North, Range 84 West, 6<sup>th</sup> P.M., Routt County, Colorado, and is depicted on Attachment 1 attached to the application.



Proposed water uses within Area No. 1 include the following: in-house and outside uses for up to 16 lots, with each lot containing a primary residence, a secondary residence, and up to 5000 square feet of irrigated lawns and gardens. The estimated water requirements for Area No. 1 are: 5,600 gallons per day for the primary residences, based on 3.5 people per residence and 100 gallons per capita per day; 1,920 gallons per day for the secondary residences, based on 1.5 people per residence and 80 gallons per capita per day; and 7,186 gallons per day for the outside uses, based on 449 gallons per day for 5,000 square feet of irrigated lawn times 16 lots (assuming an irrigation requirement of approximately 1.83 acre-feet per acre).

Proposed water uses within the Main Ranch site include the following: in-house and outside uses for a community center, 4 cabins, a main ranch house, a ranch manager house, and 40,000 square feet of irrigated lawns and gardens. The estimated water requirements for the Main Ranch site are: 750 gallons per day for the community center, based on 25 day users and 30 gallons per capita per day; 1,400 gallons per day for the 4 cabins, based on 3.5 people per cabin and 100 gallons per capita per day; 700 gallons per day for the main ranch house and the ranch manager house based on 3.5 people per house and 100 gallons per capita per day; and 3,593 gallons per day for the outside uses, based on 40,000 square feet of irrigated lawns and gardens.

Additional water requirements within Area No. 1 and the Main Ranch site include firefighting and other peak pumping needs and storage of water for water supply regulation, peaking, firefighting, emergency, and other purposes in 2 tanks with a combined volume of approximately 31,450 gallons.

Based on the foregoing, with an added safety factor of 1.25 for the in-house uses, the total estimated annual water requirements for combined uses associated with Area No. 1 and the Main Ranch site are approximately 19.5 acre-feet per year, assuming that the average water demand for five months of the year is 11.1 acre-feet based on combined in-house and outside uses and that the average water demand for seven months of the year is 8.5 acre-feet based on in-house uses only. An average flow rate of approximately 23,750 gallons per day (0.037 cfs) is estimated to be required during the five months of the year with combined in-house and outside uses, while an average flow rate of approximately 13,000 gallons per day (0.02 cfs) is estimated to be required during the seven months of the year with only in-house uses. In order to meet peak and/or emergency demands, and to provide operational flexibility, a maximum pumping rate of up to 100 gpm is proposed for the Agate Creek Preserve Well No. 1. In order to preserve flexibility with respect to land and water uses, the Agate Creek Preserve Well No. 1 and the augmentation plan herein are proposed to meet the total in-house and outside water demands associated with Area No. 1 and the Main Ranch site, no matter how the two areas are ultimately developed, provided

(1) that the total amount of irrigated acreage does not exceed 2.75 acres and the total amount of pumping for irrigation of such acreage does not exceed five acre-feet per year; (2) that the total amount of pumping for in-house uses does not exceed fourteen and a half acre-feet per year; (3) that the out-of-priority depletions from in-house uses are replaced in accordance with the augmentation plan approved herein; and (4) that either (a) out-of-priority diversions for outside uses are replaced hereunder or (b) out-of-priority depletions from outside uses are replaced hereunder based upon the Division Engineer's approval of evidence regarding the timing of return flows resulting from such outside use of water within Area No. 1 and the Main Ranch site.

Depletive effects from pumping the Agate Creek Preserve Well No. 1 are considered to be instantaneous for purposes of this augmentation plan. Return flows from in-house uses are estimated to be 90% of the amount pumped for such uses, based on use of non-evaporative septic systems for sewage treatment. Once full development has been achieved, such return flows are expected to reach the Yampa River stream system on a constant basis, and they are proposed to be accounted for as a simultaneous offset against out-of-priority pumping for purposes of determining replacement requirements under this plan for augmentation. Return flows from outside uses are estimated to be 10% of the amount pumped for such uses. Once full development has been achieved, return flows from outside use are also expected to reach the Yampa River stream system. However, the timing of such return flows is not known, and thus they are not proposed to be accounted for as an offset against out-of-priority pumping for purposes of determining replacement requirements under this plan for augmentation unless and until evidence of the timing of such return flows is submitted to and approved by the Division Engineer. Therefore, unless and until such evidence is submitted to and approved by the Division Engineer, the augmentation plan will include credit only for in-house use return flows. During this time, the augmentation plan will provide required replacement of (1) out-of-priority depletions resulting from in-house use of water and (2) out-of-priority diversions for outside use of water. However, at such time as evidence of the timing of return flows resulting from outside uses of water is submitted to and approved by the Division Engineer, the augmentation plan will include credit for return flows from both outside and in-house uses of water from the well. At such time, the augmentation plan will provide required replacement of out-of-priority depletions resulting from all use of water from the Agate Creek Preserve Well No. 1.

Prior to the Division Engineer's approval, if any, of the timing of return flows from outside use, the augmentation plan is proposed to operate as follows. Whenever there is a valid call for water being administered to satisfy a water right or water rights senior to the priority date decreed herein for the Agate Creek Preserve Well No. 1, water from Stagecoach Reservoir is proposed to be made available as necessary to



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replace either (1) the sum of (a) the out-of-priority depletions then occurring as a result of use of water from the well for in-house use and (b) the out-of-priority diversions for outside use then occurring or (2) the amount of water called for, whichever is less, plus an additional amount of water to compensate for instream transit losses as determined by the Division Engineer. The maximum amount of replacement water at full build-out under this plan of operation (*i.e.*, prior to the Division Engineer's approval, if any, of the timing of return flows from outside use) is set forth in attached Appendix B in Column 2 (on an instantaneous flow rate basis) and in Column 3 (on a monthly volumetric basis). At such time, if any, as the Division Engineer approves evidence submitted concerning the timing of return flows from outside use, the augmentation plan is proposed to operate as follows. Whenever there is a valid call for water being administered to satisfy a water right or water rights senior to the priority date decreed herein for the Agate Creek Preserve Well No. 1, water from Stagecoach Reservoir is proposed to be made available as necessary to replace either the out-of-priority depletions then occurring as a result of all use of water from the well, or the amount of water called for, whichever is less, plus an additional amount of water to compensate for instream transit losses as determined by the Division Engineer. The methodology for determining the maximum amount of replacement water at full build-out under this plan of operation (*i.e.*, after the Division Engineer's approval, if any, of the timing of return flows from outside use) is described in attached Appendix B in Column 4 (on an instantaneous flow rate basis) and Column 5 (on a monthly volumetric basis).

Attached hereto as Appendix A is a table showing the estimated average diversion (*i.e.*, pumping) rates for in-house, outside, and combined in-house/outside uses under full build-out conditions. Appendix A also shows the consumptive use and return flow rates and volumes associated with in-house uses under full build-out conditions. As noted in Appendix A, the consumptive use and return flow rates and volumes associated with outside uses and combined in-house/outside uses are to be determined at such time, if any, as evidence concerning the timing of outside use return flows is submitted to and approved by the Division Engineer.

As such time, if any, as evidence concerning the timing of outside use return flows is submitted to and approved by the Division Engineer, applicant shall submit revised Appendices A and B to the Division Engineer so that the plan of operation that takes credit for outside use return flows can be implemented. Based on the evidence approved by the Division Engineer concerning the timing of outside use return flows, revised Appendix A shall show, in addition to the values presently shown, the consumptive use and return flow rates and volumes associated with outside uses and combined in-house/outside uses. Using the values from revised Appendix A, revised



Appendix B shall show the maximum amount of replacement water at full build-out under the plan of operation that takes credit for outside use return flows.

Prior to full build-out, the diversion, consumptive use, and return flow rates and amounts will be less than the rates and amounts shown on Appendix A (or revised Appendix A). Similarly, prior to full build-out, the maximum augmentation requirements will be less than the rates and amounts shown on Appendix B (or revised Appendix B). Accordingly, in order to determine such lesser augmentation requirements, the schedule depicted on Appendix B (or revised Appendix B) may be adjusted based on the percentage of build-out that has been achieved through the end of October each year. In order to augment such lesser amounts, applicant, its successors, or assigns shall report such percentage build-out by November 15 of each year, or such other time as is acceptable to the Division Engineer. The percentage build-out must be approved by the Division Engineer and shall be determined based upon the extent to which the proposed water uses have been implemented within Area No. 1 and the Main Ranch site as described above in paragraph 7.e. If approved by the Division Engineer, the percentage build-out may then be used to adjust the rates and amounts of diversion, consumptive use, return flow, and augmentation depicted in Appendices A and B (or revised Appendices A and B). For example, when the build-out is 50% of full build-out, the rates and amounts of diversion, consumptive use and return flow will be assumed to be half of the rates and amounts depicted in Appendix A (or revised Appendix A). Similarly, under the same example, the rates and amounts of required augmentation will be assumed to be half of the rates and amounts depicted in Appendix B (or revised Appendix B).

To the extent all of the 20 acre-feet per year of Stagecoach Reservoir water described above is not required for the augmentation purposes described herein, applicant reserves the right to make other uses of such excess water, provided that any such uses of excess water are in accordance with law. This decree neither confirms nor bars the right to any specific use of such excess water.

- f. It is anticipated that applicant will construct the water system associated with the underground water right and augmentation plan decreed herein and that the costs of design, engineering, construction, repair, and reconstruction of said system will be born by applicant. It is further anticipated that the system to be constructed by applicant shall be owned and operated by the Agate Creek Preserve Homeowners Association ("Association").
8. The Referee finds that applicant has demonstrated a specific plan and intent to divert (and store for the emergency and other purposes described herein) and otherwise capture, possess, and control the rate and amount of water claimed in the application and confirmed herein and

that such water will be used for the purposes described in the application. The Referee finds further that water is available for appropriation under the water right claimed in the application and confirmed herein and that said water right can and will be completed with diligence and within a reasonable time.

### **CONCLUSIONS OF LAW**

9. The Court has exclusive jurisdiction over the subject matter of this proceeding pursuant to C.R.S. § 37-92-203, and over all persons or entities affected hereby, whether they have appeared or not.
10. Applicant has satisfied C.R.S. § 37-92-305(9)(b) and has demonstrated that the waters claimed in the application can be and will be diverted, stored or otherwise captured, possessed and controlled and will be beneficially used and that the project can and will be completed with diligence and within a reasonable time.
11. The application for an underground water right that is the subject of this proceeding is in accordance with law and should be granted subject to the terms and conditions of this ruling.
12. The application for approval of the plan for augmentation that is the subject of this proceeding is in accordance with law and should be granted subject to the terms and conditions of this ruling. No injury to other water rights will occur as a result of the exercise of the plan for augmentation granted herein in accordance with the terms and conditions of this ruling.

### **RULING OF THE REFEREE AND DECREE OF THE COURT**

13. The foregoing Findings of Fact and Conclusions of Law are incorporated by this reference and modified as necessary to constitute the Ruling of the Referee.
14. The Court hereby grants the application for a conditional underground water right from the source described above in the above-described amount for the above-described uses.
15. The application for approval of the augmentation plan described herein is approved, subject to the terms and conditions of this ruling.
16. In order to preserve flexibility with respect to land and water uses, the water rights for the Agate Creek Preserve Well No. 1 and the augmentation plan herein are approved for purposes of meeting the total in-house and outside water demands associated with Area No. 1 and the Main Ranch site, no matter how the two areas are ultimately developed, provided (1) that the total amount of irrigated acreage does not exceed 2.75 acres and the total amount of pumping for irrigation of such acreage does not exceed five acre-feet per year; (2) that the



total amount of pumping for in-house uses does not exceed fourteen and a half acre-feet per year; (3) that the out-of-priority depletions from in-house uses are replaced in accordance with the augmentation plan approved herein; and (4) that either (a) out-of-priority diversions for outside uses are replaced hereunder or (b) out-of-priority depletions from outside uses are replaced hereunder based upon the Division Engineer's approval of evidence regarding the timing of return flows resulting from such outside use of water within Area No. 1 and the Main Ranch site.

17. The terms and conditions of this ruling are adequate to assure that no material injury to any water rights will result from exercise of the plan for augmentation described in this ruling.
18. The applicant, its successors, and/or assigns, including without limitation the Association, shall be responsible for insuring that the terms and conditions of this decree are met.
19. The applicant, its successors and/or assigns, shall install measuring devices and provide accounting as required by the Division Engineer for the operation of the augmentation plan decreed herein. The applicant, its successors and/or assigns, shall also file an annual report with the Division Engineer by November 15<sup>th</sup> of each year summarizing diversions and replacements made under this plan. If applicable, the annual report shall also include the percentage build-out described above in paragraph 7.c and any other information that may be required by the Division Engineer.
20. The terms and conditions of this ruling are adequate to assure that no material injury to any water rights will result from the plan for augmentation plan described herein. Release of water from Stagecoach Reservoir pursuant to the augmentation plan approved herein for the purpose of replacing out-of-priority depletions from in-house uses and out-of-priority diversions or depletions from outside uses associated with pumping of the Agate Creek Preserve Well No. 1 will insure that replacement water is provided as necessary to meet the lawful requirements of senior diverters at the appropriate time and location and to the extent that such senior diverters would be deprived of their lawful entitlement by such out-of-priority depletions and/or diversions. So long as such replacement water continues to be provided, the plan for augmentation approved herein shall be sufficient to permit the continuation of pumping when curtailment of such pumping would otherwise be required to meet a valid senior call for water. If for any reason such replacement water is no longer provided, the State Engineer or Division Engineer shall curtail all out-of-priority diversions by the Agate Creek Preserve Well No. 1 as necessary to prevent injury to vested water rights. C.R.S. § 37-92-305(8). The applicant, its successors and/or assigns, acknowledge that the lease supply of augmentation water hereunder is only for a period of 21 years and that, if such lease should expire, fail to be renewed, or terminate, and if an alternative source of replacement water is not included in this decree by proper amendment prior to such expiration, non-renewal, or termination, curtailment of all out-of-priority diversions will occur. If the lease does not



expire or terminate or if it is renewed, no amendment of this decree shall be required, and the augmentation plan decreed herein shall continue to be effective.

21. The water right and priority granted herein for the underground water right described herein are based on the appropriation date confirmed herein and on the filing of the application in this case in the year of 2000. Said water right and priority shall be administered as having been filed in 2000, and shall be junior to all water rights granted pursuant to applications filed in previous years. As between all water rights applied for in the same calendar year, priorities shall be determined by historical dates of appropriation and shall not be affected by the date of application or the date of entry of ruling.
22. Pursuant to C.R.S. § 37-92-304(6), the Court shall retain jurisdiction over the plan for augmentation approved herein for a period of five years from the time that both of the following events have occurred: (1) 75% build-out of the development associated with the water uses for which the plan for augmentation is approved hereunder and (2) first operation of the plan for augmentation. The retained jurisdiction is for the purpose of reconsideration of the question of whether the provisions of this ruling are necessary or sufficient to prevent injury to other vested water rights. The retained jurisdiction period shall commence when notice has been provided to the Division Engineer that 75% build-out has been achieved and that the plan for augmentation has been operated.
23. The conditional underground water right herein awarded is hereby continued in full force and effect until the last day of ~~December, 2007~~. If applicant desires to maintain such conditional water right, an application for a finding of reasonable diligence shall be filed on or before the last day of ~~December, 2007~~, or a showing made on or before such date that the conditional water right has become an absolute water right by reason of the completion of the appropriation.
24. The Referee, Daniel R. Birch, signed the ruling herein on August 31, 2001. No protests have been filed to the Referee's ruling. The Court signed the decree on September 12, 2001, but is entering this amended decree in response to a request from applicant's counsel to conform the date of the decree so that it is more than 20 days from the date of mailing of the ruling actually signed by the Referee. The diligence deadline in paragraph 23 has also changed to be consistent with the date of this amended decree.

DATED THIS 30<sup>th</sup> DAY OF DECEMBER, 2001.



DANIEL R. BIRCH  
JULIATED REFEE

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THE COURT DOTH FIND: NO PROTEST WAS FILED IN THIS MATTER. THE FOREGOING RULING IS CONFIRMED AND APPROVED AND IS HEREBY MADE THE JUDGMENT AND DECREE OF THIS COURT.

DATED: January 7, 2002 Nunc Pro Tunc  
12-3-01

BY THE COURT:

Richard P. Doucette

Richard P. Doucette  
Water Judge  
Water Division No. 6  
State of Colorado

CERTIFIED TO BE A FULL  
TRUE AND CORRECT COPY  
OF ORIGINAL IN MY CUSTODY

DATE October 18, 2002

CLERK OF COURT

BY

Conne L. Strassheim

BY DEPUTY



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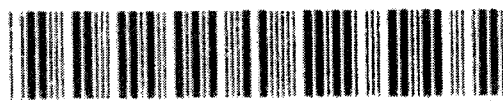
**APPENDIX A**  
**ATTACHMENT TO DECREE IN CASE NO. 00CW014, WATER DIVISION 6**

	Average Diversion Rate (cfs)	Consump- tive Use Rate (cfs)	Return Flow Rate (cfs)	Monthly Volume Of Diversion (acre-feet)	Monthly Volume of Consump- tive Use (acre-feet)	Monthly Volume of Return Flow (acre- feet)
In-house Use*	0.02	0.002	0.018	1.21	0.12	1.08
Outside Use**	0.017	***	***	1.02	***	***
Combined In-house and Outside Use**	0.055	***	***	2.23	***	***

\* The values in this row are applicable year-round.

\*\* The values in this row are applicable only during the five month period when irrigation may occur.

\*\*\* The consumptive use associated with outside uses of water is estimated to be 90% of the amount pumped for such uses. However, the timing of return flows associated with outside uses is not presently known. Therefore, the rate and monthly volume of both outside and combined in-house/outside consumptive use (defined as pumping rate or volume associated with such uses minus return flow rate or volume associated with such uses) is not yet known. The values associated with outside use and combined in-house/outside use return flows and consumptive use are to be determined at such time as evidence concerning the timing of outside use return flows is submitted to and approved by the Division Engineer.



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## APPENDIX B

## ATTACHMENT TO DECREE IN CASE NO. 00CW014, WATER DIVISION NO. 6

Column 1: Time Period	Column 2: Full Build-Out Augmentation Rate (cfs) (Prior to approval of timing of outside use return flows)*	Column 3: Full Build-Out Augmentation Volume (acre-feet) (Prior to approval of timing of outside use return flows)**	Column 4: Full Build-Out Augmentation Rate (cfs) (After approval of timing of outside use return flows)***	Column 5: Full Build-Out Augmentation Volume (acre-feet) (After approval of timing of outside use return flows)****
Month 1 (no irrigation) (for accounting and administration purposes, this month begins at the end of the irrigation season, on or around the beginning of October)	0.002	0.12	To be determined.	To be determined.
Month 2 (no irrigation)	0.002	0.12	To be determined.	To be determined.
Month 3 (no irrigation)	0.002	0.12	To be determined.	To be determined.
Month 4 (no irrigation)	0.002	0.12	To be determined.	To be determined.
Month 5 (no irrigation)	0.002	0.12	To be determined.	To be determined.
Month 6 (no irrigation)	0.002	0.12	To be determined.	To be determined.
Month 7 (no irrigation)	0.002	0.12	To be determined.	To be determined.
Month 8 (irrigation) (for accounting and administration purposes, this month begins at the beginning of the irrigation season, on or around the beginning of May)	0.019	1.14	To be determined.	To be determined.
Month 9 (irrigation)	0.019	1.14	To be determined.	To be determined.
Month 10 (irrigation)	0.019	1.14	To be determined.	To be determined.
Month 11 (irrigation)	0.019	1.14	To be determined.	To be determined.
Month 12 (irrigation)	0.019	1.14	To be determined.	To be determined.
Annual	not applicable	6.54	not applicable	To be determined.

\* Column 2 values derived as follows: During months 1 through 7 (non-irrigation season), the value is the consumptive use rate associated with in-house uses depicted in Appendix A. During months 8 through 12 (irrigation season), the value is the sum of (1) the consumptive use rate associated with in-house uses depicted in Appendix A and (2) the average diversion rate for outside uses depicted in Appendix A.



\*\* Column 3 values derived as follows: During months 1 through 7 (non-irrigation season), the value is the monthly volume of consumptive use associated with in-house uses depicted in Appendix A. During months 8 through 12 (irrigation season), the value is the sum of (1) the monthly volume of consumptive use associated with in-house uses depicted in Appendix A and (2) the monthly volume of diversions for outside uses depicted in Appendix A.

\*\*\* Column 4 values to be derived as follows: During months 1 through 7 (non-irrigation season) and months 8 through 12 (irrigation season), the value is the sum of (1) the consumptive use rate associated with in-house uses depicted in Appendix A and (2) the consumptive use rate associated with outside uses to be determined at such time as evidence concerning the timing of outside use return flows is submitted to and approved by the Division Engineer.

\*\*\*\* Column 5 values to be derived as follows: During months 1 through 7 (non-irrigation season) and months 8 through 12 (irrigation season), the value is the sum of (1) the monthly volume of consumptive use associated with in-house uses depicted in Appendix A and (2) the monthly volume of consumptive use associated with outside uses to be determined at such time as evidence concerning the timing of outside use return flows is submitted to and approved by the Division Engineer.



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**AGREEMENT REGARDING EASEMENT  
FOR GROUND WATER WELLS AND  
AGATE CREEK PRESERVE WATER SYSTEM**

**THIS AGREEMENT** is made and entered into effective this 25th day of June, 1999 by and between HUMBLE VENTURES LLC, a Colorado limited liability company ("Humble") and AGATE CREEK PRESERVE HOMEOWNERS ASSOCIATION, a Colorado nonprofit corporation ("Association") whose address is P.O. Box 776290, Steamboat Springs, Colorado 80477.

**RECITALS**

WHEREAS, that easement entitled "Easement for Ground Water Wells dated May 11, 1999 (the "Easement") recorded in Book 758 at Page 645 of the Routt County records, as the same may be corrected and subsequently re-recorded, is appurtenant to that real property described on Exhibit A to the Easement (the "Property") which has been subdivided and of which Lots 1-16, inclusive, Agate Creek Preserve is part, and of which Lot 18 and Parcel A, Agate Creek Preserve is a part; and

WHEREAS, Humble will construct the Water System for water service to Lots 1 through 16, inclusive, Agate Creek Preserve (the "Water System") as provided in the Declaration of Covenants, Conditions, Restrictions and Easements for Agate Creek Preserve, A Land Preservation Subdivision Exemption recorded in Book 759 at Page 840 of the Routt County records ("Declaration"), part of which Water System may be located within the Easement.

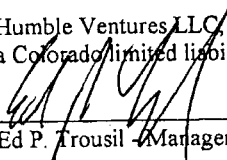
FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. All costs of design, engineering, construction, repair and reconstruction of the Water System shall be borne by Humble and Humble hereby indemnifies and agrees to defend and hold the Association harmless from any loss, liability, claim or obligation (including attorney's fees incurred by the Association) connected with Humble's construction activities within the Easement).
2. The Water System to be constructed by Humble shall be owned and operated by the Association for the primary benefit of Lots 1-16, inclusive, Agate Creek Preserve, provided, however, Humble shall have the right to expand the Water System to serve no more than eight (8) Building Lots (Lot 18 and the building sites located in Remainder Parcel A, including, without limitation, the four (4) cabin sites to be located in the Special Use Permit area as shown on the Plat for Agate Creek Preserve at File No. 12760 (the "Plat") each of which cabin sites shall be deemed a Building Lot.
3. The expansion of the Water System by Humble shall not be commenced until Humble first provides the Association with the certification of a licensed professional Colorado engineer that; (i) adequate water is available from the Water System to serve Lots 1-16, inclusive, Agate

Creek Preserve (the "Lots") and the use proposed by Humble, and (ii) the expansion of the Water System to include service to Humble has been designed and engineered in a manner that does not impair the water supply from the Water System to the Lots.

4. All costs of the expansion of the Water System by Humble, including, without limitation, costs of design, engineering, construction, repair, reconstruction and any costs incurred by the Association in connection therewith, shall be borne by Humble and Humble hereby indemnifies and agrees to defend and hold the Association harmless from any loss, liability, claim or obligation (including attorney's fees incurred by the Association) connected with Humble's construction activities within the Easement.
5. The Association shall charge Humble for water usage based on the volume of water consumed by Humble in relation to the water consumed by the Lots, user charges on a metered rate or some combination thereof, in the same manner as the Lots are charged for water service by the Association, including any portion of the Assessments levied by the Association under Article 11 of the Declaration allocable to the operations, maintenance, repair or replacement of the Water System.
6. Use of water by Humble shall be subject to the same rules and regulations as may be adopted by the Association connected with the Water System for the Lots. Water service to Humble shall be limited to domestic use and irrigated landscaping area including lawns shall be no larger than 5000 sq. ft in size for each Building Lot. In the event of a water shortage so that there is not adequate water from the Water System for both the Lots and Humble, the Association shall be entitled to curtail or entirely abate the water supply to Humble in order to provide adequate water to the Lots.
7. Any application for water rights, permits or approvals needed for the Water System shall be submitted in the name of the Association and after issuance shall be held solely in the name of the Association.
8. This Contract shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement effective the day and year first above written.

Humble Ventures LLC,  
a Colorado limited liability company  
By:   
Ed P. Trousil - Manager

Agate Creek Preserve  
Homeowners Association, a Colorado  
nonprofit corporation

By:

Ed P. Trousil - President

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ROUTT )

The foregoing instrument was acknowledged before me this 25th day of June, 1999 by  
Ed P. Trousil, as Manager of Humble Ventures LLC, a Colorado limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: 7/29/2001

Notary Public

STATE OF COLORADO )  
 ) ss.  
COUNTY OF ROUTT )

The foregoing instrument was acknowledged before me this 25th day of June, 1999 by  
Ed P. Trousil, as President of Agate Creek Preserve Homeowners Association, a Colorado  
nonprofit corporation.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: 7/29/2001

Notary Public

clients/trousil/agmt re esmnt

# STATE OF COLORADO

Bill Owens, Governor  
Douglas H. Benevento, Executive Director

*Dedicated to protecting and improving the health and environment of the people of Colorado*

Steamboat Springs Office  
410 S. Lincoln Ave., Ste A-5  
Steamboat Springs, Colorado 80487-5006  
Phone: (970) 879-7479  
FAX: (970) 871-0194  
<http://www.cdphe.state.co.us>



Colorado Department  
of Public Health  
and Environment

November 11, 2005

Agate Creek Preserve Homeowner's Association  
PO Box 771789  
Steamboat Springs, CO 80477

Re: Design Review for Agate Creek Preserve Community Drinking Water System PWSID Pending,  
Routt County.

Dear Homeowner's Association Member:

**The design (plans and specifications) prepared and submitted by Civil Design Consultants for the Agate Creek Preserve Community Water System has been reviewed in accordance with Article 1.11 of the Colorado Primary Drinking Water Regulations and the State of Colorado Design Criteria for Potable Water Systems and is hereby conditionally approved for construction.**

This approval addresses the following items:

**Infiltration gallery, post hypochlorination for disinfection and system storage.**

**The approval will be final when an O&M Manual is submitted and approved by the Division. It should be provided and approved before the system becomes a public water system (see paragraph on system population below). The O&M Manual should at least include the following sections:**

- A description of the facilities
- An explanation of startup and normal operation procedures
- A routine maintenance program
- Sampling and analysis schedules for operational controls and regulatory compliance, and sampling site plans
- Staffing and training requirements
- Identification of potential risks to the water supply
- A safety program
- A plan for tracking unaccounted-for water
- Identification of available external resources, such as technical and financial assistance
- An Emergency Management Plan and operating procedures



- Manufacturer's manuals
- Water system policies including: Budget development and rate structure; Water system responsibilities; Customer responsibilities; Cross-connection control; Customer information or public education; Customer complaints; Response and notification if water quality violations occur.

The completion of the project will set the capacity of the Water Treatment Facility at 0.072 mgd.

I have completed a final inspection of the site and have found the progress to be satisfactory.

**Please notify the WQCD when your system reaches 25 people or 15 taps so routine monitoring can begin on this system.** This notification shall come in the submittal of a current PWS inventory form submitted to Erica Kannely in our Denver office, with a copy to me in Steamboat. A copy of the system's comprehensive Operations and Maintenance Manual must be submitted to this office for approval within 6 months of receipt of a PWSID Number for the system.

Based upon the **Water And Wastewater Facility Operators Certification Requirements, Regulation No. 100**, the facility treatment system is classified as a Class D facility, and the distribution system classified as a Class 1 facility. An operator with a small system license can satisfy both of these requirements. The name and certification number of the operator in responsible charge who holds valid certifications at least equal to these levels must be submitted to this office along with the completed inventory form, once the system reaches the requirements for a public water system stated above.

Any point source discharges of water from the facility are potentially subject to a discharge permit under the Colorado Discharge Permit System (CDPS). Any point source discharges to state waters without a permit are subject to civil or criminal enforcement action. If you have any questions regarding permit requirements, contact the Division's Permits Unit at (303) 692-3500.

Approval of this project is based only upon engineering design to provide safe potable water as required by the **Colorado Primary Drinking Water Regulations** and shall in no way influence local building department or local health department decisions on this project.

Please contact me in the Steamboat Springs Office if you have any questions.

Sincerely,

Andy Poirot, P.E.  
District Engineer  
Water Quality Control Division

cc: *Mike Zopf, Routt County Environmental Health Department*  
*Betsy Beaver, Facility Operators Program, WQCD/CDPHE*  
*Erica Kannely, CA/DM Unit, WQCD/CDPHE*  
*Tom Schaffer, West Slope Supervisor, Technical Services Unit, WQCD/CDPHE*  
*Mary Andre, Civil Design Consultants*  
*Ed Trousil, Humble Ventures*

## **IRON AND MANGANESE IN HOUSEHOLD WATER**

Both iron (Fe) and manganese (Mn) are non-hazardous, nuisance chemicals in water that can cause characteristic reddish-brown or black stains on clothes or household fixtures. They are common household water contaminants with no known adverse human health effects at levels found in drinking water. They are classified under guidelines set by the U.S. Environmental Protection Agency (EPA) as "Secondary Contaminants." Secondary standards apply to chemicals in water causing offensive taste, odor, color, corrosion, foaming, or staining. Drinking water standards for iron and manganese are 0.3 and 0.05 ppm, respectively. These standards can be used to evaluate the water quality of individual wells or springs.

Iron and manganese are elements commonly found in the earth's crust. Water seeping through soil and rock often dissolves minerals containing Fe and Mn. This process accounts for the origin of these metallic elements in water. When the Fe/Mn-bearing water is exposed to air it undergoes chemical oxidation and changes from colorless, dissolved forms to colored and/or solid forms. Iron in water eventually changes to a reddish-brown material that settles out of the water while Mn forms a black residue. It is these reddish-brown and black sediments that cause stains.

Iron that does not settle out leaves the water with a reddish tint (colloidal iron). Although Mn is usually dissolved in water, some shallow wells or surface waters can retain a black tint. Iron and Mn may also combine with organic materials in water to form chemical complexes that are difficult to remove.

Corrosive water can dissolve Fe present in plumbing pipes. In this case, water is not clear from the tap but contains red particles that settle out after a short time. The pH of the water can and should be raised to prevent dissolution of Fe as well as other metals such as lead (Pb).

The presence of Fe or Mn in water will often cause bacteria that are specific to Fe and Mn to be active. These Fe and Mn bacteria are harmless but are present in many soils, shallow aquifers, and in some surface waters. Masses of these bacteria can clog water systems and form red-brown (iron) or black-brown (manganese) slime in toilet tanks.

Water can be tested for the presence of Mn and Fe. Once detected several treatment options are available. Some of these options include installation of a water softener, aeration (mixing with air), use of a Mn greensand filter, chemical oxidation, or complexation by adding phosphates.

Iron/manganese bacteria may be killed by shock treatments with chlorine or potassium permanganate, then filtered to remove precipitates. If organic-complexed or colloidal Fe/Mn is present in untreated water, a longer contact time and higher chemical levels are necessary for complete oxidation to occur. If your water has high levels of both Fe and Mn, and they are in both dissolved and solid forms, a multistage treatment operation is necessary.

Because of the many and varied treatments available for Fe and/or Mn in drinking water, accurate testing is important before selecting treatment equipment. No matter what the treatment, remember to consider effects of any chemical used in treatment on the remaining treated water.

*(Adapted from Water Treatment Notes, Cornell Cooperative Extension)*