

**AMENDED  
PROTECTIVE COVENANTS for**

**Missouri Lakes Water, Recreation, and Improvement Association  
Filing numbers 1, 2, & 3**

**Gilpin County, Colorado**

**As amended, June 2015**

# Table of Contents

<b>RECITALS .....</b>	<b>3</b>
<b>DECLARATION.....</b>	<b>3</b>
<b>ARTICLE 1            DEFINITIONS .....</b>	<b>3</b>
<b>ARTICLE 2            GENERAL RESTRICTIONS / PERMITTED USES .....</b>	<b>5</b>
<b>ARTICLE 3            THE ASSOCIATION .....</b>	<b>7</b>
<b>ARTICLE 4            ARCHITECTURAL CONTROL COMMITTEE .....</b>	<b>10</b>
<b>ARTICLE 5            EASEMENTS .....</b>	<b>12</b>
<b>ARTICLE 6            INSURANCE.....</b>	<b>12</b>
<b>ARTICLE 7            AMENDMENT.....</b>	<b>13</b>
<b>ARTICLE 8            MISCELLANEOUS .....</b>	<b>13</b>
<b>ARTICLE 9            PARLIAMENTARY AUTHORITY.....</b>	<b>14</b>

**AMENDED PROTECTIVE COVENANTS FOR  
MISSOURI LAKES FILING NUMBERS 1, 2, AND 3  
GILPIN COUNTY, COLORADO**

**RECITALS**

Pursuant to protective covenants recorded in Book 275 at Page 345 on the 16<sup>th</sup> day of December, 1971, in the records of the Gilpin County Clerk and Recorder, Protective Covenants (“the original Protective Covenants”) were imposed upon property in the Missouri Lakes filings. Pursuant to the original Protective Covenants, a majority of the owners of the real property in the Missouri Lakes filings, voting at an annual election of members of the Architectural Control Committee, have voted to repeal and re-enact the original Protective Covenants as set forth herein. Notice of intention to amend and change the original Protective Covenants was provided to each owner prior to said annual election as provided in Article 14 of the original Protective Covenants. At the annual meeting held on the 17<sup>th</sup> day of June, 2000 the property owners voted to repeal and re-enact the original Protective Covenants as follows:

**DECLARATION**

NOW, THEREFORE, pursuant to Article 14 of the original Protective Covenants, the property owners within the Missouri Lakes Filing Nos. 1, 2 and 3, located in Gilpin County, Colorado, and more particularly described on Exhibit A, attached hereto and incorporated herein (“the property”) is and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the real property and be binding on all persons having or acquiring any right, title or interest in the property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of, and be binding upon, and be enforceable by each owner and his successors in interest, and the Missouri Lakes Water, Recreation and Improvement Association and its successors in interest.

**ARTICLE 1. DEFINITIONS**

The following terms shall have the following meanings when used, unless the context requires otherwise.

1.1.1 “Architectural Control Committee” (sometimes referred to as the “Committee”) means the committee created pursuant to Article 4 below.

1.1.2 “Articles” means the Articles of Incorporation, any amendments thereto, of the Missouri Lakes Water, Recreation and Improvement Association.

1.1.3 Association as described in Article 3 below.

1.1.4 “Association” shall mean the Missouri Lakes Water, Recreation and Improvement Association, a Colorado non-profit corporation, its successors and assigns.

1.1.5 “Board of Directors” or “Board” shall mean the governing body of the Association as provided herein, and as provided in the Associations’ Articles of Incorporation and Bylaws.

1.1.6 "Bylaws" means the bylaws of the Association which may be adopted by the Board and amended from time to time.

1.1.7 "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

1.1.8 "Common Area Improvements" shall mean any and all improvements located in, under or upon the Common Area, as originally developed, or as later added on by the Association.

1.1.9 "Improvement" means every structure and all appurtenances thereto of every type and kind including, but not limited to, buildings, outbuildings, fixtures, utilities, patios, tennis courts, swimming pools, garages, dog houses, barns, stables, antennas, fences, wells, tanks, solar collectors, and other facilities used in connection with water, sewer, gas, electricity, solar energy, telephone, regular or cable television or other utilities.

1.1.10 "Lot" means any plot of land shown upon any recorded subdivision map or plat of the property or any portion thereof, with the exception of the Common Area and public streets.

1.1.11 "Member" shall mean those persons entitled to membership in the Association as provided in these Protective Covenants. "Member" and "Owner" (as hereinafter defined) may be used interchangeably unless the context provides otherwise.

1.1.12 "Owner" means a person or persons owning a fee simple interest in a lot from time to time. Such term shall include a contract vendee under an installment land sales contract, but shall not include (i) the vendor under such a contract; or (ii) a person holding an interest in a lot merely as security for performance of an obligation (unless and until such security holder becomes an owner in fee simple of a lot).

1.1.13 "Plans and Specifications" means any and all documents designed to guide or control the construction of an improvement including, but not limited to, those indicating size, shape, materials; all site plans; foundation plans; landscaping and fencing plans; elevation drawings; floor plans; specifications on all building products and construction techniques; samples of exterior colors; plans for utility services and all other documentation or information relevant to the particular improvement.

1.1.14 "Property" means all of the real property described on attached Exhibit A along with any and all improvements now in place or hereafter constructed, and any additions to the property which may later be made part of the Missouri Lakes development.

1.1.15 "Protective Covenants" means this instrument together with any and all supplements and /or amendments hereto recorded in the office of the Clerk and Recorder of Gilpin County, Colorado.

1.1.16 "Rules" means the rules adopted by the Board pursuant to Section 3.12, as they may be amended from time to time.

1.1.17 "Voting Member" means each member of the Association who is a member in good standing as defined by the Association's Bylaws. In all elections or proceedings in which the membership is required or permitted to vote, each voting member shall be entitled to one vote regardless of the number of lots in the property he or she may own.

1.1.18 "Obligation" shall mean any and all payments due to the Association, including but not limited to annual dues, special assessments, use fees, fines, interest, compliance expenditures, and penalties. (Note: see use in section 3.6.)

1.1.19 "Use Fees" shall mean any and all monies, which are charged to a Member for use of Association facilities as defined in Bylaws, Article VII, Section 2.

1.1.20 "Penalty" shall mean any and all monies charged to a Member for delinquency of payment for any obligation.

1.1.21 "Special Assessments" means special assessments of the Missouri Lakes Water, Recreation, and Improvement Association as described in Article 3 below.

1.1.22 “Fines” shall mean a charge for violation of the Association Bylaws and Covenants.

1.1.23 “Compliance Expenditures” shall mean any and all costs to the Association related to enforcement of the Bylaws and Covenants.

1.1.24 “Delinquent” shall mean any obligation which is not paid in full by the due date is delinquent.

## ARTICLE 2. GENERAL RESTRICTIONS / PERMITTED USES

2.1 **General Restrictions.** All of the property shall be owned, held, conveyed, encumbered, used and occupied subject to the following limitations and restrictions (collectively “restrictions”):

2.1.1 **Improvements and Use.** No lot shall be improved or used except as a dwelling structure designed to accommodate no more than a single family and its occasional guests. A maximum of three (3) outbuildings up to the maximum size of 25 feet by 25 feet and must be at least 6 feet by 8 feet minimum size, plus an additional gazebo/deck/hot tub room not to exceed 256 SF, total square footage of all such structures not to exceed 625 SF (exclusive of a detached garage) shall be permitted on property where a dwelling exists, unless there has been a boundary line elimination (BLE) with adjoining lot/lots. You may have a 4<sup>th</sup> outbuilding of up to 25 feet by 25 feet on any existing or new adjoining lot/lots, for a total of up to 1250 SF. Any ½-lot boundary line elimination will allow a 4<sup>th</sup> outbuilding of up to 312 SF, for a total of 937 SF. Outbuildings include new and existing structures other than the primary dwelling or detached garage, and may be termed a shed, storage building, workshop, stable, greenhouse, or dog house where such dog house is greater than 3’ x 5’ x 4’ tall. Dwellings shall not exceed two stories in height, with one private garage for not more than three vehicles, which garage may be attached to dwelling or detached. Carports are prohibited. All outbuildings and detached garages must be of a design and exterior finish commensurate with the main residential structure. The Architectural Control Committee has the authority to restrict the location/placement of all building structures to preserve the residential aesthetics of the community. New stables or barns are not allowed.

2.1.2 **Dwelling Size.** The total square footage of the dwelling shall not be less than 1500 square feet, exclusive of garages, porches, patios and attics.

2.1.3 **Dwelling Construction Materials.** Stone, stucco, stone veneers, brick, brick veneers, engineered metals, wood, or log siding may be used for building exteriors. Man-made products may be used but must meet the Architectural Control Committee guidelines and must be approved prior to construction. No plastic panels, tar paper, or similar materials will be allowed. Spark arresters shall be installed in or on all chimneys.

2.1.4 **New Construction.** All dwelling units shall be of new construction and no existing or prefabricated dwelling unit shall be moved onto any lot. No other structure (including but not limited to playhouses or storage sheds) may be moved onto a lot without the prior written approval of the Architectural Control Committee.

2.1.5 **Building Location.** No building shall be located on any lot nearer than thirty feet to the road or lot lines. For purposes of this subsection, eaves, steps and open porches shall not be considered as part of the building; provided, however, this shall not be construed to permit any portion of a building to encroach upon any adjacent lot or parcel. The setback line shall be the foundation line of the building.

2.1.6 **Unsightly Articles/Nuisances.** No unsightly articles shall be permitted to remain on any lot or any other portion of the property if they are visible from adjoining property or public roadways. Homeowners/renters may work on their own vehicles in their driveway so long as the work takes no longer than one week. Refuse, garbage, and trash that might be attractive to wildlife and that is kept outside, other than on day of trash pick up, shall be kept in a bear proof container. It and all other refuse and trash shall be kept within an enclosed structure or appropriately screened from view. No lumber, grass, plant waste, shrub, or tree clippings, metals, bulk materials or scrap or refuse shall be kept, stored or allowed to accumulate on any property except within an enclosed structure or appropriately screened from view. NO noise or other nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property or to its’ occupants.

2.1.7 **Landscaping.** Landscaping on lots shall not require prior approval of the Architectural Control Committee, but shall be in harmony with all surrounding property, and shall comply with any rules governing landscaping as may be adopted by the Association and/or the Committee.

2.1.8 Section removed due to conflicts with federal law.

2.1.9 **Signs.** No sign of any kind shall be displayed to the public view without the approval of the Architectural Control Committee; provided, however, that if the sign is no larger than three feet by two feet it may be displayed on or from a lot advertising such lot for sale or lease, or one political sign per candidate is allowed for the period from 30 days before the election to 10 days afterwards. No flashing or moving signs shall be permitted on the property. United States and US Military flags are permitted.

2.1.10 **Repair of Buildings.** No improvement constructed upon any land within the property shall be permitted to fall into disrepair, and each such improvement shall be kept at all times in good condition and repair and adequately painted or otherwise finished by the owner thereof.

2.1.11 **Improvements and Alterations.** There shall be no construction (other than repairs pursuant to Section 2.1.10 above), excavation, alteration which in any way alters the exterior appearance of any improvement, or removal of any improvement without the prior written approval of the Architectural Control Committee.

2.1.12 **Drainage.** There shall be no interference with the established drainage patterns over any property within the property, unless adequate provision is made for proper drainage and approved by the Architectural Control Committee. No driveway shall be permitted on the upslope side of any road unless there is installed at the junction of the driveway and the road a concrete or metal culvert of sufficient capacity to provide for adequate drainage of water along the side of the road. Any such culverts must comply with all county regulations and in no event shall be less than twelve inches in diameter.

2.1.13 **No Temporary Structures.** No temporary structure or improvement of any kind shall be placed upon the property; provided, however, that temporary structures necessary and appropriate for storage of tools, materials and equipment, restrooms, builders, architects, and foremen during actual construction may be maintained with the prior written approval of the Architectural Control Committee, which approval shall specify the nature, size location and permitted duration of such temporary structure. Any such approved temporary structure shall not be used for residential purposes.

2.1.14 **No Hazardous Activities.** No activity shall be conducted on the property and no improvements shall be constructed on the property which are, or might be, unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged nor any fireworks permitted upon the property and no open fires shall be lighted or permitted on the property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe interior fireplace.

2.1.15 **No Mining and Drilling.** No portion of the property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel or aggregate; provided, however, that this restriction does not apply to the drilling of wells and installation of infiltration galleries for the extraction of water to be utilized on a particular lot.

2.1.16 **Animals and Pets.** No animals or livestock shall be raised, bred or kept on any lot, except that domesticated dogs, cats, household pets, and limited chickens may be kept on a lot provided they are not kept, bred or maintained for any commercial purposes (including kennels), and are kept in accordance with all applicable laws. It is expressly understood that any owner's right to keep household pets is coupled with a responsibility for such owner's pets and, accordingly, each owner of a household pet is financially responsible and liable for any damage caused by such pet.

Regulations concerning chickens are: 1. Maximum of 6 hens (no roosters) per residential dwelling. 2. To be contained in a totally enclosed (including top) wire-mesh area, not visible from the street, and not smaller than 64 square feet, nor larger than 144 square feet. 3. To include a coop, not smaller than 24 square feet, nor larger than 36 square feet in area. Coop height shall be at least 6 feet, but not taller than 7 feet. 4. Any public nuisance that unreasonably annoys other residents, e.g., unsanitary conditions, offensive noise, or cruelty, will be non-compliant.

2.1.17 **Exterior Lighting.** Any exterior lighting installed on any lot shall either be indirect or of such controlled focus or intensity as not to disturb the residents of adjacent lots.

2.1.18 **Fences.** No fence shall be placed or constructed on any property without the prior written approval of the Architectural Control Committee. Standards for fence construction may be described in rules promulgated by the Association and/or the Committee, and at a minimum shall include the following:

- a) All posts shall be wood or log, stone, stone veneers, brick, brick veneer, or decorative metal. Man made products may be used but must meet the Architectural Control Committee guidelines and must be approved prior to construction.
- b) Any fence fabric shall be of the “see through” type such as chain link or turkey wire, and shall be strong enough to contain the pet intended without rapid deterioration.
- c) Gates are to be of similar construction to the fence.
- d) Single strand or barbed wire of any kind is prohibited.
- e) Perimeter privacy fences are prohibited. Non-perimeter privacy fences are permitted upon approval by the Architectural Control Committee.
- f) (Eliminated restriction.)

2.1.19 **Violation of Restrictions.** If any owner or the respective family, guests, licensees, lessees, invitees, agents or employees violates any of these restrictions, the Board may invoke any one or more of the following remedies: (i) impose a fine upon the owner for each violation; (ii) take appropriate action to cure the violation and charge all costs thereof to the owner; and (iii) obtain injunctive relief against the continuation of such violation, and an action for damages to recover any damages that may be incurred by the Association. Before invoking any such remedy, the Board shall give the owner 15 days notice (as provided in Section 8.2) of the violation, and a demand that corrective action be taken and damages (if any) be paid. Notwithstanding the above, the Board may immediately suspend the right to use any recreational area and/or facility by any owner and their respective family, guests, licensees, lessees, and invitees without notice for any period during which any obligations owed by such owner is past due and unpaid. In any action taken by the Board against an owner pursuant to these Protective Covenants, the owner shall be additionally liable to the Association for all reasonable legal fees and costs incurred by the Association. In the event of any private legal action between property owners and/or their agents in which violation of these Protective Covenants are alleged, any party found to have violated a provision of the Protective Covenants shall be ordered to pay to any party injured thereby, all of the injured party’s reasonable costs and attorney fees in such action.

2.1.20 **Covenant and Restriction on Marijuana, Distribution, and Growing.** No Owner or occupant of a Lot shall utilize the Lot, or any improvements constructed thereon, for the purpose of growing or distributing marijuana for donating, selling, or other commercial purposes, including medical marijuana. This covenant and restriction may be further clarified by the Board of Directors of the Association. Any Owner in violation of this section of the Covenants shall be responsible for all additional costs or damages resulting from a violation of this covenant and restriction.

2.2 **Homeowner Complaints about Covenant Violations.** Homeowners may raise any concern with the Board or with any Board member at any time, in person or by telephone. To receive a formal response, however, requires a formal complaint. Formal complaints by homeowners regarding observed violations of the restrictions outlined in this Article must be submitted to the Association Board in writing by US mail. The complainant(s) must identify themselves and describe the violations. The Board shall respond to the complainant(s), in writing, at the mailing address of record, within 30 days of the postmark on the complaint, acknowledging receipt, and outlining the next steps the Board may take on the complaint.

## ARTICLE 3. THE ASSOCIATION

**3.1 The Association.** The administration of the property shall be governed by these Protective Covenants, the Articles of Incorporation and the Bylaws of the Missouri Lakes Water, Recreation and Improvement Association, a Colorado non-profit corporation.

**3.1.1 Owner Name and Mailing Address.** The names and mailing addresses used by the Association will be exclusively the official name and mailing address of record for a property at the Gilpin County Assessor's office. Members are required to keep their names and mailing addresses current with Gilpin County. Any member failing to do so will be considered "not in good standing". No other or supplemental addresses will be accepted. All routine correspondence (invoices, dues, and fishing permits) will be via mail only and only with the legal owner at the legal mailing address. The Board has no obligation to deliver these documents in person or to any 3<sup>rd</sup> party or to any alternate address.

**3.2 Membership.** An owner of a lot shall automatically become a member of the Association and shall remain a member for the period of the owner's lot ownership. If title to a lot is held by more than one person, the membership related to that lot shall be shared by all such persons in the same proportion of interests and by the same type of tenancy in which title of the lot is held. An owner shall be entitled to one membership, regardless of the number of lots owned. Each membership shall be appurtenant to the lot and shall be transferred automatically by conveyance of the lot.

**3.2.1 Voting Rights.** Each owner (or owners in the case of multiple party ownership) shall be entitled to one vote regardless of the number of lots owned or held as a contract vendee under an installment land contract, in all elections or proceedings in which the membership is required or permitted to vote.

**3.2.2 Annual Meeting.** There shall be an annual meeting of the members to be held in the month of June in each year, at which time the members shall elect the Association's Board of Directors, and may exercise any other powers and take any other action as provided by these Protective Covenants, the Association's Articles of Incorporation, Bylaws and/or Colorado law relating to non-profit corporations.

**3.2.3 Notice of Annual Meeting.** The Board shall send notice of the annual meeting, including a copy of the agenda, and any proposed action to amend, change or remove any of these Protective Covenants to all owners by regular mail, postage prepaid, to the owner's last known address as shown by the records of the Association, at least 30 days prior to the annual meeting.

**3.2.4 Proxies.** Voting by proxy shall be permitted.

**3.3 Board of Directors.** The affairs of the Association shall be governed by a Board of Directors (sometimes referred to as the "Board") which may, by resolution, delegate any portion of its authority to an executive committee or an officer or director of the Association. The qualification and number of directors the term of office for directors, and the manner in which directors shall be replaced upon removal or resignation shall be set forth in the Articles and Bylaws.

**3.4 Officers.** The Board will select the officers of the Association, which officers may also serve as members of the Board.

**3.5 Articles and Bylaws.** The purposes and powers of the Association and the rights and obligations with respect to the members may and shall be amplified by provisions of the Articles and Bylaws of the Association. Such Articles and Bylaws may include any reasonable provisions with respect to corporate matters including provisions with respect to notices, record dates and quorums for meetings of directors and members, provided that no such provisions may be inconsistent with any provision of these Protective Covenants.

**3.6 Annual Dues, Special Assessments, Fines, Penalties, and Compliance Expenditures.** Each owner of a lot shall be obligated to pay and shall pay to the Association, at least annually or when otherwise due and payable (i) annual dues for the costs of the reasonable expenses of the Association; (ii) special assessments as approved by the Association membership; (iii) reasonable and uniformly applied fines by the Association for violation of these Protective Covenants and rules adopted by the Association; and (iv) any compliance expenditures. Each obligation shall be a separate, distinct and personal debt of the owner against whose lot the same is assessed. The obligation of multiple owners of a lot shall be joint



and several. All obligations shall be payable in full without offset for any reason whatsoever, and shall be entirely independent of any obligation of the Association to the owner or of any owner to such owner. If an obligation is delinquent beyond sixty (60) days, the Association may collect any and/or all of the following:

3.6.1 Compliance expenditures incurred in collecting the delinquent obligation including, without limitation, reasonable attorneys' fees and court costs.

3.6.2 A penalty in an amount to be determined from time to time by the Board, but not more than ten percent (10%) of the delinquent obligation or \$100.00, whichever is greater, at the expiration of the 60-day grace period. This is a recurring penalty and will be assessed each year on the anniversary date of the original obligation.

3.6.3 Interest on the entire delinquent obligation, at a rate of 1% for any month or fraction of a calendar month that the obligation is delinquent, commencing sixty (60) days after the obligation became due.

3.6.4 A collection cost of \$10 per month or fraction of a calendar month that the obligation is delinquent, commencing 60 days after the obligation became due.

3.6.5 Any obligation outstanding for more than one year will be assessed \$300.00 to offset ongoing legal costs for collection.

3.6.6 If a lien must be filed or re-filed against a property, a penalty of \$100.00, or actual filing fees, whichever is greater, will be assessed.

3.6.7 Any check returned by the bank for Non-Sufficient-Funds (NSF), whether the owner is delinquent or not, will be charged a penalty of \$50, or bank charges plus \$30, whichever is greater.

3.7 **Budget.** The total amount required to be raised by annual dues shall be determined by the Board at least once a year and shall be based upon a budget to be approved by the Board showing, in reasonable detail, the various matters proposed to be covered by the budget, the estimated costs and expenses of the Association, an amount that may be deemed necessary or desirable as a contingency reserve and the total amount required to be raised by annual dues to cover such estimated costs and expenses and contingency reserve. The budget shall cover the costs and expenses expected to be incurred by the Association in performing its function, and may be revised as necessary from time to time. Annual Dues may be raised or lowered by the Board as required to meet such revised budget.

3.8 **Annual Dues.** All owners shall be obligated to pay annual dues imposed by the Board. The Board may establish any reasonable system for collection of annual dues in advance or in arrears as deemed desirable. Expenses may include, but are not necessarily limited to, maintenance and management of any rights-of-way, fencing and landscaping in common areas, insurance premiums for coverage deemed desirable by the Board, legal and accounting fees, management fees, expenses and liabilities incurred by the Board by reason of these Protective Covenants, payment of any deficit remaining from the previous fiscal period, creation of a reasonable contingency reserve for the maintenance or replacement of common area improvements which must be maintained or replaced on a periodic basis as well as other costs and expenses relating to the common areas and the purposes and responsibilities of the Association.

3.9 **Special Assessments.** The Board may from time to time levy special assessments for the purpose of defraying in whole or in part the cost of any construction, restoration, unexpected repair or replacement of a capital improvement or for carrying out other responsibilities of the Association in accordance with these Protective Covenants.

3.10 **Uniform Rate for Annual Dues and Special Assessments.** Both annual dues and special assessments must be fixed at a uniform rate for all lots.

3.11 **Lien for Obligations.** The Association shall have a lien against each lot to secure payment of any obligation or other amount due and owing to the Association with respect to the owner of that lot. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Colorado. The Association shall have the right, but not the obligation to prepare and record in Gilpin County records a "Notice of Lien" which shall set forth (i) the amount of any obligation or other amount due and owing to the Association; (ii) the date such amount was due and payable and from which interest accrues; (iii) all costs and expenses including reasonable attorneys' fees incurred in collecting the unpaid amount to the date of recording of such notice of lien, plus additional costs and expenses to become due until all amounts have been paid in

full; (iv) the lot affected by the lien; and (v) the name or names, last known to the Association, of the owner or owners of the lot. Notwithstanding the above, all properties dedicated to and accepted by a local public authority and all common area properties are exempt from the lien and obligations created herein.

**3.12 Duties and Powers of Association.** The Association shall have all of the rights and powers conferred upon it by law, these Protective Covenants, and its' Articles and Bylaws. Without limiting the generality of the foregoing, and in addition to the powers described hereinabove, the powers and duties of the Association shall include authority to make and promulgate rules, not in contradiction to these Protective Covenants, as the Association deems proper covering any and all aspects of its functions, including but not necessarily limited to setting of all obligations and establishing regulations governing the operation of Association property and/or common areas; enforcement, on its own behalf and on behalf of all owners, all of the covenants, conditions and restrictions set forth in these Protective Covenants, and to perform all other acts, whether or not anywhere expressly authorized, as may be reasonable necessary to enforce any of the provisions of these Protective Covenants; to retain services of professional managers, accountants, attorneys and other services as may be determined necessary by the Board from time to time; and to carry out all other duties of the Association as set forth in these Protective Covenants.

**3.13 Appointment of Architectural Control Committee.** In addition to the powers and duties described above, the Board shall appoint and remove members of the Architectural Control Committee as provided in Article 4 hereof, and insure that at all reasonable times there is available a duly constituted and appointed Architectural Control Committee.

**3.14 Examination of Books and Records.** The Association shall insure that all owners shall, upon request, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive a copy of a financial statement of the Association for the preceding fiscal year at no charge; (iii) receive written notice of all meetings of the Association and be permitted to attend all such meetings; and (iv) receive upon request current copies of these Protective Covenants, Bylaws, Articles of Incorporation and any rules and regulations concerning the property, provided that reasonable copy charges are advanced to the Association by the party requesting the copies.

**3.15 Non-liability of Officials.** To the fullest extent permitted by law, neither the Board of Directors, the Architectural Control Committee, or any other committees of the Association, any member thereof, nor an officers or directors of the Association shall be liable to any owner, developer, or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Board, or such committees or officers reasonably believed to be within the scope of their respective duties.

**3.16 Indemnification.** To the fullest extent permitted by law every director, officer and committee member of the Association, and the Architectural Control Committee shall be and hereby is indemnified by the Association. Such indemnification shall be limited to all expenses and liabilities (including, without limitation, all attorneys' fees and court costs) reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been served in such capacity on behalf of the Association, or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee, member of the Architectural Control Committee, or serving in such other specified capacity at the time such expenses are incurred.

#### **ARTICLE 4. ARCHITECTURAL CONTROL COMMITTEE**

**4.1 Membership.** The Board shall appoint an Architectural Control Committee (the Committee) which shall be composed of three or more members. In the event no such appointment is made, then the Board shall constitute the Committee, and shall have all of the duties and responsibilities of the Committee as set forth herein. In the event of death, disability or resignation of any member of the Committee, the board shall have full authority to designate a successor. The Board may set the length of term for each Committee member and may remove a member of the Committee at any time without cause.

**4.2 Duties.** The committee shall act upon and approve or disapprove any and all matters submitted to the Committee pursuant to any of the provisions of these Protective Covenants, and shall have all duties and powers as are hereinafter set forth.

**4.3 Evidence of Action.** The Committee's approval or disapproval as required in these Protective Covenants shall be in writing, as indicated by a majority of the Committee. Two copies of all plans relating to any submittal shall be provided to the Committee. Plans must include a plot plan showing the following: (a) location of all existing structures; (b) location of new structure(s); (c) location of well & septic; and (d) distances to all lot lines. Plans must be engineered when the request is for an outbuilding that is over 12 feet by 16 feet, an addition to the primary dwelling, or a primary dwelling. Upon approval, each page of the plans shall be stamped with such symbol that will indicate the Committee's approval, and one complete set of plans with such stamped approval shall be returned to the property owner or his duly authorized agent. The Committee shall maintain copies of all plans submitted for a period of at least twenty-four (24) months after submission, or twelve (12) months after completion of any activity that has been approved, whichever is longer. Approval by the Committee shall be conclusive evidence of compliance with these Protective Covenants, provided that the improvements are constructed in substantial compliance with the plans as approved. In the event the Committee fails to approve or disapprove a proposal within thirty days after plans and specifications have been submitted to it, when the submission is evidenced by a certified mail or registered mail receipt, such approval will not be required and the related covenants shall be deemed to have been complied with fully.

**4.3.1 Bond.** A bond in the amount of \$1000.00 will be required to be in place prior to the start of any construction. The bond will be returned to the member upon final inspection by the Architectural Committee, and the lot has been cleaned up after construction is completed.

**4.4 Promulgation of Rules and Regulations.** The Committee may promulgate and enforce, including without limitation levying and collecting charges for the violation thereof, reasonable rules and regulations governing the use of the property which rules and regulations shall be consistent with the rights and duties established in these protective covenants. The Architectural Control Committee has the power and authority to insist all building codes be followed, even if the county does not address them, and violation be corrected and the construction come into compliance with the applicable building code.

#### **4.5 Approval of Plans and Specifications.**

**4.5.1** All plans and specifications in connection with the construction of any residence, fence, wall, driveway, or other structure, and in connection with any exterior maintenance and remodeling of any residence or other structure, including, but not limited to, the initial color of the structure, changing the color of the structure, or any alteration of any wall, fence, or driveway, which are reasonably related to the proposed project shall be submitted to the Committee and prior written approval shall be required.

**4.5.2** Before any construction, alteration or painting begins, plans and specifications relating to such construction, alteration or painting, showing as appropriate, the nature, kind, shape, height, material and location, the exterior design, the exterior materials to be used, the color scheme, the site plan, the topographic survey, the location of the driveway and plans for proper drainage of the lot with respect to the adjacent lots must be submitted to the Committee for its prior written approval.

**4.5.3** In passing upon such plans, specifications and other requirements, the Committee may take into consideration whether the proposed residence or other structure or alteration, and the materials of which it is to be built are reasonably suitable for the lot upon which the residence or other structure or alteration is to be erected, the harmony thereof with the surroundings, and the effect of the residence or other structure or alteration as planned on the outlook from adjacent or neighboring property. The committee shall, in the exercise of its judgment and determination, use reason and good faith.

**4.5.4** No residence, fence, wall, driveway, structure, alteration of any kind, which has not received such prior written approval by the Committee and which does not fully comply with such approved plans and specifications, shall be erected, constructed, placed or maintained upon any lot. No material changes or deviations in and from such plans and specifications as so approved shall be made without the prior written consent of the Committee. The Committee shall not be responsible for any structural defects in such plans and specifications or in any building or structure erected according to such plans and specifications.

**4.6 Binding Agreement to Pay Legal Costs.** In the event that an owner shall dispute the determination of the Committee and files a lawsuit to overrule, vacate or otherwise mitigate the effect of any determination of the Committee, or if an owner fails to submit for approval any action as required by this Article 4 and the Committee or any other owner brings an action to enforce the provisions; then the owner(s) and the Association are hereby bound to the agreement that

any and all costs, including reasonable attorneys' fees, associated with the institution and defense of such a suit, shall, to the extent permitted by a court of competent jurisdiction, be paid to the prevailing party by the losing party.

**4.7 Variance.** The Committee may grant a reasonable variance or adjustment from any condition or restriction imposed by these Protective Covenants. Such variance or adjustment shall only be granted if it is not material, detrimental or injurious to the other property and improvements to the neighborhood, and shall not defeat the general intent and purpose hereof.

**4.8 Minor Violations of Setback Restrictions.** If, upon erection of any dwelling unit upon any of the lots which are subject to these Protective Covenants, it is disclosed by survey that a minor violation and infringement of setback lines has occurred, such violation and infringement shall be deemed waived by the owners of the lots immediately adjoining the lot upon which the violation and infringement occurs, and such waiver shall be binding upon all other owners who are subject to these Protective Covenants. Nothing herein contained shall prevent the maintenance of suit for any other violation of the restrictions contained in these Protective Covenants. A "minor violation" for the purpose of this section is a violation of not more than thirty inches beyond the required setback lines or lot lines. This provision shall only apply to the original structures and shall not be applicable to any alterations or repairs to such structures.

## ARTICLE 5. EASEMENTS

**5.1 Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved five feet on each side of all lot lines. Within these easements, no permanent structure shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels in or stemming from said easements. However, the easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for the maintenance of these improvements for which a public authority or utility company is responsible. The Association may vacate any easement along lot lines common to two or more adjoining lots if said adjoining lots are purchased for use as a single dwelling site and providing further, that said easements are not currently in use at the time of the vacation request.

## ARTICLE 6. INSURANCE

**6.1 Comprehensive General Liability and Property Insurance.** The Board may purchase a comprehensive policy of general liability insurance covering claims for bodily injury and/or property damage and insuring against loss arising from perils in the common areas and in any other areas which the Association has a maintenance responsibility.

**6.2 Fire and Hazard Insurance.** Fire and hazard insurance may be purchased by the Association to include coverage of a master or blanket type with standard all risk endorsement, and insure against loss from perils including coverage on improvements in the common areas. The policy may contain extended coverage, vandalism and malicious mischief endorsements.

**6.3 Fidelity Insurance Coverage.** The Association may provide for fidelity insurance coverage against dishonest acts on the part of officers, directors, contractors, employees or volunteers responsible for handling funds belonging to or administered by the Association.

**6.4 Directors' and Officers' Liability Insurance.** The Association may maintain adequate liability coverage to protect against any negligent act upon the part of the directors or officers of the Association or members of the Architectural Control Committee.

**6.5 Other insurance.** The Association may purchase and maintain any other insurance, fidelity bonds or the like that it deems necessary.

6.6 **Common Expense.** All insurance purchased by the Association pursuant to the Article 6 shall be a common expense to be paid by the Association.

6.7 **Owners' Personal Liability and Property Insurance.** An owner may carry such property, fire and personal liability insurance as such owner may desire. It is understood that the Association policies described herein will provide no insurance coverage for the lots or improvements thereon.

6.8 **Attorney-in-Fact.** The Association is hereby appointed the attorney-in-fact for all owners to negotiate the loss adjustment on the policy or policies carried by the Association under this Article 6.

6.9 **Proceeds.** The Association shall receive the proceeds of any insurance payments received on the policies obtained and maintained pursuant to this article. To the extent that repairs and reconstruction are required herein and there is a determination that the property shall not be rebuilt, the proceeds shall be placed in the general fund of the Association.

6.10 **Owner Responsibility for Deductible.** If an owner, who by negligent or willful act or omission, causes damage to a common area or other portion of the property which is insured as a common expense, then said owner shall bear the whole cost of the deductible required in the insurance policy for the Association on the common area and such other property. To the extent that there may be no insurance coverage for the damage caused, the owner shall be responsible for the entire cost. An owner shall be responsible for any action of members of his family, his tenants or his guests which cause damage to said common areas or other property.

6.11 **Non-liability.** The Association and all its members are not liable for any injury, including death, which may occur to any member, member's guest, or trespasser while on Association property, including use of all lakes.

## ARTICLE 7. AMENDMENT

7.1 **Amendment.** Any amendment to these Protective Covenants that would terminate these Protective Covenants shall require the affirmative vote of those voting members to whom at least 95% of the votes in the Association are allocated. Except as provided in the foregoing, these Protective Covenants may be amended by the majority vote of the Association's membership eligible to vote, appearing in person or by proxy taken at an annual meeting.

7.2 **Notice.** Written notice of any proposed amendment to these Protective Covenants shall be provided to all members at least thirty days prior to the Association's annual meeting, which notice shall include the complete text of all proposed amendments. Amendments to these Protective Covenants may only be considered by the members at the Association's annual meeting.

7.3 **Effectiveness of Amendment.** Amendments to these Protective Covenants shall not be effective until all of the following has occurred: (i) the amendment(s) shall have been reduced to a writing, which writing shall have been approved by the applicable required percentage of voting members; and (ii) a written certificate, executed and acknowledged by the President or any Vice-President of the Association, shall be attached to the written amendment(s) which shall state that such amendment(s) was approved by the applicable required percentage of voting members; and (iii) the approved written amendment(s) including the certificate described hereinabove shall be recorded in the records of the Clerk and Recorder of Gilpin County, Colorado.

## ARTICLE 8. MISCELLANEOUS

8.1 **Term.** These Protective Covenants shall run with and bind the property up to and including the twenty-fifth anniversary of the date of recording these Protective Covenants, unless amended as herein provided. After such twenty-

fifth anniversary, these Protective Covenants shall automatically extend for successive periods of ten years each, unless amended and/or extinguished in accordance with the provisions of Article 7.

8.2 **Notices.** Any notice permitted or required to be given by these Protective Covenants shall be in writing and may be delivered personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of such notice has been deposited in the United States mail, postage prepaid, addressed to the legal owner at the legal mailing address, as recorded with Gilpin County. Such address may be changed from time to time by notice given to the Gilpin County Assessor.

8.3 (intentionally left blank)

8.4 **Severability.** In the event that any portion of these Protective Covenants shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be invalid, the remaining portions of these Protective Covenants shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

8.5 **Condemnation.**

8.5.1 In the event proceedings are initiated by any governments or agency thereof seeking to acquire the common area or any part thereof by eminent domain, the Association shall give notice thereof, including a description of the interest in the common area or improvements sought to be condemned, to all members. The Association shall have the full power and authority to defend in such proceedings and to represent the owners in any negotiations, settlements and agreements with a condemning authority; provided, however, that the Association shall not enter into any settlement or agreement pursuant to which any part of the common area or improvement thereon is relinquished, without first giving all members at least fifteen days prior written notice thereof.

8.5.2 Any award received or sums paid in settlement to the Association shall be utilized to repair or restore the common area, if such sums are sufficient to make such repair and restoration. If the award is insufficient to repair or restore the common area, or if the full amount of such award is not expended to make such repair or restoration to the common area, the sums received shall remain with the Association to be utilized in its discretion.

8.6 **Captions.** The paragraph captions are inserted for reference only and shall not be construed to define, limit or otherwise alter the scope of any provisions of these Protective Covenants.

8.7 **Governing Law.** These Protective Covenants shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action brought to enforce the provisions herein, or to seek any remedies for violation hereof shall be in the District Court in Gilpin County, Colorado.

8.8 **Where Conflicts with Law Void a Clause.** In the case that any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to any of the rules set forth herein these Covenants or the Bylaws, the law governing agency law will take precedence, unless otherwise allowed to be overridden by such. In that case, the remaining provisions set forth will remain in full effect, and unaffected by such law.

## ARTICLE 9. PARLIAMENTARY AUTHORITY

9.1 The rules contained in the Modern Edition of *Robert's Rules of Order*, copyright 1989, shall govern the Association in all cases where they are not inconsistent with these Protective Covenants and any special rules of order the Association may adopt.