AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Proposed Amendments to the Fox Meadows Subdivision Declaration of Protective Covenants

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement: Fox Meadows Subdivision & Gunnison County

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
Proposed Amendments to the Fox Meadows Subdivision Declaration of Protective Covenants

Fiscal Impact: ?

Submitted by: B. Lucero for C. Pagano **Submitter's Email Address:** cpagano@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:

Reviewed by: Bcowan Discharge Date: 6/8/2013

County Attorney Review: (●) Required ( ) Not Required

Comments:

ok db 6/10/13

Reviewed by: DBaumgarten Discharge Date: 6/10/2013 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reviewed by: MBirnie Discharge Date: 6/10/2013

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 5 minutes

Agenda Date: 6/18/2013 Follow Up Agenda Date: N/A

Revised April 2013

O'HAYRE, DAWSON & NORRIS, P.C.

ATTORNEYS AT LAW
WWW.GUCLAW.COM

DIRECT (970) 641-3326 EXT. 3
EMAIL: MDAWSON@GUCLAW.COM

MICHAEL C. DAWSON

120 N. TAYLOR STREET
P.O. BOX 179
GUNNISON, CO 81230
TELEPHONE (970) 641-3326
FACSIMILE (970) 641-3094

17228

May 29, 2013

David Baumgarten
Gunnison County Attorney
200 E. Virginia Avenue
Gunnison, Colorado 81230

Hand Delivered

Re: Fox Meadows Subdivision
Gunnison County Approval of Amendment to Declaration

Dear David:

Pursuant to Section 12.4, Required Approvals, of the Declaration of Protective Covenants of Fox Meadows Subdivision, recorded at Reception No. 550372 of the records of Gunnison County, Colorado, the approval of Gunnison County is required to amend the Declaration of Protective Covenants of Fox Meadows Subdivision.

We now have 71% approval from the lot owners (5 out of 7 lot owners) to amend the Declaration, addition the allowance for accessory buildings. Enclosed for your reference are copies of the following:

1. Declaration of Protective Covenants of Fox Meadows Subdivision recorded at Reception 550372;

2. A redline copy of the proposed changes to the Declaration of Protective Covenants of Fox Meadows Subdivision; and

3. Copies of the executed Consents from the Lot Owners.

Please schedule this matter for the next available County Commissioners Meeting. If you have any questions or need anything further, please let me know. Thank you in advance for your attention to this matter.

Very truly yours,

Michael C. Dawson

MCD:cp
Enclosures
cc: Neal Starkebaum (with copies)
Mike Darnell, Association President (w/o copies)

BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY
RESOLUTION NO. _____SERIES 2013

A RESOLUTION APPROVING THE AMENDMENT OF THE DECLARATION OF PROTECTIVE COVENANTS FOR FOX MEADOWS SUBDIVISION

WHEREAS, the Fox Meadows Homeowner's Association has submitted proposed amendments to the Fox Meadows Subdivision Declaration of Protective Covenants recorded in the office of the Gunnison County Clerk and Recorder at Reception No. 550372. 71% of the lot owners (5 out of 7 lot owners) have given consent to amend the Declaration of Protective Covenants. The proposed amendment allows for accessory buildings; and

WHEREAS, Gunnison County approved Fox Meadows Subdivision in Resolution No. 79, 2004 and Section 12.4 of the Declaration of Protective Covenants require that any changes or amendments to the covenants shall not be effective until approved by Gunnison County; and

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Gunnison County, Colorado, that the proposed amendments to the Declaration of Protective Covenants of Fox Meadows Subdivision are hereby approved.

THIS APPROVAL is affected noting that decision documentation includes, but is not limited to the application and the entire Community Development Department Land Use Change Permit application file relative to this application. This approval is founded on each individual finding and requirement. Should the applicant successfully challenge any such finding or requirement, this approval is null and void.

THIS RESOLUTION AND THE APPROVAL GRANTED HEREBY shall not be effective unless and until a copy is recorded in the Office of the Clerk and Recorder of Gunnison County.

INTRODUCED by Commissioner _____, seconded by Commissioner , and passed on this ___day of _____, 2013.

BOARD OF COUNTY COMMISSIONERS

_____	_____	_____
Paula Swenson, Chairperson	Phil Chamberland, Commissioner	Jonathan Houck, Commissioner

ATTEST:

Gunnison County Clerk and Recorder

CONSENT

LOT 1:
The undersigned, being the owner(s) of Lot 1, Fox Meadows Subdivision, according to the Plat filed with the Gunnison County Clerk and Recorder on January 26, 2005 at Reception No. 550373, consents to the foregoing Amended and Restated Declaration of Protective Covenants of Fox Meadows Subdivision.

D&S LAND HOLDINGS, LLC, a Colorado limited liability company

By: Michael Darnell
Michael Darnell, its MGR

STATE OF Colorado)
)ss.
COUNTY OF Gunnison)

The foregoing was acknowledged before me this 22nd day of April, 2013 by Michael Darnell the Manager of D& S Land Holdings, LLC.

Witness my hand and official seal.
My commission expires: 04/20/2017

JOANNA DAUTRICH
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID #20054015871
My Commission Expires April 20, 2017

Joanna Dautrich
Notary Public

CONSENT

LOT 2:
The undersigned, being the owner(s) of Lot 2, Fox Meadows Subdivision, according to the Plat filed with the Gunnison County Clerk and Recorder on January 26, 2005 at Reception No. 550373, consents to the foregoing Amended and Restated Declaration of Protective Covenants of Fox Meadows Subdivision.

James Kunes / Abby Kunes
James / Abby Kunes

STATE OF Colorado)
)ss.
COUNTY OF Gunnison)

The foregoing was acknowledged before me this 15 day of May, 2013 by James Kunes & Abby Kunes James / Abby Kunes.
Witness my hand and official seal.
My commission expires: 8-25-15

Darlene M Halazon
Notary Public

NOTARY PUBLIC
DARLENE M. HALAZON
STATE OF COLORADO

CONSENT

LOT 3:
The undersigned, being the owner(s) of Lot 3, Fox Meadows Subdivision, according to the Plat filed with the Gunnison County Clerk and Recorder on January 26, 2005 at Reception No. 550373, consents to the foregoing Amended and Restated Declaration of Protective Covenants of Fox Meadows Subdivision.

NORTHWEST METROPOLITAN UROLOGY ASSOCIATES, S.C. PROFIT SHARING PLAN AND TRUST, formed under the laws of Illinois.

By: _____
Gordon R. Gluckman, Trustee

STATE OF IL)
)ss.
COUNTY OF Cook)

The foregoing was acknowledged before me this 25th day of April, 2013 by Gordon R. Gluckman the Trustee of Northwest Urology Associates, S.C. Profit Sharing Plan and Trust.

Witness my hand and official seal.
My commission expires: March 11, 2015

Barbara Werderitch
Notary Public

OFFICIAL SEAL
BARBARA WERDERITCH
Notary Public - State of Illinois
My Commission Expires Mar 11, 2015

CONSENT

LOT 6:
The undersigned, being the owner(s) of Lot 6, Fox Meadows Subdivision, according to the Plat filed with the Gunnison County Clerk and Recorder on January 26, 2005 at Reception No. 550373, consents to the foregoing Amended and Restated Declaration of Protective Covenants of Fox Meadows Subdivision.

ROBERT W. SCHAUER LIVING TRUST 2003,
formed under the laws of Illinois

By: Robert W Schauer
ROBERT W. SCHAUER, Trustee

STATE OF Colorado)
)ss.
COUNTY OF Gunnison)

The foregoing was acknowledged before me this 24th day of April, 2013 by Robert W Schauer, Trustee of the Robert W. Schauer Living Trust 2003. .

Witness my hand and official seal.
My commission expires: 07/08/2016

Elizabeth Bates
Notary Public

NOTARY PUBLIC
ELIZABETH BATES
STATE OF COLORADO

My Commission Expires 07/08/2016

CONSENT

LOT 7:
The undersigned, being the owner(s) of Lot 7, Fox Meadows Subdivision, according to the Plat filed with the Gunnison County Clerk and Recorder on January 26, 2005 at Reception No. 550373, consents to the foregoing Amended and Restated Declaration of Protective Covenants of Fox Meadows Subdivision.

William S. or Sharon C. Crittendon

STATE OF Colorado)
)ss.
COUNTY OF Montrose)

The foregoing was acknowledged before me this 2ND day of MAY, 2013 by William S. or Sharon C. Crittendon.

Witness my hand and official seal.
My commission expires: Feb. 1, 2016

Rex Pierson
Notary Public

NOTARY PUBLIC
REX PIERSON
STATE OF COLORADO

550372
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DECLARATION OF PROTECTIVE COVENANTS

OF

FOX MEADOWS SUBDIVISION

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DECLARATION OF PROTECTIVE COVENANTS

OF

FOX MEADOWS SUBDIVISION

THIS DECLARATION AND AGREEMENT is executed the _____ day of _____, 2004, by BB & KW, LLC, a Colorado limited liability company, hereafter termed "Declarant."

ARTICLE 1
STATEMENT OF PURPOSE OF DECLARATION

Section 1.1 Ownership of Property. Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado, described as follows:

The Real Property, together with all improvements situate thereon, as set forth on attached Exhibit A,

Together with all water and water rights as set forth on attached Exhibit B.

Section 1.2 Declaration of Covenants. Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall affect the Property. This Declaration of Protective Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Lots, tracts or parcels thereof, their heirs, successors and assigns and their employees, guests and invitees and shall inure to and be for the benefit of each Owner of a Lot within the Property.

Section 1.3 Common Interest Community. Declarant further declares the Property to be a Common Interest Community in accordance with the Colorado Common Interest Ownership Act. The annual average common expense liability of each Lot, exclusive of optional user fees and any insurance premiums paid by the Association, as defined below, will not exceed $400.00 and pursuant to Colorado Revised Statutes Section 38-33.3-116, is therefore exempt from the provisions of the Colorado Common Interest Ownership Act, except only for Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107. If the annual average common expense liability of each Lot, exclusive of optional user fees and any insurance premiums paid by the Association, should ever exceed the statutory maximum amount for exemption from full conformance with the Colorado Common Interest Ownership Act, then the Association will fully conform with the provisions of the Colorado Common Interest Ownership Act.

Section 1.4 Statement of Purpose. This Declaration of Protective Covenants is imposed for the benefit of all Owners and future owners of Lots, tracts, and parcels located within the Property and to provide for the preservation of values of the

ii. A Stable or Barn Facility to be constructed by the Association in the area set forth in the Plat ("Barn/Stable Facility").

iii. Recreational uses as determined by the Association including community parks, walking, horseback riding, bicycling, and cross-country skiing.

iv. Roads, driveways and installation and maintenance of utilities.

v. Ditches and irrigation structures and the irrigation of the Recreational Open Space.

Section 2.9 "Common Interest Community" shall have the definition set forth in the Colorado Common Interest Ownership Act.

Section 2.10 "Declarant" shall mean BB & KW, LLC, their successors and assigns.

Section 2.11 "Declaration" or "Declaration of Protective Covenants" shall mean this Declaration of Protective Covenants of Fox Meadows Subdivision and as the same may be hereafter amended, modified or extended.

Section 2.12 "Design Guidelines" shall mean those guidelines, rules and regulations published from time to time by the Design Review Board.

Section 2.13 "Design Review Board" shall mean the Board of Directors of the Association.

Section 2.14 "Garage" shall mean an accessory portion of a Single-Family Residence designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Section 2.15 "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior color or shape, excavation, and all other site work including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior Improvement constructed or completed on the Property.

Section 2.16 "Landscaping" shall mean planted areas and plant materials, including trees, shrubs, lawns, flower beds and ground cover.

Section 2.17 "Lot" shall mean a tract, lot or parcel of land as set forth on the plat of Fox Meadows Subdivision.

Property and to preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property.

ARTICLE 2
DEFINITIONS

The following terms and words shall have the following definitions:

Section 2.1 "Assessments" shall mean regular monthly, quarterly or annual assessments, special assessments or default assessments levied pursuant to the Association Documents to provide the funds required to meet the obligations of the Association.

Section 2.2 "Association" shall mean the Fox Meadows Subdivision Homeowners Association, a Colorado nonprofit corporation, or any successor thereof charged with the duties and obligations set forth herein.

Section 2.3 "Association Documents" shall mean this Declaration of Protective Covenants, the Articles of Incorporation and Bylaws of the Association, any amendments thereto, and the Design Guidelines adopted by the Association, and any rules, regulations or policies adopted by the Association.

Section 2.4 "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association. The Board of Directors is also defined as an Executive Board by the Colorado Common Interest Ownership Act.

Section 2.5 "Building" shall mean any structure having a roof supported by columns or walls, or any similar type of Improvement situate and located within the Property.

Section 2.6 "Building Site" or "Building Envelope" shall mean the site, envelope or area within a Lot where the Building and other Improvements shall be located within a Lot and as set forth on the Plat of Fox Meadows Subdivision.

Section 2.7 "Colorado Common Interest Ownership Act" shall mean the "Colorado Common Interest Ownership Act of the State of Colorado and being Section 38-33.3-101, et seq., Colorado Revised Statutes."

Section 2.8 "Common Area" shall mean that property set forth in the Plat as dedicated to the Association for the common use and enjoyment of the members of the Association, and such other areas and interests acquired by the Association for the common use and enjoyment of the Members. The Common Area shall specifically be used for:

i. Agricultural and ranch purposes.

Section 2.18 "Maintenance Fund" shall mean the fund created by Assessments and fees levied pursuant to this Declaration to provide the Association with funds it requires to carry out its duties hereunder.

Section 2.19 "Member" shall mean any person holding membership in the Association.

Section 2.20 "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Lot or any interest therein as security for the payment of any indebtedness. "First Mortgage" shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.

Section 2.21 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot for value after this Declaration, the Owner shall mean the Declarant unless the Declarant has designated its successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.22 "Plat" shall mean the Plat of Fox Meadows Subdivision as filed in the records of Gunnison County, Colorado, which is subject to these Protective Covenants, and as the same may be amended, enlarged or revised from time to time and affecting the Property.

Section 2.23 "Property" shall mean and include all of the property subject to this Declaration.

Section 2.24 "Fox Meadows Subdivision" shall mean all of the Property as set forth on Exhibit A and Exhibit B and shall also mean all of the Property as may be platted or set forth on a plat filed in the records of Gunnison County, Colorado pertaining to Fox Meadows Subdivision.

Section 2.25 "Single-Family Residence" shall mean the primary residence on any Single-Family Lot designed for occupancy by the Owner of the Lot.

ARTICLE 3
USE OF FOX MEADOWS SUBDIVISION

Section 3.1 Building Site Use. The Building Site of each Lot shall be used for the construction, erection and maintenance of the Buildings situate upon a Lot as provided in Article 7 of this Declaration of Protective Covenants.

Section 3.2 Use of Lot. Each Lot shall be for the exclusive use of the Owner of the Lot, members of his family, his tenants and his guests. The Lot may be utilized for landscaping, the installation and maintenance of utilities, irrigation ditches and the water and sewer systems of Fox Meadows Subdivision.

Section 3.3 Water and Irrigation. All of the water and water rights as set forth on attached Exhibit B (the "Water Rights") are owned, controlled and administered by the Association. The Association shall have the further right to adopt such rules and regulations as may be reasonably necessary to own, administer and control the Water Rights.

Section 3.4 Wildlife. Wildlife, in its natural state within Fox Meadows Subdivision, will be encouraged. The usage of Fox Meadows Subdivision will be accomplished in a manner to encourage and protect wildlife, and no hunting, fishing, or taking of any wildlife shall be allowed except in accordance with all applicable laws, rules and regulations, this Declaration and the rules and regulations of Fox Meadows Subdivision.

Section 3.5 Partition of Lots. No Lot may be partitioned, subdivided nor, in any manner, divided into two or more tracts of land except as set forth in this Declaration.

Section 3.6 Combining of Lots. In the event that the same Owner owns two adjoining Lots and desires to change the location of the Building Envelopes for each Lot to reflect a single Building Envelope for the combined usage of both Lots, the Owner may do so subject to compliance with the following conditions:

3.6.1 By appropriate land covenant or other recorded document, the Owner commits, agrees and covenants that both Lots will be treated as a single Lot for the purpose of compliance with the Declaration of Protective Covenants and must thereafter remain in common ownership by the same Owner.

3.6.2 The Owner submits to and obtains recorded approval from the Design Review Board for a change of the Building Envelope.

3.6.3 If any Owner changes the location of a Building Envelope, in addition to approval from the Design Review Board, the change in the Building Envelope must be submitted to and approved by the Gunnison County Planning Department under such terms as it designates.

Section 3.7 Use of Common Area. The Common Area shall be used exclusively for:

3.7.1 Agricultural purposes.

3.7.1 A Barn/Stable Facility to be constructed by the Association in the building envelope set forth on the Plat.

3.7.1 Recreational uses as determined by the Association including community parks, walking, horseback riding, bicycling, and cross-country skiing.

3.7.1 Rights of way for the installation and maintenance of utilities.

3.7.1 Ditches and irrigation structures and the irrigation of the Common Area.

Section 3.8 Management of Grazing. The utilization of the Common Area or the Lots for the grazing of horses shall be governed by the following principles:

3.8.1 All grazing of horses on the Common Area shall be in accordance with the practices and recommendations of the Natural Resources Conservation Service, or another equivalent agency or service ("Service") and the Weed Management Plan attached as Exhibit C.

3.8.2 The Association and the Owners shall utilize cross-fencing, rotational grazing, partial day grazing and other appropriate pasture management techniques to maintain productive pasture.

3.8.3 The Association and any Owner of a horse shall maintain a stubble height of at least 4 inches on all pasturage.

ARTICLE 4
USE OF LOTS

Section 4.1 Residential Use. All Lots shall be used exclusively for residential purposes and shall be limited to one Single-Family Residence with an attached or detached Garage. No additional Buildings, Improvements, or usage shall be permitted except as authorized by this Declaration and the Design Guidelines.

Section 4.2 Building Site. The Single-Family Residence and Garage shall be situate within the designated Building Site of the Lot.

Section 4.3 Garage. One Garage attached to or detached from the Single-Family Residence may be constructed. All Garages shall, at a minimum by size, be a two car garage and sufficient in size to park and store all motor vehicles, recreational vehicles, all terrain vehicles, snowmobiles, boats and trailers located upon the Lot.

Section 4.4 Approval of Use. No Improvement shall be constructed on any Lot, except only as approved by the Design Review Board.

Section 4.5 Keeping of Horses. Owners shall be allowed to seasonally graze and keep no more than 2 horses they own on the Lot upon the following conditions:

4.5.1 Temporary fence shall be erected, such as electric fence or panels, to contain the horse within the Lot and to manage grazing, if a permanent fence has not been constructed.

4.5.2 The Lot shall not be over-grazed and the stubble height restrictions of paragraph 3.8 shall be maintained.

4.5.3 The feeding or keeping of horses through the non-irrigating months on a Lot shall not be allowed, and the horse(s) must either be boarded off-site or kept within the Barn/Stable Facility on the Common Area.

Section 4.6 No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Lot or within the Common Area or Barn/Stable Facility, including the boarding of horses by non-Owners; provided, however, that the Owner of a Lot may be permitted to conduct an in-home executive office or an in-home occupation, artistic or literary activity on a Lot upon the prior approval by the Design Review Board as to such occupation or activity. No such occupation or activity shall be approved by the Design Review Board which would create a visual, sound or traffic nuisance. Any such occupation or activity shall be subject to a reasonable limitation as to the number of persons and the number and type of motor vehicles involved in such occupation or activity. Certain in-home activities may require a Land Use Change Permit from Gunnison County.

ARTICLE 5
DESIGN REVIEW AND APPROVAL

Section 5.1 Board. The Board of Directors of the Association shall be the Design Review Board.

Section 5.2 Review and Approval. No Single-Family Residence, Garage, Building or Improvement shall be commenced, constructed, erected, maintained, altered or changed upon any Lot, nor shall any Landscaping or fencing be accomplished, nor shall any exterior addition, change or alteration be made, until the plans and specifications therefor have been submitted to and approved in writing by the Design Review Board in the manner hereafter set forth and contained in the Design Guidelines.

Section 5.3 Submission Requirements. Prior to the commencement of any such construction or the accomplishment of any items requiring the approval of the Design Review Board, an application, together with all plans and documents, for such Building, Improvement or item shall be submitted to the Design Review Board for approval. The submittal requirements and the method of review shall be as set forth in the Design Guidelines.

Section 5.4 Quorum. A majority of the Design Review Board shall constitute a quorum and all decisions of the Design Review Board shall be by a majority vote of the members of the Design Review Board present.

Section 5.5 Final Decision. The decision of the Design Review Board as to the final plan application shall be final, subject only to the right of judicial review as provided by the laws of the State of Colorado. The Board shall indicate to any applicant, in the event of disapproval of the final plan application, the reasons why the final plan application was rejected and grant to the applicant an opportunity to resubmit with the revisions and corrections that would bring the request for final plan approval into conformity with the requirements of this Declaration of Protective Covenants and the Design Guidelines.

Section 5.6 Rules and Regulations. This Design Review Board may adopt such rules and regulations as are appropriate to govern its proceedings as a Design Review Board.

Section 5.7 Design Review Fee. The Design Review Board shall adopt a schedule of fees to be charged for each application submitted to the Design Review Board for review and approval. Such fee shall be in an amount reasonably determined to cover the actual costs and fees of the Design Review Board in processing the application. Such fee shall be paid by the applicant on or before the date of hearing on the application.

Section 5.8 Limitation of Liability. The Design Review Board shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it for review and approval. Neither the Design Review Board, nor any individual member thereof, shall be liable to any person for any official act of the Design Review Board in connection with the submittal of any plans and specifications for approval, except only to the extent that the Design Review Board, or any individual member thereof, acted with malice or wrongful intent.

Section 5.9 Building Permit. In addition to the approval requirements by the Design Review Board, each Owner is responsible for obtaining all approvals, licenses and permits as may be required by Gunnison County, Colorado, and any entity or district having jurisdiction over the Lot prior to the commencement of construction.

Section 5.10 Variances. The Design Review Board may grant variances as to the design requirements contained in this Declaration of Protective Covenants and the Design Guidelines and the location of the Building Site under the following conditions:

5.10.1 An application for a variance shall be submitted in the same manner as is required for design review approval. If the requested variance is part of an application for approval of a Building or other structure, such request may be submitted as part of that application.

5.10.2 The location of the Building Site within any Lot may be changed or adjusted by variance based upon the following criteria:

5.10.2.1 Such variance is necessary and desirable to take advantage of terrain and site features for the construction of any Improvement and such change would not unreasonably detract from the Building Site, any other Lot or Fox Meadows Subdivision.

5.10.2.2 The application for such variance shall include a certificate from a Professional Engineer licensed to do business in the State of Colorado that it is an acceptable Building Site based upon geological and soil condition.

5.10.2.3 Any change in location of a Building Site from that shown on the Plat of Fox Meadows Subdivision shall be confirmed by an amended plat of the Lot for which such variance is requested. The plat shall be prepared by a licensed Colorado surveyor at the request of, and at the cost of, the Owner of the Lot, signed by the Owner and approved by the Design Review Board. Such amended plat of the Lot shall be filed in the records of Gunnison County, Colorado.

5.10.3 A variance of the design requirements of this Declaration or the Design Guidelines may be granted if such variance is reasonable, is in keeping with the overall design requirements of Fox Meadows Subdivision and does not unreasonably detract from the Building Site, any other Lot, or Fox Meadows Subdivision.

ARTICLE 6
DESIGN REQUIREMENTS

Section 6.1 Design Requirements. Any Single-Family Residence, Garage, Building or Improvement situate within Fox Meadows Subdivision shall comply with the design requirements of this Article.

Section 6.2 Building Site. Any Building or Improvement shall be constructed entirely within the designated Building Site for the Lot.

Section 6.3 Uniform Building Code. All Buildings and Improvements shall meet all of the requirements, including fire protection standards, of the Uniform Building Code and any other building code or fire code of Gunnison County, Colorado then in effect.

Section 6.4 Building Density. The following minimum and maximum building densities are established for all Buildings, excluding basements or that level of a structure constructed below the average ground level, lofts, decks, attics, enclosed walkways, and balconies.

Single Family Lot

Residence:	Minimum:	Not less than 2400 square feet of gross residential floor area.

Garage:	Minimum:	Not less than 625 square feet of gross floor area.
	Maximum:	Not more than 900 square feet of gross floor area.

Barn/Stable Facility

Stables:	Minimum:	Not less than 7 individual horse stalls.
	Maximum:	No more than 14 individual horse stalls.
Aggregate Square Feet:		The maximum gross floor area of the Stable/Barn Facility shall not exceed 15,000 square feet.

Section 6.5 Height. The maximum height of any Building shall be 30 feet. Chimneys, flag poles, and similar architectural features may extend above the height limit a distance of not more than 25% of the height of the Building. Height shall be measured in accordance with Section 5-403(1) of the Gunnison County Land Use Resolution, as amended.

Section 6.6 Design Guidelines. The Design Review Board shall adopt Design Guidelines which shall include all design requirements for the construction of any Single-Family Residence, Garage, or other Improvements within Fox Meadows Subdivision and the method of procedure and the plans and documentation that are required by an applicant to submit an application to the Design Review Board. Such Design Guidelines are in addition to the requirements of this Declaration, are supplemental thereto and are enforceable in the same manner and shall have the same force and effect as this Declaration. Such Design Guidelines may be altered, amended, revised, and changed from time to time as determined by the Design Review Board.

Section 6.7 Exterior Lighting. Outdoor lighting shall meet the standards set forth in Section 5-414 of the Gunnison County Land Use Resolution, as amended.

Section 6.8 Fireplaces. Each Single-Family Residence constructed on a Lot shall have no more than one approved solid fuel-burning devices. Any solid-fuel burning device shall be installed pursuant to the standards and specifications defined by the manufacturer of that device, or shall meet the clearances specified in the *Uniform Mechanical Code*, subject to inspection and approval by the Gunnison County Building Inspector and by the Gunnison Fire Protection District for compliance with the Gunnison County Land Use Resolution Section 5-407, as amended.

ARTICLE 7
CONSTRUCTION, USE AND MAINTENANCE REQUIREMENTS

Section 7.1 Excavation. No excavation shall be made on any Lot, except in connection with a Building approved in accordance with this Declaration of Protective Covenants.

Section 7.2 Electrical, Telephone and Utility Services. All electrical, telephone and utility services within any Lot shall be underground.

Section 7.3 Water Service. All Lots within Fox Meadows Subdivision shall be connected to and utilize the existing individual or shared water wells. Each Owner of a Lot shall be responsible for and shall be required to pay any costs of installation within such Owner's Lot, for the connection and use of such water well.

Section 7.4 Sewer Systems.

7.4.1 All Buildings designed for human occupancy shall initially be connected with individual sanitation facilities. All individual sewage disposal systems shall be constructed, installed and maintained in compliance with all applicable rules and regulations of any governmental entity having jurisdiction over the Property. All sewage disposal systems shall comply with the following:

7.4.1.1 Any sewage disposal system in Fox Meadows Subdivision shall be located as approved by the Design Review Board.

7.4.1.2 All sewage disposal systems must meet all applicable rules and regulations of Gunnison County, Colorado and the State of Colorado.

7.4.1.3 The Owner of the Lot upon which any individual sewage disposal system is located shall be responsible to at all times maintain and operate such system in accordance with the applicable rules and regulations of Gunnison County, Colorado and the State of Colorado. The Association shall have the responsibility and authority to at all times confirm that individual sewage disposal systems are being adequately maintained and operated.

7.4.2 At such time as the statutes, rules and regulations of the applicable governmental entities require that the Lots within Fox Meadows Subdivision connect to a Sanitation District capable of providing sewer service to Fox Meadows Subdivision, the Owners of all of the Lots within Fox Meadows Subdivision shall be compelled and required to connect any building designed for human occupancy to such collector sewer line upon the following conditions:

7.4.2.1 The Sanitation District is ready, willing and able to provide sewer service to Fox Meadows Subdivision and has a collector sewer line within 400 feet of Fox Meadows Subdivision.

7.4.2.2 The connection to such sewer line can be done in accordance with all applicable county, state and federal statutes, rules and regulations and pursuant to any permits, easements or rights of way required by law.

7.4.2.3 Each Owner of a Lot shall be responsible for and shall be required to pay any cost, including tap fees, user fees, and costs of installation within such Owner's Lot, for the connection and use of such sewer services to the extent such costs and fees do not exceed the same fees and costs charged by such Sanitation District to any user within the boundary lines of such Sanitation District plus an amount equal to the amount that the Owner of a Lot would be required to pay under the mill levy of such Sanitation District if the Lot were within the District boundaries of the Sanitation District. The Association shall have the power to assess and collect such fees and costs as against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

7.4.2.4 The Association shall be responsible and required to install any main or collector sewer line within Fox Meadows Subdivision and to the existing collector sewer line of the Sanitation District as may be required to provide sewer service connections to each Lot. The Association shall assess and collect such costs of installation and connection as an assessment against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

7.4.3 In addition to the foregoing, the Association shall have the power at any future time to require that all Lots within Fox Meadows Subdivision be connected to and be a part of any sewer system and/or water system whether owned or operated by the Association or owned and operated by any Special District or other governmental or legal entity, which is capable of providing sewer and/or water services to all Lots within Fox Meadows Subdivision. The Association shall assess and collect such costs to accomplish the same as an assessment against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

Section 7.5 Signs. No sign of any kind shall be displayed to public view on any portion of any Lot, except only a sign not to exceed four square feet identifying the Owner and/or address of the Lot, provided, however, that the Declarant, its successors and assigns may place a "For Sale" sign on any lot prior to its original conveyance.

Section 7.6 Drainage. No Owner shall do or permit any work, construct any Improvements or do any Landscaping which shall alter or interfere with the natural

drainage of the Property, except to the extent the same is approved by the Design Review Board and as authorized for any surface water discharge easement within the Property.

Section 7.7 Temporary Structures. No temporary structure, mobile home, modular home, trailer house, travel trailer or recreational vehicle shall be permitted on any Lot, except only as may be determined to be necessary during the period of construction of the Single Family Residence as specifically approved by the Design Review Board. Provided, however, a motor home, travel trailer or similar vehicle of any Owner or their guests shall be permitted on a Lot for a short term period of time, not to exceed 30 days in any one calendar year.

Section 7.8 Continuity of Construction. All construction, reconstruction, alterations or Improvements shall be prosecuted diligently to completion and shall be completed within twelve months of the commencement thereof, unless an exception is granted by the Design Review Board.

Section 7.9 Landscaping. The Lot and all Landscaping thereon shall be maintained in its natural condition to the extent possible. Lawns and artificial Landscaping shall be minimal and in no event shall an irrigated lawn and garden exceed 2,500 square feet in total area. Irrigation of any Landscaping shall be utilizing the water rights set forth in Exhibit B. No trees shall be cut or removed from any Lot except only (1) as required to permit ingress and egress to and from the Building Site, (2) to clear the actual construction site for any Single Family Residence or Garage, (3) to remove any diseased or dead trees, (4) to remove any tree that poses a danger to any Building, (5) limited tree cutting approved by the Board of Directors in the manner that will not be visible to any other Lot or as required for Wildfire Safety, and (6) as may be approved by the Design Review Board. All surface areas disturbed during construction shall be promptly re-vegetated in compliance with the Weed Management Plan attached as Exhibit C.

Section 7.10 Trash. No trash, ashes, garbage or other refuse shall be allowed to accumulate or placed on any Lot or area within the Property. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animals (including black bears) and other disturbance.

Section 7.11 Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles or motor vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any portion of a Lot. "abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three months or longer; provided, however, this shall not include vehicles parked by Owners while on vacation. Upon approval of the Design Review Board, an Owner may store a vehicle within a Garage which the Owner is remodeling or rebuilding for a period of longer than three months. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy-

two hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner.

Section 7.12 Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of persons and Improvements on any Lot, shall be placed or used on any Lot. No animals shall be kept or maintained on any Lot which create a nuisance by noise, including without limitation, barking dogs.

Section 7.13 Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its Owners or occupants; provided, however, that this Section shall not apply to any noise or other activity approved by the Design Review Board as to the construction of any Improvements.

Section 7.14 Hazardous Activities. No activities shall be allowed or conducted on the Property which are or might be unsafe or hazardous to any person or property. Such hazardous activities include, but are not limited to, fireworks, firearms, bow and arrows, explosives, air or pellet guns or any similar type devices. No outside open fires shall be permitted on any Lot unless contained within a cooking or barbecue type unit or grill.

Section 7.15 Recreational Tracks Prohibited. No tracks, courses or jumps may be constructed on any Lot for the use of bicycles, snowmobiles, motorcycles or any other mechanized recreational vehicles. The use of any such mechanized vehicles on a Lot shall be limited solely to ingress and egress.

Section 7.16 Roads and Streets. The Association, for and on behalf of the Owners of the Lots, shall be responsible for the proper maintenance of all private roads and drives, including the resurfacing, grading, drainage and snow removal thereof and including any construction after the initial construction by the Declarant or Kiowa Lane. The Association shall specifically:

7.16.1 In the event that any road is not paved, to provide dust control not less than once a year on any road following the commencement of construction of any Building on a Lot served by such road and at any time that the use of any road within the Property is the cause of dust pollution, to provide dust control in the form of the use of magnesium chloride, oil treatment, or other suitable dust retardant on the roads.

7.16.2 Have the power to grant to Gunnison County, Colorado, or public or private utility providers any additional easements or rights of way as may be required within the subdivision road or Common Area.

Section 7.17 Right to Ranch and Fence Out Requirements. All Lots within Fox Meadows Subdivision shall be used and maintained in recognition of the Right to Ranch Policy of Gunnison County, Section 6-103 of the 2001 Gunnison County Land Use Resolution, as amended, including Gunnison County and the State of Colorado requirements to maintain fences and fence out livestock.

ARTICLE 8
ANIMALS

Section 8.1 Dogs and Cats. The Owner of a Lot may keep and maintain no more than a maximum of 2 dogs and 2 cats within the Lot subject to the following conditions:

8.1.1 All dogs and cats shall be confined by kenneling, leashing, fencing or other physical constraint at all times. This restriction may be enforced by Gunnison County at the expense of the Owner.

8.1.2 The owner shall at all times be personally liable and responsible for all actions of any dog or cat and any damage caused by the dog or cat.

8.1.3 No dog may be left leashed or chained on a Lot for more than fifteen minutes at one time. Dogs left on a Lot for more than fifteen minutes must be confined by a fence or kennel.

8.1.4 No dog or cat shall create a nuisance nor noise problem within Fox Meadows Subdivision.

8.1.5 The owner of any dog or cat shall be personally responsible and liable for the cleanup of any excrement left by such dog or cat within Fox Meadows Subdivision.

Section 8.2 Horses. Each Owner shall be entitled to keep and maintain not to exceed two horses within its Lot on a seasonal basis or within the Common Area in accordance with the following restrictions:

8.2.1 Each Owner shall be entitled to board one horse in a horse stall within the Barn/Stable Facility within the Common Area. If space permits, each Owner shall be allowed to board one additional horse.

8.2.2 The Association shall establish a separate assessment and fee schedule for the use of the Common Area for horse grazing and Barn/Stable Facility for horse boarding. Owners boarding horses within the Common Area shall be charged a separate fee to cover their proportionate cost for the boarding and maintenance of horses of any Owner on the Common Area and in the Barn/Stable Facility.

8.2.3 The Association shall establish rules and regulations for the grazing and keeping of horses on the Common Area, including use of the Barn/Stable Facility and the providing of services at the Barn/Stable Facility.

Section 8.3 Other Animals and Pets. No other animals or pets may be kept or maintained by any Owner except upon the prior written permission of the Board of Directors, provided, however, that in no event may livestock be kept or maintained on any Lot. For purposes of this Section 8.3, livestock shall include, but not be limited to, cattle, llamas, goats, sheep and hogs.

Section 8.4 Rules and Regulations. The Board of Directors shall adopt suitable rules and regulations as to the keeping and maintaining of animals and pets within Fox Meadows Subdivision. The Board of Directors shall have the sole authority to determine that any such animal has created a noise, odor or nuisance problem within Fox Meadows Subdivision.

Section 8.5 Impoundment of Animals. The Association is specifically empowered to impound any animal running at large within the Property. The Owners shall be notified that any adjacent landowner engaging in agricultural operations has the right to destroy any dogs which are harassing livestock within that person's property. Upon impoundment, the owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility which accepts impounded animals. It is the duty of the owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the facility, any other Owner or the Association by the owner of such animal.

ARTICLE 9
FOX MEADOWS SUBDIVISION HOMEOWNERS ASSOCIATION

Section 9.1 Government of Association. Fox Meadows Subdivision Homeowners Association, a Colorado nonprofit corporation, shall be governed by and shall exercise all of the duties, privileges and obligations set forth in this Article, and the Articles of Incorporation and Bylaws of the Association.

Section 9.2 Members. Each Owner shall be a Member of the Association. No Owner, whether one or more persons or entities, shall have more than one membership per Lot owned by such Owner, but all persons owning each Lot shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Lot.

Section 9.3 Termination of Membership. The right of membership in the Association and the status as a Member shall terminate upon the termination of status as an Owner of a Lot. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for Assessments levied from and after the date of such sale or conveyance; provided, however, that no such sale or conveyance of any

ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

Section 9.4 Voting Rights. All Owners within the Fox Meadows Subdivision shall be Members of the Association. Each Lot shall be entitled to one vote in the Association. The one vote for each Lot shall be exercised by the Owner and when more than one person or entity holds an interest in a Lot, the vote for the Lot shall be exercised as the Owners may determine among themselves, but the vote for the Lot shall be cast by only one person.

Section 9.5 Compliance with Documents. Each Owner shall abide by and have the benefit from the provisions, covenants, conditions and restrictions contained in the Association Documents.

Section 9.6 Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as the "Fox Meadows Subdivision Rules and Regulations" governing, among other things, and without limitation:

9.6.1 The use and maintenance of all roads within Fox Meadows Subdivision.

9.6.2 The maintenance and keeping of animals within Fox Meadows Subdivision.

9.6.3 Standards for the care, maintenance, and use of all Lots and all Improvements, Buildings, grounds and Landscaping situate upon such Lots within Fox Meadows Subdivision.

9.6.4 Standards for the allocation and administration of irrigation water to the individual Lots within Fox Meadows Subdivision.

9.6.5 Standards for the use of the Common Area and Barn/Stable facility on the Common Area.

9.6.6 All matters delegated to the Association by this Declaration.

ARTICLE 10
MAINTENANCE ASSESSMENTS

Section 10.1 Creation of Lien. Each Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Association: (1) all Regular Assessments or charges; (2) any Special Assessments or charges; and (3) any Default Assessments or charges; all of which shall be fixed, established and collected as determined by the Association. The Regular, Special and Default Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such Assessment is made until paid. Each such Assessment, together with interest, costs and

reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due.

Section 10.2 Purpose of Assessments. The Assessments levied by the Association shall be limited to and used exclusively for the following:

10.2.1 The maintenance, repairs, snow removal and improvement of any private road or street within the Property.

10.2.2 Any maintenance, repair or improvement required to be made by any Owner to any Improvement on any Lot which the Owner fails to do.

10.2.3 Any costs and expenses pertaining to the operation of the Association in the performance of its duties.

10.2.4. Any purpose specifically provided for in this declaration.

10.2.5 Any other purpose approved by a majority vote of all Members of the Association.

Section 10.3 Regular Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and not less than thirty days prior to the commencement of each fiscal year, the Board shall adopt a final budget and shall determine, levy and assess the Association's Regular Assessments for the following year.

Section 10.4 Special Assessments. In addition to the Regular Assessments set forth in Section 10.3 above, the Board of Directors may levy, in any fiscal year, one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement within or upon any private roads or to make up any shortfall in the current year's budget. Notice of the amount and due dates for such Special Assessments shall be sent to each Owner at least thirty days prior to the due date.

Section 10.5 Assessment for Each Lot. All Regular and Special Assessments shall be apportioned and allocated equally among all Lots.

Section 10.6 Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner, shall be a Default Assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty days prior to the due date.

Section 10.7 Nonpayment of Assessments. Any Assessment, whether Regular, Special, or Default Assessment, which is not paid within thirty days of its due date

shall be deemed delinquent. In the event that any Assessment becomes delinquent, the Association, in its sole discretion, may take any or all the following actions:

10.7.1 Assess a late charge of not more than 10% of the amount due and owing per each delinquency.

10.7.2 Assess an interest rate charge from the date of delinquency at a rate four points above the base rate or prime rate charged by the Association's bank, or such other rate as shall be established by the Board of Directors.

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

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

10.7.5 File a Statement of Lien with respect to the Lot and foreclose such lien in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and Recorder of Gunnison County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent Assessments then owing, which Statement of Lien shall be signed and acknowledged by the President, Vice President or Secretary of the Association and which shall be sent by certified mail, postage prepaid, to the Owner of the Lot at the latest address the Association may have in its records as to the Owner. Thirty days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such Statement of Lien shall secure all Assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same have been satisfied and released, together with the Association's attorneys' fees and cost incurred in the preparation and recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such Assessment, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.

10.7.6 The Statement of Lien shall be superior to all other liens and encumbrances on such Lot, except only any tax and assessment liens levied by any government entity and the lien of any First Mortgage. Provided, however, at all times the lien of the Association shall have priority and status over any other lien or Mortgage as provided by the Colorado Common Interest Ownership Act, as it now exists and as it may hereafter be amended.

Section 10.8 Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot to pay all Assessments and the Association's lien on a Lot for such Assessments, all successors to the ownership of a Lot shall be jointly

and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses and attorneys' fees against such Lot.

ARTICLE 11
ENFORCEMENT OF COVENANTS

Section 11.1 Violations Deemed a Nuisance. Every violation of this Declaration of Protective Covenants, the Articles and Bylaws of the Association or any Rules and Regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 11.2 Failure to Comply. The failure to comply with this Declaration, the Design Guidelines, or any Rules and Regulations adopted by the Board of Directors or the Design Review Board shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them under the following terms and conditions:

11.2.1 Written notice of any violation or failure to comply with this Declaration, the Design Guidelines or any Rules and Regulations adopted by the Board of Directors or the Design Review Board shall first be given to any Member or person as to such violation or failure to comply.

11.2.2 Such Member or person shall be given 10 days from the date of such notice to correct such violation or failure to comply.

11.2.3 In the event that any Member or person believes that he or she is not in violation or failure to comply, he or she may request an opportunity for a hearing by the Board of Directors prior to the Association taking further action or commencing any legal proceeding against such Member or person.

11.2.4 Any action by the Association as against any such Member or person shall be by resolution of the Board of Directors following notice as above provided and granting to such Member or person an opportunity to be heard before the Board of Directors.

Section 11.3 Who May Enforce. Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

11.3.1 By the Association in name of the Association and on behalf of the Owners.

11.3.2 By the Owner of any Lot.

Section 11.4 No Waiver. The failure of the Board of Directors, the Association, an Owner or Gunnison County, Colorado to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

Section 11.5 Right of Gunnison County, Colorado. The Board of County Commissioners of Gunnison County, Colorado is specifically granted the right to enforce these Protective Covenants and to bring any action as may be required for the violation of these Protective Covenants. Gunnison County, Colorado may enforce this Declaration of Protective Covenants at its sole discretion, without assumption of any liability whether or not such enforcement is exercised, and without obligation to exercise such enforcement in any circumstance. The ability of Gunnison County, Colorado to enforce this Declaration is non-exclusive and does not preclude any other authorized party from enforcing the same.

ARTICLE 12
DURATION OF COVENANTS

Section 12.1 Term. The term of this Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2032. Thereafter, this Declaration of Protective Covenants shall be automatically renewed for successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 12.2 Amendment. This Declaration of Protective Covenants, or any provision thereof, may only be terminated, extended, modified or amended as to the Property subject to the Protective Covenants, or any portion thereof, upon the written consent by the Owners of 75% or more of the Lots in the Property. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots within the Property.

Section 12.3 Amendment by Declarant. Notwithstanding the provisions of Section 13.2, the Declarant reserves the sole right and power to modify and amend this Declaration of Protective Covenants, and all plats subject to this Declaration of Protective Covenants, by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in this Declaration of Protective Covenants and/or the plats, (2) any corrections required to comply with the applicable laws, rules and regulations of any governmental entity having jurisdiction over the Property, and (3) any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a Single Family Residence upon any Lot, which are not contrary to the terms of the agreement. This right and power of the Declarant to modify or amend this Declaration of Protective Covenants and the plats, in whole or in part, as set forth in this Section, shall be effective only until (1) five years after the date of construction of the first Improvements on the Property or (2) the date that 75% of all Lots within the Property have been sold or conveyed to third person owners by the Declarant, whichever occurs first. Provided, however, the Declarant may not amend or revise the location and dimensions of any Lot which has been conveyed by Declarant to another Owner, without the consent of such Owner.

Section 12.4 Required Approvals. No amendment or termination of the Protective Covenants which amends or changes any of the terms and conditions of these Protective Covenants shall be effective until such changes or amendments have been approved by Gunnison County, which approval shall not be unreasonably withheld.

ARTICLE 13
PRINCIPLES OF INTERPRETATION

Section 13.1 Severability. This Declaration of Protective Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration of Protective Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

Section 13.2 Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 13.3 Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration of Protective Covenants.

Section 13.4 Written Notice. All notices required under this Declaration of Protective Covenants shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt required, to the latest address of such Owner on file in the record of the Association at the time of such mailing.

Section 13.5 Limitation of Liability. Neither the Association nor any officer or director, shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under this Declaration of Protective Covenants if the action or failure to act was made in good faith. The Association shall indemnify all officers and directors with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association.

Section 13.6 Attorneys' Fees. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Declaration of Protective Covenants or any provision of the Association Documents provided herein, the prevailing party in any such action shall be awarded its reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

Section 13.7 Applicable Law. The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association Documents shall be the District Court of Gunnison County, Colorado, unless otherwise chosen by the

Association and shall be interpreted, construed and governed by the laws of the State of Colorado.

Section 13.8 Interest. Unless otherwise provided in this Declaration of Protective Covenants, any sums, amounts or monies due and owing to the Association under the Association Documents shall bear interest at 18% per year from the date due until paid.

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

BB & KW, LLC, a Colorado limited liability company

By: _____
Keith Wiggins, General Manager

STATE OF COLORADO)
) ss.
County of Gunnison)

The above and foregoing Declaration of Protective Covenants was acknowledged before me this 17th day of December, 2004, by Keith Wiggins as General Manager.

Witness my hand and official seal.
My commission expires: 7-7-08

NOTARY PUBLIC
KATHY E. SMITH
STATE OF COLORADO

_____
Notary Public

EXHIBIT A
(Property)
DECLARATION OF PROTECTIVE COVENANTS OF FOX MEADOWS SUBDIVISION

Township 50 North, Range 1 West, N.M.P.M.

Section 13: W1/2NW1/4NW1/4

Section 14: A tract of land located in the NE1/4NE1/4 of Section 14, more particularly described as follows:

Beginning at the Northeast corner (marked stone) of said Section 14; thence South 88°32'49" West along the North line of said Section 14 a distance of 999.25 feet to the easterly boundary of Chekwa Trail, a dedicated roadway according to the plat of Ohio Meadows Filing No. 3, a Gunnison County Subdivision filed under Reception No. 289612 and dated July 7, 1972; thence along the said easterly roadway boundary on a curve to the left a distance of 197.06 feet, said curve having a radius of 1170.0 feet and a chord which bears South 19°36'30" East 196.82 feet; thence on a curve to the right a distance of 211.10 feet, said curve having a radius of 1230.0 feet and a chord which bears South 19°31' East 210.84 feet; thence South 14°36' East 390.0 feet; thence on a curve to the right a distance of 570.02 feet to the South boundary of the said Northeast Quarter of the Northeast Quarter said curve having a radius of 3030.0 feet and a chord which bears South 9°12'38" East 569.18 feet; thence leaving the said easterly roadway boundary North 88°43'15" East along the above said South boundary 681.14 feet to the section line between said Sections 13 and 14; thence North 0°19'30" West along the above said section 1333.54 feet to the point of beginning,

County of Gunnison,
State of Colorado.

EXHIBIT B
(water rights)
DECLARATION OF PROTECTIVE COVENANTS OF FOX MEADOWS SUBDIVISION

A proportionate interest in the GLEASON IRRIGATING DITCH a/k/a Gleason Ditch, Ditch No. 100 with:

0.36 c.f.s. in Priority No. 83
1.14 c.f.s. in Priority No. 341

A proportionate interest in the HYZER-VIDAL-MILLER DITCH a/k/a Vidal Ditch and a/k/a Old Channel Ditch, Ditch No.4 with:

0.70 c.f.s. in Priority No. 276,

Water District 59,
Water Division 4,
County of Gunnison,
State of Colorado.

EXHIBIT C
(Weed Management Plan)
DECLARATION OF PROTECTIVE COVENANTS OF FOX MEADOWS SUBDIVISION

WEED MANAGEMENT PLAN

I. INTRODUCTION

Noxious weeds are non-native plant species which have been introduced into an environment with few, if any, natural biological controls, thus giving them a distinct competitive advantage in dominating and crowding out native plant species. They are aggressive, spread rapidly, possess a unique ability to reproduce profusely, and resist control. Noxious weeds, such as Canada thistle and white top, adversely impact Fox Meadows Subdivision by creating problems such as reducing aesthetic value, choking out native vegetation, invading landscaped areas, decreasing property value, and other concerns.

Soil disturbance such as roads, trails, and homesites are areas in which noxious weeds may become established. In non-residential areas noxious weeds also threaten valuable wildlife habitat and other natural resources.

II. PLAN GOAL

The goal of this plan is "TO PREVENT AND/OR CONTROL THE SPREAD OF NOXIOUS WEEDS IN FOX MEADOWS SUBDIVISION."

III. PLAN OBJECTIVES

1) Control and/or eradicate Canada thistle within Fox Meadows Subdivision.

2) Control and/or eradicate white top within Fox Meadows Subdivision.

3) To protect native vegetation within Fox Meadows Subdivision.

4) Prevent the invasion of State and/or County listed noxious weed species within Fox Meadows Subdivision.

IV. MANAGEMENT ACTIONS - INTEGRATED WEED MANAGEMENT (IWM)

This weed management plan encourages Integrated Weed Management (IWM). IWM is a strategy using a comprehensive, interdisciplinary approach to manage noxious weeds. The purpose of integrated weed management is to achieve healthy and productive natural and agricultural ecosystems through a balanced program. This program will include, but not be limited to, education, prevention measures, good stewardship and control methods.

A. IDENTIFICATION AND INVENTORY

An initial noxious weed inspection was done by the Gunnison County Weed Coordinator prior to development. Canada thistle, white top and other mustards can be found around the ditches, fencerows, and within the meadow. However, developers and property owners should continue to monitor the area for other noxious weed species that may become established due to development.

B. AWARENESS AND EDUCATION

Awareness of what noxious weeds are and the problems they cause will help the homeowners/developer(s) understand why a long-term noxious weed program is important to Fox Meadows Subdivision. Educational materials regarding noxious weeds are available at the Gunnison Basin Weed Commission Office, Mountain Meadow Research Center, 970-641-4393. The developer/owner and homeowners are strongly encouraged to utilize this source to educate themselves and increase their awareness of noxious weeds within Fox Meadows Subdivision.

Information regarding State and County weed laws and those weeds required to be controlled is available through the County Weed Coordinator.

C. PREVENTION

Prevention, early detection, and eradication of new noxious weed plants are the most effective means of noxious weed management. Prevention is best accomplished by ensuring that new weed species' seed or vegetative reproductive plant parts are not introduced into Whetstone Vista Subdivision. To do this, the following actions are recommended:

1) Revegetate disturbed areas such as: roadsides, pond banks, landscaped areas and trails with certified noxious weed free seed; 2) Hydromulch or certified noxious weed free forage should be used as mulch; and 3) Open space areas should also be managed for noxious weeds through good land stewardship (pasture/range management, riparian management, etc.).

D. CONTROL METHODS

A number of control methods are available to homeowners/ developer(s). The following control methods are standard components of an IWM program. While these methods may be used singularly, they are usually most effective when used in combination. The homeowners/developer(s) should utilize control method(s) that best meet their needs and the needs of the site to be treated while controlling the target specie(s). These methods include:

1. PHYSICAL CONTROL

Physical control intentionally disrupts the growth of weeds through cultivation, mowing, hand pulling, flooding, and burning. All of these measures, when used correctly, can be useful when used in conjunction with other control methods. This method of control is best suited for annuals and biennials.

2. CULTURAL CONTROL

Cultural control involves methods favoring desirable plant growth such as proper grazing, fertilization, irrigation, and seeding vigorously growing, competitive desirable plant species. Revegetation is necessary on all disturbed sites to reduce soil erosion and weed infestations.

3. BIOLOGICAL CONTROL

Biological control involves the release of beneficial organisms such as insects, fungi, rusts, pathogens, parasites, and diseases to diminish weed seed production, increase plant stress, and limit the expansion of underground parts of the plant's reproductive system. This control method is best suited for large infestations.

4. HERBICIDE CONTROL

Herbicide control involves the application of EPA-registered herbicides that are effective on target noxious weed species based on the best available scientific facts and current technology to reduce weed infestations. This method is a tool for perennials. The root must be killed to control and/or eradicate perennials.

While herbicides are a powerful tool, it must be realized that they are just that; and should be used only as part of an Integrated Weed Management Program (IWM).

Before applying herbicides,, homeowners and developer(s) are strongly encouraged to attend Private Pesticide Applicator training provided by the Gunnison Basin Weed Commission. This training combined with the careful use of herbicides according to the product label will help to ensure safe and proper use. Commercial applicators are also available for noxious weed control. Contact the Gunnison Basin Weed Commission for a list of these applicators.

Control methods are at the discretion of the homeowner/ developer(s), however, the method chosen should be appropriate for the noxious weed species being controlled and the area it is growing in. Fifteen County and seventeen State listed noxious weeds are mandated by law (C.R.S. 35-5.5, et. seq.) to be controlled. There are also two other categories of State listed noxious weeds.

The developers and homeowners should contact the County Weed Coordinator, Adena Green, for assistance in determining the appropriate management action for the noxious weeds present. Recommendations are sight specific and species specific.

V. RESPONSIBILITIES

Initially it is the responsibility of the developer to control noxious weeds within Fox Meadows Subdivision. The Homeowners Association will assume responsibility for controlling noxious weeds along subdivision roadways, and open space. Homeowners will be responsible for controlling noxious weeds on their property or in cooperation with the Homeowners Association.

The Gunnison County Weed Coordinator, Adena Green. will be available to assist the homeowners/developer(s) with weed identification, weed management strategies and to provide educational materials on noxious weeds. Colorado State University Cooperative Extension can also provide educational materials on noxious weeds.

VI. MONITORING/EVALUATION

An Integrated Weed Management Program should be evaluated each year to determine whether or not the program is successful in achieving the plan goal and objectives. This will allow developers and homeowners of Fox Meadows Subdivision to make appropriate changes to ensure the success of their weed management program.

Homeowners/developer(s) should monitor their perspective properties in order to detect new infestations and to determine the success or failure of treatments (management actions).

Because State and/or County listed weeds (Canada thistle, white top) were found on the property, this area will continue to be monitored by the Gunnison County Weed Coordinator until such time that these weeds have been controlled.

AMENDED AND RESTATED

DECLARATION OF PROTECTIVE COVENANTS

OF

FOX MEADOWS SUBDIVISION

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DECLARATION OF PROTECTIVE COVENANTS

OF

FOX MEADOWS SUBDIVISION

THIS DECLARATION AND AGREEMENT is executed the _____ day of _____, ~~2004, by BB & KW, LLC, a Colorado limited liability company, hereafter termed "Declarant~~2013.~~"~~

ARTICLE 1
STATEMENT OF PURPOSE OF DECLARATION

Section 1.1 Ownership of Property. Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado, described as follows:

The Real Property, together with all improvements situate thereon, as set forth on attached Exhibit A,

Together with all water and water rights as set forth on attached Exhibit B.

Section 1.2 Declaration of Covenants. Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall affect the Property. This Declaration of Protective Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Lots, tracts or parcels thereof, their heirs, successors and assigns and their employees, guests and invitees and shall inure to and be for the benefit of each Owner of a Lot within the Property.

Section 1.3 Common Interest Community. Declarant further declares the Property to be a Common Interest Community in accordance with the Colorado Common Interest Ownership Act. The annual average common expense liability of each Lot, exclusive of optional user fees and any insurance premiums paid by the Association, as defined below, will not exceed $400.00 and pursuant to Colorado Revised Statutes Section 38-33.3-116, is therefore exempt from the provisions of the Colorado Common Interest Ownership Act, except only for Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107. If the annual average common expense liability of each Lot, exclusive of optional user fees and any insurance premiums paid by the Association, should ever exceed the statutory maximum amount for exemption from full conformance with the Colorado Common Interest Ownership Act, then the Association will fully conform with the provisions of the Colorado Common Interest Ownership Act.

Section 1.4 Statement of Purpose. This Declaration of Protective Covenants is imposed for the benefit of all Owners and future owners of Lots, tracts, and parcels located within the Property and to provide for the preservation of values of the

Property and to preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property.

ARTICLE 2
DEFINITIONS

The following terms and words shall have the following definitions:

Section 2.1 "Accessory Building" shall mean a structure that is located on the same parcel as the primary structure, clearly incidental, secondary and subordinate to the primary structure on the parcel, devoted to the primary structure, customarily found in conjunction with the primary structure, not incompatible with the primary structure and subordinate in purpose to the primary structure, not to exceed 1,000 square feet in size.

Section 2.~~1~~2 "Assessments" shall mean regular monthly, quarterly or annual assessments, special assessments or default assessments levied pursuant to the Association Documents to provide the funds required to meet the obligations of the Association.

Section 2.~~2~~3 "Association" shall mean the Fox Meadows Subdivision Homeowners Association, a Colorado nonprofit corporation, or any successor thereof charged with the duties and obligations set forth herein.

Section 2.~~3~~4 "Association Documents" shall mean this Declaration of Protective Covenants, the Articles of Incorporation and Bylaws of the Association, any amendments thereto, and the Design Guidelines adopted by the Association, and any rules, regulations or policies adopted by the Association.

Section 2.~~4~~5 "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association. The Board of Directors is also defined as an Executive Board by the Colorado Common Interest Ownership Act.

Section 2.~~5~~6 "Building" shall mean any structure having a roof supported by columns or walls, or any similar type of Improvement situate and located within the Property.

Section 2.~~6~~7 "Building Site" or "Building Envelope" shall mean the site, envelope or area within a Lot where the Building and other Improvements shall be located within a Lot and as set forth on the Plat of Fox Meadows Subdivision.

Section 2.~~7~~8 "Colorado Common Interest Ownership Act" shall mean the "Colorado Common Interest Ownership Act of the State of Colorado and being Section 38-33.3-101, et seq., Colorado Revised Statutes."

Section 2.~~8~~9 "Common Area" shall mean that property set forth in the Plat as dedicated to the Association for the common use and enjoyment of the members of the Association, and such other areas and interests acquired by the Association for the common use and enjoyment of the Members. The Common Area shall specifically be used for:

i. Agricultural and ranch purposes.

ii. A Stable or Barn Facility to be constructed by the Association in the area set forth in the Plat ("Barn/Stable Facility").

iii. Recreational uses as determined by the Association including community parks, walking, horseback riding, bicycling, and cross-country skiing.

iv. Roads, driveways and installation and maintenance of utilities.

v. Ditches and irrigation structures and the irrigation of the Recreational Open Space.

Section 2.~~9~~10 "Common Interest Community" shall have the definition set forth in the Colorado Common Interest Ownership Act.

Section 2.1~~0~~1 "Declarant" shall mean BB & KW, LLC, their successors and assigns.

Section 2.1~~1~~2 "Declaration" or "Declaration of Protective Covenants" shall mean this Declaration of Protective Covenants of Fox Meadows Subdivision and as the same may be hereafter amended, modified or extended.

Section 2.1~~2~~3 "Design Guidelines" shall mean those guidelines, rules and regulations published from time to time by the Design Review Board.

Section 2.1~~3~~4 "Design Review Board" shall mean the Board of Directors of the Association.

Section 2.1~~4~~5 "Garage" shall mean an accessory portion of a Single-Family Residence designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Section 2.1~~5~~6 "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior color or shape, excavation, and all other site work including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior Improvement constructed or completed on the Property.

Section 2.167 "Landscaping" shall mean planted areas and plant materials, including trees, shrubs, lawns, flower beds and ground cover.

Section 2.178 "Lot" shall mean a tract, lot or parcel of land as set forth on the plat of Fox Meadows Subdivision.

Section 2.189 "Maintenance Fund" shall mean the fund created by Assessments and fees levied pursuant to this Declaration to provide the Association with funds it requires to carry out its duties hereunder.

Section 2.1920 "Member" shall mean any person holding membership in the Association.

Section 2.201 "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Lot or any interest therein as security for the payment of any indebtedness. "First Mortgage" shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.

Section 2.212 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot for value after this Declaration, the Owner shall mean the Declarant unless the Declarant has designated its successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Section 2.223 "Plat" shall mean the Plat of Fox Meadows Subdivision as filed in the records of Gunnison County, Colorado, which is subject to these Protective Covenants, and as the same may be amended, enlarged or revised from time to time and affecting the Property.

Section 2.234 "Property" shall mean and include all of the property subject to this Declaration.

Section 2.245 "Fox Meadows Subdivision" shall mean all of the Property as set forth on Exhibit A and Exhibit B and shall also mean all of the Property as may be platted or set forth on a plat filed in the records of Gunnison County, Colorado pertaining to Fox Meadows Subdivision.

Section 2.256 "Single-Family Residence" shall mean the primary residence on any Single-Family Lot designed for occupancy by the Owner of the Lot.

ARTICLE 3
USE OF FOX MEADOWS SUBDIVISION

Section 3.1 Building Site Use. The Building Site of each Lot shall be used for the construction, erection and maintenance of the Buildings situate upon a Lot as provided in Article 7 of this Declaration of Protective Covenants.

Section 3.2 Use of Lot. Each Lot shall be for the exclusive use of the Owner of the Lot, members of his family, his tenants and his guests. The Lot may be utilized for landscaping, the installation and maintenance of utilities, irrigation ditches and the water and sewer systems of Fox Meadows Subdivision.

Section 3.3 Water and Irrigation. All of the water and water rights as set forth on attached Exhibit B (the "Water Rights") are owned, controlled and administered by the Association. The Association shall have the further right to adopt such rules and regulations as may be reasonably necessary to own, administer and control the Water Rights.

Section 3.4 Wildlife. Wildlife, in its natural state within Fox Meadows Subdivision, will be encouraged. The usage of Fox Meadows Subdivision will be accomplished in a manner to encourage and protect wildlife, and no hunting, fishing, or taking of any wildlife shall be allowed except in accordance with all applicable laws, rules and regulations, this Declaration and the rules and regulations of Fox Meadows Subdivision.

Section 3.5 Partition of Lots. No Lot may be partitioned, subdivided nor, in any manner, divided into two or more tracts of land except as set forth in this Declaration.

Section 3.6 Combining of Lots. In the event that the same Owner owns two adjoining Lots and desires to change the location of the Building Envelopes for each Lot to reflect a single Building Envelope for the combined usage of both Lots, the Owner may do so subject to compliance with the following conditions:

3.6.1 By appropriate land covenant or other recorded document, the Owner commits, agrees and covenants that both Lots will be treated as a single Lot for the purpose of compliance with the Declaration of Protective Covenants and must thereafter remain in common ownership by the same Owner.

3.6.2 The Owner submits to and obtains recorded approval from the Design Review Board for a change of the Building Envelope.

3.6.3 If any Owner changes the location of a Building Envelope, in addition to approval from the Design Review Board, the change in the Building Envelope must be submitted to and approved by the Gunnison County Planning Department under such terms as it designates.

Section 3.7 Use of Common Area. The Common Area shall be used exclusively for:

3.7.1 Agricultural purposes.

3.7.1 A Barn/Stable Facility to be constructed by the Association in the building envelope set forth on the Plat.

3.7.1 Recreational uses as determined by the Association including community parks, walking, horseback riding, bicycling, and cross-country skiing.

3.7.1 Rights of way for the installation and maintenance of utilities.

3.7.1 Ditches and irrigation structures and the irrigation of the Common Area.

Section 3.8 Management of Grazing. The utilization of the Common Area or the Lots for the grazing of horses shall be governed by the following principles:

3.8.1 All grazing of horses on the Common Area shall be in accordance with the practices and recommendations of the Natural Resources Conservation Service, or another equivalent agency or service ("Service") and the Weed Management Plan attached as Exhibit C.

3.8.2 The Association and the Owners shall utilize cross-fencing, rotational grazing, partial day grazing and other appropriate pasture management techniques to maintain productive pasture.

3.8.3 The Association and any Owner of a horse shall maintain a stubble height of at least 4 inches on all pasturage.

ARTICLE 4
USE OF LOTS

Section 4.1 Residential Use. All Lots shall be used exclusively for residential purposes and shall be limited to one Single-Family Residence with an attached or detached Garage and one Accessory Building. No additional Buildings, Improvements, or usage shall be permitted except as authorized by this Declaration and the Design Guidelines.

Section 4.2 Building Site. The Single-Family Residence and Garage shall be situate within the designated Building Site of the Lot.

Section 4.3 Garage. One Garage attached to or detached from the Single-Family Residence may be constructed. All Garages shall, at a minimum by size, be a two car garage and sufficient in size to park and store all motor vehicles, recreational vehicles, all terrain vehicles, snowmobiles, boats and trailers located upon the Lot.

4.3.1 Accessory Buildings. One Accessory Building, as that term is defined herein, shall be allowed for each Lot, not to exceed 1,000 square feet and for the purpose of storing those items of personal property not allowed to be stored outdoors as per these Declarations, and/or as barn for horses.

Section 4.4 Approval of Use. No Improvement shall be constructed on any Lot, except only as approved by the Design Review Board.

Section 4.5 Keeping of Horses. Owners shall be allowed to seasonally graze and keep no more than 2 horses they own on the Lot upon the following conditions:

4.5.1 Temporary fence shall be erected, such as electric fence or panels, to contain the horse within the Lot and to manage grazing, if a permanent fence has not been constructed.

4.5.2 The Lot shall not be over-grazed and the stubble height restrictions of paragraph 3.8 shall be maintained.

4.5.3 The feeding or keeping of horses through the non-irrigating months on a Lot shall not be allowed, and the horse(s) must either be boarded off-site or kept within the Barn/Stable Facility on the Common Area.

Section 4.6 No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Lot or within the Common Area or Barn/Stable Facility, including the boarding of horses by non-Owners; provided, however, that the Owner of a Lot may be permitted to conduct an in-home executive office or an in-home occupation, artistic or literary activity on a Lot upon the prior approval by the Design Review Board as to such occupation or activity. No such occupation or activity shall be approved by the Design Review Board which would create a visual, sound or traffic nuisance. Any such occupation or activity shall be subject to a reasonable limitation as to the number of persons and the number and type of motor vehicles involved in such occupation or activity. Certain in-home activities may require a Land Use Change Permit from Gunnison County.

ARTICLE 5
DESIGN REVIEW AND APPROVAL

Section 5.1 Board. The Board of Directors of the Association shall be the Design Review Board.

Section 5.2 Review and Approval. No Single-Family Residence, Garage, Building or Improvement shall be commenced, constructed, erected, maintained, altered or changed upon any Lot, nor shall any Landscaping or fencing be accomplished, nor shall any exterior addition, change or alteration be made, until the plans and specifications therefor have been submitted to and approved in writing by the Design Review Board in the manner hereafter set forth and contained in the Design Guidelines.

Section 5.3 Submission Requirements. Prior to the commencement of any such construction or the accomplishment of any items requiring the approval of the Design Review Board, an application, together with all plans and documents, for such Building, Improvement or item shall be submitted to the Design Review Board for approval. The submittal requirements and the method of review shall be as set forth in the Design Guidelines.

Section 5.4 Quorum. A majority of the Design Review Board shall constitute a quorum and all decisions of the Design Review Board shall be by a majority vote of the members of the Design Review Board present.

Section 5.5 Final Decision. The decision of the Design Review Board as to the final plan application shall be final, subject only to the right of judicial review as provided by the laws of the State of Colorado. The Board shall indicate to any applicant, in the event of disapproval of the final plan application, the reasons why the final plan application was rejected and grant to the applicant an opportunity to resubmit with the revisions and corrections that would bring the request for final plan approval into conformity with the requirements of this Declaration of Protective Covenants and the Design Guidelines.

Section 5.6 Rules and Regulations. This Design Review Board may adopt such rules and regulations as are appropriate to govern its proceedings as a Design Review Board.

Section 5.7 Design Review Fee. The Design Review Board shall adopt a schedule of fees to be charged for each application submitted to the Design Review Board for review and approval. Such fee shall be in an amount reasonably determined to cover the actual costs and fees of the Design Review Board in processing the application. Such fee shall be paid by the applicant on or before the date of hearing on the application.

Section 5.8 Limitation of Liability. The Design Review Board shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it for review and approval. Neither the Design Review Board, nor any individual member thereof, shall be liable to any person for any official act of the Design Review Board in connection with the submittal of any plans and specifications for approval, except only to

the extent that the Design Review Board, or any individual member thereof, acted with malice or wrongful intent.

Section 5.9 Building Permit. In addition to the approval requirements by the Design Review Board, each Owner is responsible for obtaining all approvals, licenses and permits as may be required by Gunnison County, Colorado, and any entity or district having jurisdiction over the Lot prior to the commencement of construction.

Section 5.10 Variances. The Design Review Board may grant variances as to the design requirements contained in this Declaration of Protective Covenants and the Design Guidelines and the location of the Building Site under the following conditions:

5.10.1 An application for a variance shall be submitted in the same manner as is required for design review approval. If the requested variance is part of an application for approval of a Building or other structure, such request may be submitted as part of that application.

5.10.2 The location of the Building Site within any Lot may be changed or adjusted by variance based upon the following criteria:

5.10.2.1 Such variance is necessary and desirable to take advantage of terrain and site features for the construction of any Improvement and such change would not unreasonably detract from the Building Site, any other Lot or Fox Meadows Subdivision.

5.10.2.2 The application for such variance shall include a certificate from a Professional Engineer licensed to do business in the State of Colorado that it is an acceptable Building Site based upon geological and soil condition.

5.10.2.3 Any change in location of a Building Site from that shown on the Plat of Fox Meadows Subdivision shall be confirmed by an amended plat of the Lot for which such variance is requested. The plat shall be prepared by a licensed Colorado surveyor at the request of, and at the cost of, the Owner of the Lot, signed by the Owner and approved by the Design Review Board. Such amended plat of the Lot shall be filed in the records of Gunnison County, Colorado.

5.10.3 A variance of the design requirements of this Declaration or the Design Guidelines may be granted if such variance is reasonable, is in keeping with the overall design requirements of Fox Meadows Subdivision and does not unreasonably detract from the Building Site, any other Lot, or Fox Meadows Subdivision.

ARTICLE 6
DESIGN REQUIREMENTS

Section 6.1 Design Requirements. Any Single-Family Residence, Garage, Building or Improvement situate within Fox Meadows Subdivision shall comply with the design requirements of this Article.

Section 6.2 Building Site. Any Building or Improvement shall be constructed entirely within the designated Building Site for the Lot.

Section 6.3 Uniform Building Code. All Buildings and Improvements shall meet all of the requirements, including fire protection standards, of the Uniform Building Code and any other building code or fire code of Gunnison County, Colorado then in effect.

Section 6.4 Building Density. The following minimum and maximum building densities are established for all Buildings, excluding basements or that level of a structure constructed below the average ground level, lofts, decks, attics, enclosed walkways, and balconies.

Single Family Lot

Residence:	Minimum:	Not less than ~~2400~~1800 square feet of gross residential floor area.
Garage:	Minimum:	Not less than 625 square feet of gross floor area.
	Maximum:	Not more than 900 square feet of gross floor area.

Barn/Stable Facility

Stables:	Minimum:	Not less than 7 individual horse stalls.
	Maximum:	No more than 14 individual horse stalls.
Aggregate Square Feet:	The maximum gross floor area of the Stable/Barn Facility shall not exceed 15,000 square feet.	

Section 6.5 Height. The maximum height of any Building shall be 30 feet. Chimneys, flag poles, and similar architectural features may extend above the height limit a distance of not more than 25% of the height of the Building. Height shall be measured in accordance with Section 5-403(1) of the Gunnison County Land Use Resolution, as amended.

Section 6.6 Design Guidelines. The Design Review Board shall adopt Design Guidelines which shall include all design requirements for the construction of any Single-Family Residence, Garage, or other Improvements within Fox Meadows Subdivision and the method of procedure and the plans and documentation that are required by an applicant to submit an application to the Design Review Board. Such Design Guidelines are in addition to the requirements of this Declaration, are supplemental thereto and are enforceable in the same manner and shall have the same force and effect as this Declaration. Such Design Guidelines may be altered, amended, revised, and changed from time to time as determined by the Design Review Board.

Section 6.7 Exterior Lighting. Outdoor lighting shall meet the standards set forth in Section 5-414 of the Gunnison County Land Use Resolution, as amended.

Section 6.8 Fireplaces. Each Single-Family Residence constructed on a Lot shall have no more than one approved solid fuel-burning devices. Any solid-fuel burning device shall be installed pursuant to the standards and specifications defined by the manufacturer of that device, or shall meet the clearances specified in the *Uniform Mechanical Code*, subject to inspection and approval by the Gunnison County Building Inspector and by the Gunnison Fire Protection District for compliance with the Gunnison County Land Use Resolution Section 5-407, as amended.

ARTICLE 7
CONSTRUCTION, USE AND MAINTENANCE REQUIREMENTS

Section 7.1 Excavation. No excavation shall be made on any Lot, except in connection with a Building approved in accordance with this Declaration of Protective Covenants.

Section 7.2 Electrical, Telephone and Utility Services. All electrical, telephone and utility services within any Lot shall be underground.

Section 7.3 Water Service. All Lots within Fox Meadows Subdivision shall be connected to and utilize the existing individual or shared water wells. Each Owner of a Lot shall be responsible for and shall be required to pay any costs of installation within such Owner's Lot, for the connection and use of such water well.

Section 7.4 Sewer Systems.

7.4.1 All Buildings designed for human occupancy shall initially be connected with individual sanitation facilities. All individual sewage disposal systems shall be constructed, installed and maintained in compliance with all applicable rules and regulations of any governmental entity having jurisdiction over the Property. All sewage disposal systems shall comply with the following:

7.4.1.1 Any sewage disposal system in Fox Meadows Subdivision shall be located as approved by the Design Review Board.

7.4.1.2 All sewage disposal systems must meet all applicable rules and regulations of Gunnison County, Colorado and the State of Colorado.

7.4.1.3 The Owner of the Lot upon which any individual sewage disposal system is located shall be responsible to at all times maintain and operate such system in accordance with the applicable rules and regulations of Gunnison County, Colorado and the State of Colorado. The Association shall have the responsibility and authority to at all times confirm that individual sewage disposal systems are being adequately maintained and operated.

7.4.2 At such time as the statutes, rules and regulations of the applicable governmental entities require that the Lots within Fox Meadows Subdivision connect to a Sanitation District capable of providing sewer service to Fox Meadows Subdivision, the Owners of all of the Lots within Fox Meadows Subdivision shall be compelled and required to connect any building designed for human occupancy to such collector sewer line upon the following conditions:

7.4.2.1 The Sanitation District is ready, willing and able to provide sewer service to Fox Meadows Subdivision and has a collector sewer line within 400 feet of Fox Meadows Subdivision.

7.4.2.2 The connection to such sewer line can be done in accordance with all applicable county, state and federal statutes, rules and regulations and pursuant to any permits, easements or rights of way required by law.

7.4.2.3 Each Owner of a Lot shall be responsible for and shall be required to pay any cost, including tap fees, user fees, and costs of installation within such Owner's Lot, for the connection and use of such sewer services to the extent such costs and fees do not exceed the same fees and costs charged by such Sanitation District to any user within the boundary lines of such Sanitation District plus an amount equal to the amount that the Owner of a Lot would be required to pay under the mill levy of such Sanitation District if the Lot were within the District boundaries of the Sanitation District. The Association shall have the power to assess and collect such fees and costs as against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

7.4.2.4 The Association shall be responsible and required to install any main or collector sewer line within Fox Meadows Subdivision and to the existing collector sewer line of the Sanitation District as may be required to provide sewer service connections to each Lot. The Association shall assess and collect such costs of installation and connection as an

assessment against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

7.4.3 In addition to the foregoing, the Association shall have the power at any future time to require that all Lots within Fox Meadows Subdivision be connected to and be a part of any sewer system and/or water system whether owned or operated by the Association or owned and operated by any Special District or other governmental or legal entity, which is capable of providing sewer and/or water services to all Lots within Fox Meadows Subdivision. The Association shall assess and collect such costs to accomplish the same as an assessment against the Owners of the Lots in the same manner as is provided for other assessments of the Association.

Section 7.5 Signs. No sign of any kind shall be displayed to public view on any portion of any Lot, except only a sign not to exceed four square feet identifying the Owner and/or address of the Lot, provided, however, that the Declarant, its successors and assigns may place a "For Sale" sign on any lot prior to its original conveyance.

Section 7.6 Drainage. No Owner shall do or permit any work, construct any Improvements or do any Landscaping which shall alter or interfere with the natural drainage of the Property, except to the extent the same is approved by the Design Review Board and as authorized for any surface water discharge easement within the Property.

Section 7.7 Temporary Structures. No temporary structure, mobile home, modular home, trailer house, travel trailer or recreational vehicle shall be permitted on any Lot, except only as may be determined to be necessary during the period of construction of the Single Family Residence as specifically approved by the Design Review Board. Provided, however, a motor home, travel trailer or similar vehicle of any Owner or their guests shall be permitted on a Lot for a short term period of time, not to exceed 30 days in any one calendar year.

Section 7.8 Continuity of Construction. All construction, reconstruction, alterations or Improvements shall be prosecuted diligently to completion and shall be completed within twelve months of the commencement thereof, unless an exception is granted by the Design Review Board.

Section 7.9 Landscaping. The Lot and all Landscaping thereon shall be maintained in its natural condition to the extent possible. Lawns and artificial Landscaping shall be minimal and in no event shall an irrigated lawn and garden exceed 2,500 square feet in total area. Irrigation of any Landscaping shall be utilizing the water rights set forth in Exhibit B. No trees shall be cut or removed from any Lot except only (1) as required to permit ingress and egress to and from the Building Site, (2) to clear the actual construction site for any Single Family Residence or Garage, (3) to remove any diseased or dead trees, (4) to remove any tree that poses a danger to any Building, (5) limited tree cutting approved by the Board of Directors in the manner that will not be visible to any other Lot or as required for Wildfire Safety, and (6) as may be approved by the Design Review Board.

All surface areas disturbed during construction shall be promptly re-vegetated in compliance with the Weed Management Plan attached as Exhibit C.

Section 7.10 Trash. No trash, ashes, garbage or other refuse shall be allowed to accumulate or placed on any Lot or area within the Property. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animals (including black bears) and other disturbance.

Section 7.11 Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles or motor vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any portion of a Lot. "abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three months or longer; provided, however, this shall not include vehicles parked by Owners while on vacation. Upon approval of the Design Review Board, an Owner may store a vehicle within a Garage which the Owner is remodeling or rebuilding for a period of longer than three months. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy-two hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner.

Section 7.12 Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of persons and Improvements on any Lot, shall be placed or used on any Lot. No animals shall be kept or maintained on any Lot which create a nuisance by noise, including without limitation, barking dogs.

Section 7.13 Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its Owners or occupants; provided, however, that this Section shall not apply to any noise or other activity approved by the Design Review Board as to the construction of any Improvements.

Section 7.14 Hazardous Activities. No activities shall be allowed or conducted on the Property which are or might be unsafe or hazardous to any person or property. Such hazardous activities include, but are not limited to, fireworks, firearms, bow and arrows, explosives, air or pellet guns or any similar type devices. No outside open fires shall be permitted on any Lot unless contained within a cooking or barbecue type unit or grill.

Section 7.15 Recreational Tracks Prohibited. No tracks, courses or jumps may be constructed on any Lot for the use of bicycles, snowmobiles, motorcycles or any

other mechanized recreational vehicles. The use of any such mechanized vehicles on a Lot shall be limited solely to ingress and egress.

Section 7.16 Roads and Streets. The Association, for and on behalf of the Owners of the Lots, shall be responsible for the proper maintenance of all private roads and drives, including the resurfacing, grading, drainage and snow removal thereof and including any construction after the initial construction by the Declarant or Kiowa Lane. The Association shall specifically:

7.16.1 In the event that any road is not paved, to provide dust control not less than once a year on any road following the commencement of construction of any Building on a Lot served by such road and at any time that the use of any road within the Property is the cause of dust pollution, to provide dust control in the form of the use of magnesium chloride, oil treatment, or other suitable dust retardant on the roads.

7.16.2 Have the power to grant to Gunnison County, Colorado, or public or private utility providers any additional easements or rights of way as may be required within the subdivision road or Common Area.

Section 7.17 Right to Ranch and Fence Out Requirements. All Lots within Fox Meadows Subdivision shall be used and maintained in recognition of the Right to Ranch Policy of Gunnison County, Section 6-103 of the 2001 Gunnison County Land Use Resolution, as amended, including Gunnison County and the State of Colorado requirements to maintain fences and fence out livestock.

ARTICLE 8
ANIMALS

Section 8.1 Dogs and Cats. The Owner of a Lot may keep and maintain no more than a maximum of 2 dogs and 2 cats within the Lot subject to the following conditions:

8.1.1 All dogs and cats shall be confined by kenneling, leashing, fencing or other physical constraint at all times. This restriction may be enforced by Gunnison County at the expense of the Owner.

8.1.2 The owner shall at all times be personally liable and responsible for all actions of any dog or cat and any damage caused by the dog or cat.

8.1.3 No dog may be left leashed or chained on a Lot for more than fifteen minutes at one time. Dogs left on a Lot for more than fifteen minutes must be confined by a fence or kennel.

8.1.4 No dog or cat shall create a nuisance nor noise problem within Fox Meadows Subdivision.

8.1.5 The owner of any dog or cat shall be personally responsible and liable for the cleanup of any excrement left by such dog or cat within Fox Meadows Subdivision.

Section 8.2 Horses. Each Owner shall be entitled to keep and maintain not to exceed two horses within its Lot on a seasonal basis or within the Common Area in accordance with the following restrictions:

8.2.1 Each Owner shall be entitled to board one horse in a horse stall within the Barn/Stable Facility within the Common Area. If space permits, each Owner shall be allowed to board one additional horse.

8.2.2 The Association shall establish a separate assessment and fee schedule for the use of the Common Area for horse grazing and Barn/Stable Facility for horse boarding. Owners boarding horses within the Common Area shall be charged a separate fee to cover their proportionate cost for the boarding and maintenance of horses of any Owner on the Common Area and in the Barn/Stable Facility.

8.2.3 The Association shall establish rules and regulations for the grazing and keeping of horses on the Common Area, including use of the Barn/Stable Facility and the providing of services at the Barn/Stable Facility.

Section 8.3 Other Animals and Pets. No other animals or pets may be kept or maintained by any Owner except upon the prior written permission of the Board of Directors, provided, however, that in no event may livestock be kept or maintained on any Lot. For purposes of this Section 8.3, livestock shall include, but not be limited to, cattle, llamas, goats, sheep and hogs.

Section 8.4 Rules and Regulations. The Board of Directors shall adopt suitable rules and regulations as to the keeping and maintaining of animals and pets within Fox Meadows Subdivision. The Board of Directors shall have the sole authority to determine that any such animal has created a noise, odor or nuisance problem within Fox Meadows Subdivision.

Section 8.5 Impoundment of Animals. The Association is specifically empowered to impound any animal running at large within the Property. The Owners shall be notified that any adjacent landowner engaging in agricultural operations has the right to destroy any dogs which are harassing livestock within that person's property. Upon impoundment, the owner of the animal, if known, shall be immediately notified and the animal taken to the nearest facility which accepts impounded animals. It is the duty of the owner of such animal to recover the animal from such facility and to pay all costs and fees incurred in the impoundment of the animal. If the animal is not recovered by the owner in accordance with the rules and regulations of the impoundment facility, the facility may destroy the animal without liability to the facility, any other Owner or the Association by the owner of such animal.

ARTICLE 9
FOX MEADOWS SUBDIVISION HOMEOWNERS ASSOCIATION

Section 9.1 Government of Association. Fox Meadows Subdivision Homeowners Association, a Colorado nonprofit corporation, shall be governed by and shall exercise all of the duties, privileges and obligations set forth in this Article, and the Articles of Incorporation and Bylaws of the Association.

Section 9.2 Members. Each Owner shall be a Member of the Association. No Owner, whether one or more persons or entities, shall have more than one membership per Lot owned by such Owner, but all persons owning each Lot shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Lot.

Section 9.3 Termination of Membership. The right of membership in the Association and the status as a Member shall terminate upon the termination of status as an Owner of a Lot. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for Assessments levied from and after the date of such sale or conveyance; provided, however, that no such sale or conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

Section 9.4 Voting Rights. All Owners within the Fox Meadows Subdivision shall be Members of the Association. Each Lot shall be entitled to one vote in the Association. The one vote for each Lot shall be exercised by the Owner and when more than one person or entity holds an interest in a Lot, the vote for the Lot shall be exercised as the Owners may determine among themselves, but the vote for the Lot shall be cast by only one person.

Section 9.5 Compliance with Documents. Each Owner shall abide by and have the benefit from the provisions, covenants, conditions and restrictions contained in the Association Documents.

Section 9.6 Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as the "Fox Meadows Subdivision Rules and Regulations" governing, among other things, and without limitation:

9.6.1 The use and maintenance of all roads within Fox Meadows Subdivision.

9.6.2 The maintenance and keeping of animals within Fox Meadows Subdivision.

9.6.3 Standards for the care, maintenance, and use of all Lots and all Improvements, Buildings, grounds and Landscaping situate upon such Lots within Fox Meadows Subdivision.

9.6.4 Standards for the allocation and administration of irrigation water to the individual Lots within Fox Meadows Subdivision.

9.6.5 Standards for the use of the Common Area and Barn/Stable facility on the Common Area.

9.6.6 All matters delegated to the Association by this Declaration.

ARTICLE 10
MAINTENANCE ASSESSMENTS

Section 10.1 Creation of Lien. Each Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Association: (1) all Regular Assessments or charges; (2) any Special Assessments or charges; and (3) any Default Assessments or charges; all of which shall be fixed, established and collected as determined by the Association. The Regular, Special and Default Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such Assessment is made until paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment became due.

Section 10.2 Purpose of Assessments. The Assessments levied by the Association shall be limited to and used exclusively for the following:

10.2.1 The maintenance, repairs, snow removal and improvement of any private road or street within the Property.

10.2.2 Any maintenance, repair or improvement required to be made by any Owner to any Improvement on any Lot which the Owner fails to do.

10.2.3 Any costs and expenses pertaining to the operation of the Association in the performance of its duties.

10.2.4. Any purpose specifically provided for in this declaration.

10.2.5 Any other purpose approved by a majority vote of all Members of the Association.

Section 10.3 Regular Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and not less than thirty days prior to the commencement of each fiscal year, the Board shall adopt a final budget and shall determine, levy and assess the Association's Regular Assessments for the following year.

Section 10.4 Special Assessments. In addition to the Regular Assessments set forth in Section 10.3 above, the Board of Directors may levy, in any fiscal year, one or

more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement within or upon any private roads or to make up any shortfall in the current year's budget. Notice of the amount and due dates for such Special Assessments shall be sent to each Owner at least thirty days prior to the due date.

Section 10.5 Assessment for Each Lot. All Regular and Special Assessments shall be apportioned and allocated equally among all Lots.

Section 10.6 Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner, shall be a Default Assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty days prior to the due date.

Section 10.7 Nonpayment of Assessments. Any Assessment, whether Regular, Special, or Default Assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any Assessment becomes delinquent, the Association, in its sole discretion, may take any or all the following actions:

10.7.1 Assess a late charge of not more than 10% of the amount due and owing per each delinquency.

10.7.2 Assess an interest rate charge from the date of delinquency at a rate four points above the base rate or prime rate charged by the Association's bank, or such other rate as shall be established by the Board of Directors.

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

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

10.7.5 File a Statement of Lien with respect to the Lot and foreclose such lien in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and Recorder of Gunnison County, Colorado, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association and the amount of the delinquent Assessments then owing, which Statement of Lien shall be signed and acknowledged by the President, Vice President or Secretary of the Association and which shall be sent by certified mail, postage prepaid, to the Owner of the Lot at the latest address the Association may have in its records as to the Owner. Thirty days following the mailing of such notice, the Association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such Statement of Lien shall secure all Assessments accruing or assessed subsequent to the date of

recording of such Statement of Lien until the same have been satisfied and released, together with the Association's attorneys' fees and cost incurred in the preparation and recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such Assessment, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.

10.7.6 The Statement of Lien shall be superior to all other liens and encumbrances on such Lot, except only any tax and assessment liens levied by any government entity and the lien of any First Mortgage. Provided, however, at all times the lien of the Association shall have priority and status over any other lien or Mortgage as provided by the Colorado Common Interest Ownership Act, as it now exists and as it may hereafter be amended.

Section 10.8 Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot to pay all Assessments and the Association's lien on a Lot for such Assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interest, costs, expenses and attorneys' fees against such Lot.

ARTICLE 11
ENFORCEMENT OF COVENANTS

Section 11.1 Violations Deemed a Nuisance. Every violation of this Declaration of Protective Covenants, the Articles and Bylaws of the Association or any Rules and Regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 11.2 Failure to Comply. The failure to comply with this Declaration, the Design Guidelines, or any Rules and Regulations adopted by the Board of Directors or the Design Review Board shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them under the following terms and conditions:

11.2.1 Written notice of any violation or failure to comply with this Declaration, the Design Guidelines or any Rules and Regulations adopted by the Board of Directors or the Design Review Board shall first be given to any Member or person as to such violation or failure to comply.

11.2.2 Such Member or person shall be given 10 days from the date of such notice to correct such violation or failure to comply.

11.2.3 In the event that any Member or person believes that he or she is not in violation or failure to comply, he or she may request an opportunity for a hearing by the Board of Directors prior to the Association taking further action or commencing any legal proceeding against such Member or person.

11.2.4 Any action by the Association as against any such Member or person shall be by resolution of the Board of Directors following notice as above provided and granting to such Member or person an opportunity to be heard before the Board of Directors.

Section 11.3 Who May Enforce. Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

11.3.1 By the Association in name of the Association and on behalf of the Owners.

11.3.2 By the Owner of any Lot.

Section 11.4 No Waiver. The failure of the Board of Directors, the Association, an Owner or Gunnison County, Colorado to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

Section 11.5 Right of Gunnison County, Colorado. The Board of County Commissioners of Gunnison County, Colorado is specifically granted the right to enforce these Protective Covenants and to bring any action as may be required for the violation of these Protective Covenants. Gunnison County, Colorado may enforce this Declaration of Protective Covenants at its sole discretion, without assumption of any liability whether or not such enforcement is exercised, and without obligation to exercise such enforcement in any circumstance. The ability of Gunnison County, Colorado to enforce this Declaration is non-exclusive and does not preclude any other authorized party from enforcing the same.

ARTICLE 12
DURATION OF COVENANTS

Section 12.1 Term. The term of this Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2032. Thereafter, this Declaration of Protective Covenants shall be automatically renewed for successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 12.2 Amendment. This Declaration of Protective Covenants, or any provision thereof, may only be terminated, extended, modified or amended as to the Property subject to the Protective Covenants, or any portion thereof, upon the written consent by the Owners of ~~75%~~67% or more of the Lots in the Property. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots within the Property.

Section 12.3 Amendment by Declarant. Notwithstanding the provisions of Section 13.2, the Declarant reserves the sole right and power to modify and amend this Declaration of Protective Covenants, and all plats subject to this Declaration of Protective

Covenants, by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in this Declaration of Protective Covenants and/or the plats, (2) any corrections required to comply with the applicable laws, rules and regulations of any governmental entity having jurisdiction over the Property, and (3) any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a Single Family Residence upon any Lot, which are not contrary to the terms of the agreement. This right and power of the Declarant to modify or amend this Declaration of Protective Covenants and the plats, in whole or in part, as set forth in this Section, shall be effective only until (1) five years after the date of construction of the first Improvements on the Property or (2) the date that 75% of all Lots within the Property have been sold or conveyed to third person owners by the Declarant, whichever occurs first. Provided, however, the Declarant may not amend or revise the location and dimensions of any Lot which has been conveyed by Declarant to another Owner, without the consent of such Owner.

Section 12.4 Required Approvals. No amendment or termination of the Protective Covenants which amends or changes any of the terms and conditions of these Protective Covenants shall be effective until such changes or amendments have been approved by Gunnison County, which approval shall not be unreasonably withheld.

ARTICLE 13
PRINCIPLES OF INTERPRETATION

Section 13.1 Severability. This Declaration of Protective Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration of Protective Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

Section 13.2 Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 13.3 Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration of Protective Covenants.

Section 13.4 Written Notice. All notices required under this Declaration of Protective Covenants shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt required, to the latest address of such Owner on file in the record of the Association at the time of such mailing.

Section 13.5 Limitation of Liability. Neither the Association nor any officer or director, shall be liable to any party for any action or for any failure to take any action

with respect to any matter arising by, through or under this Declaration of Protective Covenants if the action or failure to act was made in good faith. The Association shall indemnify all officers and directors with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association.

Section 13.6 Attorneys' Fees. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, construction or the determination of the rights and duties of the parties to this Declaration of Protective Covenants or any provision of the Association Documents provided herein, the prevailing party in any such action shall be awarded its reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.

Section 13.7 Applicable Law. The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association Documents shall be the District Court of Gunnison County, Colorado, unless otherwise chosen by the Association and shall be interpreted, construed and governed by the laws of the State of Colorado.

Section 13.8 Interest. Unless otherwise provided in this Declaration of Protective Covenants, any sums, amounts or monies due and owing to the Association under the Association Documents shall bear interest at 18% per year from the date due until paid.

~~IN WITNESS WHEREOF, the Declarant has executed this~~

ASSOCIATION APPROVAL AND CERTIFICATION:
The undersigned, President of the Fox Meadows Subdivision Homeowners Association, a Colorado nonprofit corporation, executes this Amended and Restated Declaration of Protective Covenants ~~the day and year first above written.~~

~~BB & KW, LLC, a Colorado limited liability company~~

~~By:~~

~~Keith Wiggins, General Manager~~

of Fox Meadows Subdivision in accordance with Section 12.2 of the foregoing and hereby certifies that 67% of the owners of lots within Fox Meadows Subdivision have approved this Amended and Restated Declaration of Protective Covenants of Fox Meadows Subdivision, as evidenced by the executed Consents attached hereto.

FOX MEADOWS SUBDIVISION HOMEOWNERS ASSOCIATION

By: _____
Mike Darnell, President

STATE OF COLORADO)
) ss.
County of Gunnison)

The above and foregoing Amended and Restated Declaration of Protective Covenants was acknowledged before me this _____ day of _____, 20~~0~~413, by ~~Keith Wiggins as General Manager~~Mike Darnell as President of the Fox Meadows Subdivision Homeowners Association.

Witness my hand and official seal.
My commission expires: _____

_____

_____
Notary Public

COUNTY APPROVAL:

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

BY:_____

ATTEST: _____

_____

County Clerk

EXHIBIT A
(Property)
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS OF FOX MEADOWS SUBDIVISION

Township 50 North, Range 1 West, N.M.P.M.

Section 13: W1/2NW1/4NW1/4

Section 14: A tract of land located in the NE1/4NE1/4 of Section 14, more particularly described as follows:

Beginning at the Northeast corner (marked stone) of said Section 14; thence South 88°32'49" West along the North line of said Section 14 a distance of 999.25 feet to the easterly boundary of Chekwa Trail, a dedicated roadway according to the plat of Ohio Meadows Filing No. 3, a Gunnison County Subdivision filed under Reception No. 289612 and dated July 7, 1972; thence along the said easterly roadway boundary on a curve to the left a distance of 197.06 feet, said curve having a radius of 1170.0 feet and a chord which bears South 19°36'30" East 196.82 feet; thence on a curve to the right a distance of 211.10 feet, said curve having a radius of 1230.0 feet and a chord which bears South 19°31' East 210.84 feet; thence South 14°36' East 390.0 feet; thence on a curve to the right a distance of 570.02 feet to the South boundary of the said Northeast Quarter of the Northeast Quarter said curve having a radius of 3030.0 feet and a chord which bears South 9°12'38" East 569.18 feet; thence leaving the said easterly roadway boundary North 88°43'15" East along the above said South boundary 681.14 feet to the section line between said Sections 13 and 14; thence North 0°19'30" West along the above said section 1333.54 feet to the point of beginning,

County of Gunnison,
State of Colorado.

EXHIBIT B
(water rights)
AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
OF
FOX MEADOWS SUBDIVISION

A proportionate interest in the GLEASON IRRIGATING DITCH a/k/a Gleason Ditch, Ditch No. 100 with:

0.36 c.f.s. in Priority No. 83
1.14 c.f.s. in Priority No. 341

A proportionate interest in the HYZER-VIDAL-MILLER DITCH a/k/a Vidal Ditch and a/k/a Old Channel Ditch, Ditch No.4 with:

0.70 c.f.s. in Priority No. 276,

Water District 59,
Water Division 4,
County of Gunnison,
State of Colorado.

EXHIBIT C
(Weed Management Plan)
AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
OF
FOX MEADOWS SUBDIVISION

WEED MANAGEMENT PLAN

I. INTRODUCTION

Noxious weeds are non-native plant species which have been introduced into an environment with few, if any, natural biological controls, thus giving them a distinct competitive advantage in dominating and crowding out native plant species. They are aggressive, spread rapidly, possess a unique ability to reproduce profusely, and resist control. Noxious weeds, such as Canada thistle and white top, adversely impact Fox Meadows Subdivision by creating problems such as reducing aesthetic value, choking out native vegetation, invading landscaped areas, decreasing property value, and other concerns.

Soil disturbance such as roads, trails, and homesites are areas in which noxious weeds may become established. In non-residential areas noxious weeds also threaten valuable wildlife habitat and other natural resources.

II. PLAN GOAL

The goal of this plan is "TO PREVENT AND/OR CONTROL THE SPREAD OF NOXIOUS WEEDS IN FOX MEADOWS SUBDIVISION."

III. PLAN OBJECTIVES

1) Control and/or eradicate Canada thistle within Fox Meadows Subdivision.

2) Control and/or eradicate white top within Fox Meadows Subdivision.

3) To protect native vegetation within Fox Meadows Subdivision.

4) Prevent the invasion of State and/or County listed noxious weed species within Fox Meadows Subdivision.

IV. MANAGEMENT ACTIONS - INTEGRATED WEED MANAGEMENT (IWM)

This weed management plan encourages Integrated Weed Management (IWM). IWM is a strategy using a comprehensive, interdisciplinary approach to manage noxious weeds. The purpose of integrated weed management is to achieve healthy and productive natural and agricultural ecosystems through a balanced program. This program will include, but not be limited to, education, prevention measures, good stewardship and control methods.

3. BIOLOGICAL CONTROL

Biological control involves the release of beneficial organisms such as insects, fungi, rusts, pathogens, parasites, and diseases to diminish weed seed production, increase plant stress, and limit the expansion of underground parts of the plant's reproductive system. This control method is best suited for large infestations.

4. HERBICIDE CONTROL

Herbicide control involves the application of EPA-registered herbicides that are effective on target noxious weed species based on the best available scientific facts and current technology to reduce weed infestations. This method is a tool for perennials. The root must be killed to control and/or eradicate perennials.

While herbicides are a powerful tool, it must be realized that they are just that; and should be used only as part of an Integrated Weed Management Program (IWM).

Before applying herbicides,, homeowners and developer(s) are strongly encouraged to attend Private Pesticide Applicator training provided by the Gunnison Basin Weed Commission. This training combined with the careful use of herbicides according to the product label will help to ensure safe and proper use. Commercial applicators are also available for noxious weed control. Contact the Gunnison Basin Weed Commission for a list of these applicators.

Control methods are at the discretion of the homeowner/ developer(s), however, the method chosen should be appropriate for the noxious weed species being controlled and the area it is growing in. Fifteen County and seventeen State listed noxious weeds are mandated by law (C.R.S. 35-5.5, et. seq.) to be controlled. There are also two other categories of State listed noxious weeds.

The developers and homeowners should contact the County Weed Coordinator, Adena Green, for assistance in determining the appropriate management action for the noxious weeds present. Recommendations are sight specific and species specific.

V. RESPONSIBILITIES

Initially it is the responsibility of the developer to control noxious weeds within Fox Meadows Subdivision. The Homeowners Association will assume responsibility for controlling noxious weeds along subdivision roadways, and open space. Homeowners will be responsible for controlling noxious weeds on their property or in cooperation with the Homeowners Association.

The Gunnison County Weed Coordinator, Adena Green. will be available to assist the homeowners/developer(s) with weed identification, weed management strategies and to provide educational materials on noxious weeds. Colorado State University Cooperative Extension can also provide educational materials on noxious weeds.

VI. MONITORING/EVALUATION

An Integrated Weed Management Program should be evaluated each year to determine whether or not the program is successful in achieving the plan goal and objectives. This will allow developers and homeowners of Fox Meadows Subdivision to make appropriate changes to ensure the success of their weed management program.