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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

FOR

THE SPECIE MESA RANCH  
SAN MIGUEL COUNTY  
STATE OF COLORADO

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

FOR

THE SPECIE MESA RANCH  
SAN MIGUEL COUNTY  
STATE OF COLORADO

This Declaration of Covenants, Conditions, and Restrictions ("Declaration") is made as of the 17th day of November, 1989 by Specie Mesa Land Company, a Colorado partnership ("the Declarant").

WHEREAS the Declarant is the owner of a tract of land in San Miguel County, Colorado identified as the Specie Mesa Ranch on the survey of the Specie Mesa Ranch recorded in the Plat Books of the Clerk and Recorder of San Miguel County, Colorado of even date herewith (hereinafter called the "Property").

WHEREAS this Declaration is executed in furtherance of a common plan to protect and enhance the quality, value, desirability, and attractiveness of the Property.

WHEREAS this Declaration is executed to create an Association to provide certain functions for the benefit of the owners of the property which may become subject to this Declaration and to define duties, powers and rights of the Association as well as the duties, powers and rights of owners of the Property.

I. GENERAL AND DEFINITIONS

1.1 *Declaration.* The Declarant, for itself, its successors and assigns hereby declares that the Property, except for the 24.67 acres located in Parcel 15-2 which is west of County Road M-44, shall from the date of this Declaration become subject to this Declaration, be owned, held, transferred, conveyed, sold, leased, rented, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, assessments, charges, equitable servitudes, liens, easements, and other provisions set forth in this Declaration for the duration thereof, all of which shall run with the title to the Property and shall be binding upon all parties having any right, title or interest in the Property and upon their heirs, personal representatives, successors, and assigns and shall inure to the benefit of each party having such right, title or interest in the Property.

1.2 *Definitions.* The following words, phrases or terms used in this Declaration shall have the following meanings:

a. Specie Mesa Ranch shall mean the residential development on the Property.

b. Annual Assessment shall mean the charge levied or assessed each year against each parcel and the owner thereof.

c. The Articles shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

d. Assessable Property shall mean any parcel, except such part or parts thereof or interest therein as may from time to time constitute common area.

e. Assessment shall mean an annual assessment, special assessment, maintenance charge and or any costs, interest, attorney's fees or charge imposed on a parcel and the owner thereof in accordance with this Declaration and made subject to the assessment lien by this Declaration.

f. Association shall mean the Specie Mesa Homeowners Association, a Colorado non-profit corporation organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration.

g. Board shall mean the Board of Directors of the Association.

h. Bylaws shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented.

i. Common Area shall mean (a) such part or parts of the Specie Mesa Ranch, together with the buildings, structures and improvements thereon, which the Association may at any time own in fee or any easement, right or leasehold interest held by the Association for as long as the Association is the owner of such fee, easement, right or leasehold interest; (b) all land within the Property or any easement, right or leasehold interest held by Declarant in which the Declarant, by this Declaration or other recorded instrument, makes available for use by the Association and/or its Members; (c) easements encumbering a Parcel granted to the Association or its Members and accepted by the Association; (d) all private roads, trails and parks including those conveyed in fee to the Association or the use of which is given the Association or its Members by easement or license, and of which by agreement the Association accepts responsibility for

maintenance; (e) the Common Utility Facilities, roads, trails and other easements appurtenant thereto.

j. Household shall mean one or more natural persons, each related to the other by blood, marriage or legal adoption, or a group of not more than 3 such persons not all so related, together with his or their domestic servants, all of whom maintain a common household in a Residence on a Parcel.

k. Common Utility Facilities shall mean all lines, mains, conduits, transformers, vaults, and all other related surface and below ground appurtenances thereto now or hereafter located within those areas delineated as such or as the Private Road on the Specie Mesa Ranch for the purpose of providing utility service, including, but not limited to, water, sewer, electricity, gas, telephone, and cable television services, to the Parcels, but excluding any service laterals therefrom intended to service only a single Parcel.

l. Covenants shall mean the covenants, conditions, restrictions, limitations, reservations, exceptions, assessments, charges, equitable servitudes, liens, easements and other provisions set forth herein.

m. Declaration shall mean this Declaration of Covenants, Conditions, and Restrictions, as amended or supplemented from time to time.

n. Residence shall mean any building or portion of a building situated upon a Parcel designed and intended for use and occupancy as a residence by a Household.

o. Parcel shall mean each area of the Property designated as a Parcel on the Survey, but not including the Common Areas.

p. Owner shall mean a person, including Declarant, or if more than one, all persons collectively, who hold fee simple title of record to any Parcel including contract sellers, but excluding record title holders who hold such title merely as security. In the case of Parcels legal title to which is vested of record in a trustee to create a security interest, legal title shall be deemed to be in the trustor.

q. Private Road shall mean the roads shown on the Survey, including the slope, drainage and utility easements appurtenant thereto.

r. Resident shall mean the Owner or each Tenant actually residing on the Parcel and each member of the Household of such Owner or Tenant.

s. Special Assessment shall mean any charge levied and assessed pursuant to subsection 3.10.

t. Survey shall mean the survey of the Specie Mesa Ranch recorded in the Plat Books of the Clerk and Recorder of San Miguel County, Colorado on November 17, 1989.

u. Tenant shall mean any person who occupies a Residence under any type of rental or letting arrangement.

v. Trail shall mean that recreational trail for hiking, bicycling, equestrian use, cross country skiing and such other uses as the Board shall approve and subject to such limitations as may be provided for herein and in the Association Rules, in the location identified as "Horse Trail Easement" on the Survey.

w. Park shall mean that recreation area located on the western boundary of the lake and identified as "Park" on the Survey.

## 2. MUTUALITY OF BENEFIT AND OBLIGATION

These Covenants, unless specifically stated otherwise herein, shall apply to all of the Property. The Covenants set forth herein are made for the mutual and reciprocal benefit of each and every Parcel, and are intended to create mutual equitable servitudes upon each Parcel in favor of each and all of the other Parcels; to create reciprocal rights between the respective Owners; to create a privity of contract and estate between the Owners of Parcels, their heirs, successors and assigns, and shall, as to the Owner of each Parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other Parcels and their respective Owners. The grantee of any Parcel subject to this Declaration, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Declarant or a subsequent Owner of such Parcel, shall accept such deed or contract upon and subject to each and all of these Covenants and the agreements herein contained, and also the jurisdiction, rights and powers of the Association, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Association, and to and with the grantees and subsequent Owners of each of the Parcels within the Specie Mesa Ranch perform said Covenants and agreements. These Covenants shall also be binding upon and shall inure to the benefit of the Association.

### 3. THE ASSOCIATION; MEMBERS AND VOTING; ASSESSMENTS

3.1 *The Association; Rights and Powers.* The Association shall be a nonprofit Colorado corporation charged with the duties and invested with the rights and powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. A copy of the Articles and Bylaws shall be available for inspection by Members and Tenants at the office of the Association during reasonable business hours. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If any provision of the Bylaws shall be deemed inconsistent with the provisions of this Declaration, the provisions of the Declaration shall control.

3.2 *Board of Directors and Officers.* The affairs of the Association shall be conducted by the Board in accordance with the Articles and the Bylaws. The Board shall be composed of three (3) members. Until December 31, 1990, the members of the Board shall be appointed by Declarant. Thereafter, until Declarant has conveyed sixty-five percent (65%) of the Parcels, the Members other than Declarant shall elect one (1) Board member and Declarant shall appoint two (2) Board members. After Declarant has conveyed sixty-five percent (65%) of the Parcels, all Members, including Declarant so long as it is a Member, shall be entitled to elect Board members. Cumulative voting for Board members shall not be allowed. The Board may appoint various committees such as an Architectural Control Committee. The Board shall determine the compensation to be paid to any employee of the Association.

3.3 *Association Rules.* By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations to be known as the Association Rules. The Association Rules may restrict and govern the use of any area of the Specie Mesa Ranch by any Member or Resident; provided, however, that the Association Rules shall not unfairly discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

3.4 *Personal Liability.* No member of the Board or of any committee of the Association, no officer of the Association, and no agent or employee of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, any representative or employee of the



Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this subsection 3.4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the construction, repair, improvement or maintenance of the Common Area or from any action taken to comply with any law, ordinance or order of governmental authority.

3.5 *Membership.* Every Owner of a Parcel or Parcels (including Declarant) shall be a Member of the Association. Each such Owner shall have one Membership for each Parcel owned by the Owner. Each such Membership shall be appurtenant to and may not be separated from ownership of the Parcel to which the Membership is attributable. There shall be only one Membership for each Parcel.

3.6 *Right to Vote.* Each membership shall be entitled to one (1) vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

3.7 *Transfer of Membership.* Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of a Parcel. A transfer of ownership to a Parcel may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Colorado. Any transfer of ownership to a Parcel shall operate to transfer automatically the Membership appurtenant to said Parcel to the new Owner thereof, whether or not specific reference to such Membership is made.

3.8 *Creation of Lien and Personal Obligation for Assessments.* The Declarant, for each Parcel, hereby covenants and agrees, and each Owner by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association the following assessments and charges: (1) Annual Assessments established by subsection 3.9, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by subsection 3.10, (3) Maintenance Charges established by subsections 3.25 and 3.26, and (4) such other charges, including (but not by way of limitation) interest, costs and attorney's fees established or required by this Declaration. All such Assessments shall be established and collected as hereinafter provided.

The Annual Assessments, Special Assessments, and Maintenance Charges, together with interest, costs, and reasonable attorney's fees and such other charges, all as provided for in this Declaration, shall be a charge on the Parcel and shall be a continuing servitude and lien upon the Parcel against which each such Assessment is made. The Annual and Special Assessments (but not necessarily the Maintenance Charges, and any interest, costs, and reasonable attorney's fees and such other charges as are provided for in this Declaration) shall be uniform as to each Parcel. Each such Annual and Special Assessment, and Maintenance Charge, together with Interest, costs and reasonable attorneys fees and such other charges shall also be the personal obligation of the person who was the Owner of the Parcel at the time when the Assessment fell due. The personal obligation of an Owner to pay Assessments which accrue during the period of his ownership of a Parcel shall not pass to the successors in title of such Owner unless expressly assumed by them.

Annual Assessments will be collected on an annual basis unless otherwise specified by the Board and Special Assessments will be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment. Any Owner who disputes the amount of any Assessment or the power of the Association to levy it may challenge such Assessment in any court of appropriate jurisdiction but only after having made full and timely payment thereof and failure to make such payment within 60 days of the due date thereof shall be deemed an irrevocable waiver of the right to challenge such amount or power.

3.9 *Annual Assessments.* In order to provide for the uses and purposes specified herein including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the calendar year 1989 shall assess against each Parcel an Annual Assessment. The amount of the Annual Assessment

shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and may not exceed the "Maximum Annual Assessment". The Maximum Annual Assessment shall be determined as follows:

(a) For the calendar years 1989 and 1990, the Maximum Annual Assessment shall be determined by the Board and paid by the Declarant.

(b) From and after January 1, 1991, the Maximum Annual Assessment may be increased by the Board effective January 1 of each year without a vote of the Membership by a maximum of 15% of the Annual Assessment for the immediately preceding calendar year plus such amount, if any, as may be required in an emergency for the safety of Owners or Residents of the Specie Mesa Ranch or for the repair of existing facilities, but only if contingency reserves are inadequate for such purpose, it being further understood that the upgrading or remodeling of existing facilities or the nonmandatory construction of new facilities shall be deemed, *prima facie*, not to be emergencies.

(c) From and after January 1, 1991, the Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under subsection b above by a vote of fifty-one percent (51%) of the Memberships present in person or by proxy at a meeting duly called for such purpose.

3.10 *Special Assessments for Capital Improvements and Extraordinary Expenses.* In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period a Special Assessment applicable to that period only for the purpose of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such assessment shall be approved by two-thirds (2/3) of the votes of the Members present in person or by proxy at a meeting duly called for that purpose. The provisions of this subsection are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

3.11 *Establishment of Annual Assessment Period.* The period for which the Annual Assessment is to be levied shall be the calendar year ("Assessment Period"). The Board in its sole discretion from time to time may change the Assessment Period by recording in the San Miguel Records, an instrument specifying the new Assessment Period. The Association shall promptly give notice of such new Assessment Period to each Member.

3.12 *Rules Regarding Billing and Collection Procedures.* The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making, billing and collecting the Assessments provided for herein, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment under this Declaration, but no such Assessment shall be deemed due and payable or delinquent until the Member has been given not less than twenty (20) days' written notice thereof, at the address of the Member on the records of the Association, and furthermore the Assessment Lien for any Assessment or other charge shall not be foreclosed or otherwise enforced until the expiration of 120 days from and after the date the Assessment or other charge giving rise to the Assessment Lien becomes due and payable. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Parcels shall be given credit for prepayments, on a prorated basis, made by prior Owners.

3.13 *Collection Costs and Interest on Delinquent Assessments.* Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a simple interest rate equal to the lesser of (a) eighteen percent (18%) per annum or (b) the highest interest rate then permitted under the laws of the State of Colorado, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The Board may also record a notice of delinquency against any Parcel as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

3.14 *Evidence of Payment of Assessments.* Upon receipt of a written request by a Member, the Association within a reasonable period of time thereafter shall issue to or at the direction of such Member a written certificate stating (a) that all Assessments have been paid with respect to any specified Parcel as of the date of such certificate, or (b) if all Assessments have not been paid, the amount and nature thereof due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, and may require that such charges be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall

be conclusive and binding with respect to any matter therein stated as against the Association and may be relied upon by any bona fide purchaser of, or lender on, the Parcel in question.

3.15 *Property Exempted from Assessments and Assessment Lien.* Common Areas shall be exempted from Assessments and the Assessment Lien; provided, however, that in the event any change of ownership of Common Areas results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to Assessments (prorated as of the date it became Assessable Property) and the Assessment Lien.

3.16 *Association's Rights of Enforcement.* The Owners of the Parcels subject to these Covenants hereby grant to the Association the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. This right shall be in addition to the right of any Owner whose Parcel is subject to Covenants to enforce the same. The Board's obligation to enforce any term or condition of these Covenants is optional whether or not enforcement is requested by any Owner. Failure by the Association or any Owner to enforce any Covenant shall not be deemed a waiver of the right to do so thereafter.

3.17 *Association's Remedies.* If any Member fails to pay an Assessment or installment thereof when due, the Association may enforce the payment thereof by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise any other remedy):

(a) Bring an action at law and recover judgment against the Member personally obligated to pay the Assessment;

(b) Foreclose the Assessment Lien against the Parcel in accordance with the then prevailing Colorado law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Parcel may be redeemed after foreclosure sale as provided by law.

3.18 *Subordination of Assessment Lien to Certain Mortgages or Deeds of Trust; Priority of Lien.* The Assessment Lien shall be subordinate to any prerecorded first or second mortgage lien

held by, or first or second deed of trust of which the beneficiary is, a bona fide lender who has loaned funds with the Parcel as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior.

Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon a Parcel. The Sale or transfer of any Parcel shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the lot free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien, with respect to Assessments accruing from and after such date, immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Assessments, and the Assessment Lien thereof accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

3.19 *Costs to be Borne by Member in Connection with Enforcement of Payment of Assessments.* In any action taken pursuant to subsection 3.17, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Assessments together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in subsection 3.13.

3.20 *Purposes for which Association's Funds may be Used.* The Association shall apply all funds and property collected and received by it (including Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Specie Mesa Ranch Members and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, security, programs, studies and systems, within or without the Specie Mesa Ranch, which may be

necessary, desirable or beneficial to the general common interests of the Specie Mesa Ranch, the Members and the Residents. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Colorado.

3.21 *Association's Rights in Spending Funds from Year to Year.* The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

3.22 *Insurance.* The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property in such amounts and with such coverages and deductible as the Board in its discretion shall determine from time to time. Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, cover each Member without each Member necessarily being specifically named.

Insurance obtained by the Association shall, to the extent reasonably possible without undue cost, contain a waiver of rights of subrogation as against the Association, each Member and any person claiming by, through or under such Member and as against any officer, director, agent or employee of any of the foregoing. Insurance obtained by the Association shall, to the extent reasonably possible, provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

3.23 *Association's Maintenance of Common Areas.* The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas at the sole cost and expense of the Association (including payment of real estate taxes, if any, imposed on any Common Area as such), including, but not limited to, removal of snow from the Private Road, and maintenance and repair of the Private Road, the Trail, the Park, the appurtenant roads, drainage and slope easements included in the Common Areas and the Common Utility Facilities. The Association shall also promulgate and enforce all regulations necessary or convenient to

the use and enjoyment of the Private Road, the Trail, such easements, and the Common Utility Facilities.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of Common Areas so that the Specie Mesa Ranch will reflect a high pride of ownership. In this connection the Association may, subject to any applicable provisions on Special Assessments for capital improvements, in the discretion of the Board:

(a) Reconstruct, repair, replace or refinish any improvement or portion thereof upon Common Areas.

(b) Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

*3.24 Assessment of Certain Costs of Maintenance and Repair of Common Areas.* In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Parcel is subject and shall be secured by the Assessment Lien.

*3.25 Improper Maintenance and Use of Parcels.* In the event any portion of any Parcel is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Parcels or Common Areas of the Specie Mesa Ranch which are substantially affected thereby or related thereto, or in the event any portion of a



Parcel is being used in a manner which violates this Declaration or in the event the Owner of any Parcel is failing to perform any of its obligations under this Declaration or the Association Rules, the Board may give notice to the offending Owner of the particular condition or conditions which exist, and unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Parcel is subject and shall be secured by the Assessment Lien.

3.26 *Contracts with Others for Performance of Association's Duties.* Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliates, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Board members or officers of the Association or members of any committee is employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other Board members acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Board member, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliates or any competitor thereof and may vote to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

3.27 *Change of Use of Common Areas.* Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by three-quarters (3/4) of the votes of Memberships present in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, (ii) shall be consistent with any deed or similar restrictions (or zoning regulations) restricting or limiting the use of the Common Area, and (iii) shall not eliminate access to any Parcel.

3.28 *Contingent Exemption.* In the event Parcels 5-1, 5-2, 5-3, 6-1, 6-2, 6-3, 6-4, 7, 8, 9-1, 9-2, 10-1, 10-2, 15-1 and 15-2 (herein collectively referred to as the "Unit") are sold to a single Owner, that Owner shall have a one-time right to exempt the Unit from the Declaration upon written notice to the Board. Thereafter, the Unit shall not be subject to nor entitled to the benefits of the Declaration except as follows:

(1) The parcels in the Unit shall remain subject to all easements and the Common Areas created on the Specie Mesa Ranch for the use and benefit of the members of the Association and the Owner of the Unit shall be entitled to use said easements and the Common Areas on the Specie Mesa Ranch;

(2) The owner of the Unit shall also remain responsible to the Association for assessments on the Parcels in the Unit for construction, maintenance and repair costs for the easements and Common Areas on the Ranch.

(3) The Owner shall not subdivide any Parcel in the Unit; and

(4) The Unit shall be used solely for residential purposes and shall not be used for business, manufacturing or commercial purposes.

In the event any Parcel(s) in the Unit is separately conveyed, said Parcel(s) shall no longer be exempt from the Declaration and shall become subject to the Declaration. When the remaining Unit consists of no more than five Parcels, this exemption shall terminate as to all Parcels. Notwithstanding this exemption, on or after May 15, 1992, the Owner of the Unit shall also be entitled to place an unlocked gate across Laughing Dog Road at the northern boundary of Parcel 5-2 and on Dusky Roost at the point it intersects Laughing Dog Road on Parcels 10-1 and 10-2.

#### 4. COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS APPLICABLE TO LOTS, OWNERS AND RESIDENTS.

The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Parcels and to the Owners and Residents thereof, and where an Owner is required to perform any of the following obligations, it shall do so at its sole expense:

4.1 *Exclusive Residential Use and Improvement.* Except for the division of the 24.67 acres in Parcel 15-2, which is located west of County Road M-44, no Parcel shall be further

subdivided unless in connection with a boundary line adjustment approved in writing by the Board. Each Parcel shall be used solely for residential purposes and shall not be used for business, manufacturing or commercial purposes. No structures shall be erected, placed or permitted to remain on a Parcel other than (a) one (1) Residence or (b) two (2) Residences meeting the requirements of Section 4.2 hereof, and, in either case such outbuildings as are usually accessory to a residence dwelling, including (but not by way of limitation) a private garage or stable.

4.2 *Structures.* All Residences erected on any Parcel shall be of new construction and no Residence shall be moved from another location to the Parcel. Each Residence shall contain at least the following minimum square feet of fully enclosed floor area devoted to living purposes (exclusive of roofed or unroofed porches, terraces, garages, carports and other outbuildings);

Primary Residence	2,000 sq. ft.
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Caretakers Residence	1,000 sq. ft.
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nor shall the Caretakers Residence, whether as part of the Primary Residence or as an independent structure, contain more than one-half (1/2) of such area as is contained in the Primary Residence.

No Caretakers Residence on a Parcel may be constructed unless, prior to or simultaneously with the completion of construction of the Caretakers Residence, the Primary Residence on such Parcel shall have been completed in compliance with this Declaration and a certificate of occupancy issued in connection therewith.

4.3 *Fences.* All fences must be approved before installation by the Board. Fences shall be of snake type construction (*i.e.*, the fence contains sections which run at forty-five degree (45°) angles to one another) except as otherwise approved by the Board. In order to preserve the existing natural quality and aesthetics of the Specie Mesa Ranch, all property lines of Parcels shall be kept substantially free and open one to another and no Owner shall allow fences to be erected or maintained except as follows:

(a) To enclose the following area or areas on the Parcel, preferably not visible from other Parcels, for the following purposes:

(i) To protect a cultivated garden from damage or destruction by wildlife;

- (ii) To contain the movements of young children for their own safety;
- (iii) To surround a tennis court or pool;

(b) To corral horses; and

(c) As a structure or aesthetic feature of a design concept including the screening of structures from each other or from Common Areas, contributing to and in keeping with the character of the Specie Mesa Ranch and the purposes embodied in these Covenants.

(d) Outside perimeter of the Unit.

4.4 *Landscaping.* All landscaping must be approved before installation by the Board. The theme for landscaping shall emphasize plantings and other features which will compliment and enhance the native, existing character. Certain plantings may be prohibited. Approved landscaping after installation will be maintained as required to provide a neat and attractive appearance. Removal of dead bushes and trees and removal of trash and debris will be accomplished as required to this effect. Subject to subsection 4.6 the Board will be the sole and final judge as to whether or not landscaping after installation has met the approved criteria and whether or not it is, at any given time, maintained properly to the standards established by this Declaration. The Association will have the right to require any Owner to landscape and/or maintain landscaped areas, or to maintain natural areas in their natural state within fifty (50) feet of the Private Road or Trail. The Association also has the right, by agreement with the Owner of the affected Parcel, to maintain parts of Parcels directly adjacent to the Private Road and/or Trail at the expense of the Association when the Board determines that it is to the benefit of all Members that the Association accept such responsibility.

4.5 *Timely Completion.* Any Residence, outbuilding or other improvement, the construction or placement of which is begun on any Parcel, shall be completed not later than eighteen (18) months after the beginning of such construction or placement, subject only to force majeure.

4.6 *Architectural Control.* No improvements, alterations, demolition, repairs, excavation, grading, filling, damming, redirection of natural surface drainage channels, landscaping, removal of trees having a diameter of more than four (4) inches or other work which in any way alters the exterior appearance of any property of the Specie Mesa Ranch, or the improvements located thereon, from its natural or improved state shall be made

or done without the prior approval of the Board. No building, fence, wall, residence or other structure, or any exterior lighting, shall be commenced, erected, improved, altered, or made without the prior written approval of the Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Parcels, shall be subject to the prior written approval of the Board. No changes or deviations in or from the plans once approved by the Board shall be made without prior written approval of the Board.

4.7 *Submission of Plans.* Any Owner desiring to do or cause to be done any work requiring the prior written approval of the Board, as set forth in subsection 4.3, shall submit to the Board three (3) complete sets of plans therefor. Such plans shall include plot plans showing the location of the work, specifications and all other relevant detail, including without limitation proposed construction material, exterior color schemes and proposed landscape changes of any kind. In no event shall such plans contain less information than would be required by San Miguel County for the issuance of a building permit. The Board may require that any such Owner submit additional or supplemental plans or information before being required to commence review of any plans submitted by such Owner.

4.8 *Approvals.* The Board shall approve or disapprove plans within sixty (60) days after the receipt of all plans required pursuant to Section 4.3 or shall notify the person submitting them that an additional period of time, not to exceed thirty (30) days, is required for such approval or disapproval. One (1) set of said plans with the approval, or disapproval, endorsed thereon, shall be returned to the person submitting them and another copy thereof shall be retained by the Board for its permanent files. The Board shall have the unconditional right to disapprove any plans submitted to it in the event the same are not in accordance or in harmony with all of the provisions of these Covenants and the design guidelines herein contained, if the plans submitted are incomplete, or in the event the Board deems the plans, or any part thereof, to be contrary to the interests, welfare or rights of all or any part of the Specie Mesa Ranch or the Owner of any Parcel.

4.9 *Animals and Wildlife.* Each Parcel may contain up to one (1) horse per fifteen (15) acres and a reasonable number of house pets for domestic use and pleasure but not for commercial purposes. No other animal, bird, fowl, poultry or livestock, shall be maintained on any Parcel. No animal, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. Upon the written request of

any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this subsection, whether such a pet is a nuisance, or whether the number of animals on any such Parcel is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other Covenants contained herein. Owners will take precaution as required to prevent the alteration of native fauna by insuring that pet food, garbage, and refuse are properly stored or covered.

4.10 *Firearms and Hunting.* No hunting of animals or birds within the Specie Mesa Ranch shall be permitted. No firearms shall be discharged within the Specie Mesa Ranch.

4.11 *Repair of Buildings.* No building, structure or other improvement on any Parcel shall be permitted to fall into disrepair or to remain otherwise than in a good, sanitary and sightful condition and each such building, structure and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building, structure or improvement is damaged or destroyed, then, within 180 days after such event, but subject to the approvals required by subsection 4.6 above, such building, structure or improvement shall be immediately repaired or rebuilt or shall be demolished and the site revegetated.

4.12 *Mineral Exploration.* No Parcel shall be used in any manner, at or below the surface, to explore for or to remove any oil or other hydrocarbons, or as a mining operation for minerals, gravel, earth or any earth substance of any kind.

4.13 *Trash Containers and Collection.* No garbage or trash shall be placed or kept on any Parcel except in covered containers. In no event shall such containers be maintained so as to be visible except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Parcels and shall not be allowed to accumulate or be burned thereon. No outdoor incinerators shall be kept or maintained on any Parcel.

4.14 *Signs.* No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible shall be erected or maintained on any Parcel except:

(i) Signs required by legal proceedings.

(ii) Not more than one (1) identification sign for individual Dwelling Units, which have been approved by the Board.

(iii) Signs, the nature, number, and location of which have been approved in advance and in writing by the Board as to size, color, design, and message content.

4.15 *Property Restrictions and Rezoning.* No portion less than all of any Parcel, nor any easement or other interest therein, shall be conveyed or transferred by any Owner (otherwise than by the lease of a Residence and its appurtenances), without the prior written approval of the Board, which approval must be evidenced on the Survey or other instrument creating the easement or other interest. No further covenants, conditions, restrictions or easements shall be conveyed by any Owner or other person against any Parcel without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements conveyed without such approval being evidenced thereon shall be null and void. No application for rezoning of any Parcel, and no applications for variances or special use permits, shall be filed with any governmental authority unless the proposed use of the Parcel has been approved by the Board and the proposed use otherwise complies with this Declaration.

4.16 *Leases.* No Residence shall be rented without a written lease or for a period of less than three (3) months.

4.17 *Septic Systems.* No toilet not within a Residence shall be constructed on any Parcel, nor shall any plumbing, plumbing fixtures, dishwashers, toilets or sewage disposal systems be constructed on any Parcel except those connected to a septic tank (or other sewage system) approved by San Miguel County Health Department.

4.18 *Fire Protection.* Except with the written approval of the Telluride Fire Protection District, no Residence shall be constructed on any Parcel without all of the following:

(i) either a fire protection water storage tank holding one gallon of water per gross square foot of such Residence, with a hydrant connection fitted with Mueller National Standard threads (2.5 x 5.5 sleeves), the tank to be so situated and/or equipped that its water will meet all fire protection requirements of such District, and otherwise approved by such District prior to the issuance of a building permit, or a residential sprinkler system approved by said District prior to the issuance of a building permit;

(ii) roofs made of fire-resistive materials;

(iii) spark arrestors on all chimneys used for solid fuel burning; and

(iv) emergency locator devices to facilitate fire protection and rescue efforts.

4.19 *Dead Vegetation.* All dead vegetation or otherwise hazardous material within 100 feet of any Residence shall be removed. However, this provision, which is to facilitate fire protection, shall not require any Owner to remove live trees or landscaping vegetation.

4.20 *Common Utility Easements.* There is hereby created a blanket easement upon, across, over and under each Parcel for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewer, gas, telephone, electricity, television cable or communication lines and systems, as such utilities are installed in connection with the initial development of the Parcel and the construction of Residence or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the Parcels and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Parcels. Notwithstanding anything to the contrary contained in this subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Parcel except as initially programmed and approved by the Declarant or alternatively as approved by the Owner and the Board.

4.21 *Utility Service.* No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Board.

4.22. *Fuel Tanks.* Any tank approved by the Board for the storage of fuel installed outside any building in Specie Mesa Ranch shall either be buried below the surface of the ground or screened by fencing or shrubbery.

4.23 *Motor Vehicles, Trucks, Trailers, Campers and Boats.* No motor vehicle, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or



other similar equipment or vehicle which is inoperable may be parked, maintained, reconstructed or repaired on any Parcel except in an enclosed garage. Nor shall such vehicles be parked except temporarily so as to be visible from the Private Road.

4.24 *Helicopters.* Other than to land or depart, helicopters shall fly or hover a sufficient distance above the ground in order to prevent disturbing the wildlife in the area and the peace and quiet of the Members.

## 5. RESERVATION OF EASEMENTS: OWNERSHIP AND USE OF COMMON AREAS

5.1 *Declarant's Reservation of Easements.* Declarant reserves, for purposes incident to its development of Specie Mesa Ranch and for the purposes hereinafter stated the following easements and/or rights-of-way:

(i) For the construction, use and maintenance of Common Utility Facilities on, over and under those areas delineated as such and as the Private Road on the Survey;

(ii) For the construction, use and maintenance of the Private Road and for maintenance and permanent stabilization control of slopes on, over and under those areas delineated as such and as the Private Road on the Survey;

(iii) For the construction, use and maintenance of the Trail on, over and under those areas delineated as the Trail and as the Private Road on the Survey;

(iv) For the ingress and egress over the Private Road delineated as such on the Survey;

(v) For the construction, use and maintenance of the Park.

(vi) For the construction, use and maintenance of dams, reservoirs, irrigation ditches and/or pipes to collect, direct and redirect the surface water rights to Specie Mesa Ranch or to such Parcels as Declarant by agreement with the Owners or contract buyers thereof may elect from time to time, on, over and under the area delineated as the Private Road on the Survey and on, over and under such areas or Parcels as may be required or convenient to accomplish the foregoing.

5.2 *Use and Enjoyment of Common Areas.* The Private Road is a private street, the Park is a private recreation area and the Trail is a private trail, each on individual Parcels in the Specie Mesa Ranch. They and every other easement, facility and

amenity constituting a common area within the Specie Mesa Ranch is a private easement, facility or amenity. Neither Declarant's execution or recording of this or any similar instrument nor any other act of Declarant with respect to such filings is, or is intended to be, or shall be construed as a dedication to the public of any said Private Road, Trail, Park, easement, facility or amenity ("Common Areas").

An easement for the use of the Common Areas of the Specie Mesa Ranch (including, but without limitation, the Private Road, the Trail, the Common Utility Facilities, the Park) and of the easements and rights-of-way reserved by Declarant in subsection 5.3 is hereby reserved, granted and conveyed to the Association in order that the Association may exercise its rights and fulfill its obligations under this Declaration. An easement for the use and enjoyment of the Common Areas of the Specie Mesa Ranch (including, but without limitation, the Private Road, the Trail, the Common Utility Facilities, the Park) is hereby reserved, granted and conveyed to the persons who are, from time to time, Members of the Association, which easement shall pass with the title to every Parcel. Each Member may, subject to the Association Rules and this Declaration and to the limitations contained therein and herein use and enjoy the Common Areas for the purposes for which they are intended on a non-exclusive basis in common with the other Owners, and their guests and invitees, and delegate such right to use and enjoy the Common Areas to his guests and invitees.

5.3 *No Maintenance of Common Areas by Members.* Notwithstanding any other provision of this Declaration to the contrary, the Association shall have the sole right and duty to maintain and repair the Common Areas including, without limitation, the Private Road, the Trail, the Common Utility Facilities, and the Park, and no Member shall have any right or duty to maintain or repair any Common Area, whether the Common Area is located on such Member's Parcel or elsewhere in the Specie Mesa Ranch. The Association agrees to indemnify, defend and hold each Member harmless from and against any and all claim, liability, damage, cost or expense which may be incurred by or asserted against a Member as a result of any failure by the Association to comply with its obligation to maintain and repair the Common Areas as set forth herein, but only to the extent that such claim, liability, damage, cost or expense shall exceed the amount of insurance proceeds, if any, paid or payable to such Member in connection therewith. Nothing in this subsection 5.3 shall be construed to alter or amend any waiver of rights of subrogation as against the Association and each Member contemplated by the provisions of subsection 3.23 hereof.

## 6. MISCELLANEOUS

6.1 *Term.* This Declaration shall remain in full force and effect until December 31, 2039. It may thereafter be extended or modified or replaced by a new declaration upon the approval of two-thirds (2/3) of the Memberships.

6.2 *Interpretation of the Covenants.* Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the Covenants and provisions hereof.

6.3 *Severability.* Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

6.4 *Change of Circumstances.* Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

6.5 *Rules and Regulations.* In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's right, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

6.6 *Gender and Number.* Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders, words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

6.7 *Captions and Titles.* All captions, titles or headings of the Sections and subsections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

6.8 *Notices.* Any notice permitted or required to be given under this Declaration shall be in writing and may be given either personally or by mail or telephone. If served on a Member by mail, each notice shall be sent postage prepaid, addressed to such Member at the address given by such Member to the Association for the purpose of service of such notice and shall be deemed given, if not actually received earlier, at 5:00 P.M. on the second day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

6.9 *Violations of Law.* Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Specie Mesa Ranch is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 11<sup>th</sup> day of November, 1989.

DECLARANT:

Specie Mesa Ranch, a Colorado partnership.

By Richard P. Hefner  
General Partner

STATE OF Connecticut

COUNTY OF Fairfield

) ss. Greenwich

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of November, 1989, by Richard P. Hefner, General Partner of Specie Mesa Ranch, a Colorado partnership.

Witness my hand and official seal.

My commission expires:

Notary Public: Joan K. DERNHARD

JOAN K. DERNHARD  
NOTARY PUBLIC

MY COMMISSION EXPIRES MARCH 31, 1992

