

Not Original Signature

190189
Page 1 of 42
Michelle Nauer, County Clerk & Recorder
Ouray, Colorado
11/30/2005 12:20 PM Recordings Fee \$211.00

**DECLARATION OF
COMMON INTEREST COMMUNITY
FOR
DANCING BEAR RANCH**

DECLARATION made on the date hereinafter set forth by San Miguel Development Co. - VIII, LLC, a Colorado limited liability company, as the sole owner of the real property constituting Dancing Bear Ranch on Spruce Mountain.

NOW, THEREFORE, the Declarant states as follows:

ARTICLE 1

SUBMISSION/DEFINED TERMS

Section 1.01 Submission of Real Estate. Declarant hereby submits the Real Estate described in Exhibit A, to the provisions of the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, (the "Act") and to the terms and conditions of this Declaration. Further, Declarant hereby declares that all of the Real Estate described in Exhibit A, and as added by expansion, shall be held or sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of Dancing Bear Ranch, and which shall run with the Real Estate and which shall be binding on all parties having any right, title or interest in the Real Estate or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the benefit of each Lot Owner thereof.

Section 1.02 Defined Terms. Each capitalized term in this Declaration or in the plat shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration.

(a) **Common Elements.** "Common Elements" shall mean the Dancing Bear Trail, Black Bear Trail, utilities, drainage and water augmentation facilities within Dancing Bear Ranch. Common Elements shall mean all portions of Dancing Bear Ranch not within a Lot.

(b) **Common Interest Community Map.** "Common Interest Community Map" shall mean the Plat Map for Dancing Bear Ranch appearing in the records of the Clerk and Recorder of Ouray County and Montrose County, Colorado.

(c) **Declarant.** "Declarant" shall mean San Miguel Development Co. - VIII, LLC, a Colorado limited liability company ("San Miguel Development").

(d) **Declaration.** "Declaration" shall mean this Declaration, together with any supplements or amendments thereto, and also including, but not limited to, any Dancing Bear Ranch Plats recorded in the office of the Clerk and Recorder of Montrose and Ouray County, Colorado.

(e) **Design Guidelines.** "Design Guidelines" shall mean those rules and regulations promulgated by Dancing Bear Ranch Owners Association to insure that all improvements constructed within Dancing Bear Ranch preserve and promote the interest of the Owners.

(f) **Dwelling.** "Dwelling" means any residential structure constructed within a Lot on Dancing Bear Ranch.

(g) **General Common Elements.** "General Common Elements" shall mean all parts of the Dancing Bear Ranch not identified as Lots on the Plat Map.

(h) **Improvements.** "Improvements" means structures and landscaping installed within or upon a Lot.



190189 12/30/2005 Page 2 of 42

(i) **Limited Common Elements.** "Limited Common Elements" means those portions of the Common Elements, designated by Declarant for the exclusive use of one or more but fewer than all of the Lots.

(j) **Owner.** "Owner" means a person, corporation, partnership, or other entity, legally capable of holding title to real property that may hold legal title to a numbered Lot identified on the Plat Map.

ARTICLE 2

NAMES AND DESCRIPTION OF REAL ESTATE

Section 2.01 **Name and Type.**

(a) **Common Interest Community.** The name of the Common Interest Community is "Dancing Bear Ranch"

(b) **Association.** The name of the Association is "Dancing Bear Ranch Owners Association."

Section 2.02 **Real Estate.** Dancing Bear Ranch is located in Ouray County and Montrose County, State of Colorado. The initial real estate to be included in Dancing Bear Ranch is described in Exhibit A.

Section 2.03 **Access Roads.** All access roads to which the Dancing Bear Ranch is presently subject are noted on the Plat Map for Dancing Bear Ranch.

Section 2.04 **Utility Easements.** Easements for utilities shall be those shown upon the recorded Plat Map of Dancing Bear Ranch.

Section 2.05 **Easements for the Association.** Each Lot shall be subject to an easement in favor of the Declarant and the Association (including their agents, employees and contractors) to perform obligations pursuant to this Declaration.

Section 2.06 **Emergency Easements.** A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing Dancing Bear Ranch, to enter upon any part of Dancing Bear Ranch in the performance of their duties.

Section 2.07 **Easement for Surface Water Drainage and Water Augmentation Facilities.** An easement is hereby declared, reserved and created over and across each and every Lot constituting Dancing Bear Ranch for the removal, drainage and flow of surface water over and across the Property and for the construction, maintenance and replacement of Water Augmentation Facilities, including such ponds and delivery systems as San Miguel Development may construct in the future on any of the Lots within Dancing Bear Ranch. The easements for the drainage of surface water, including snow melt, and water augmentation facilities shall be for the benefit of Declarant and the Lot owners within Dancing Bear Ranch. The easements granted herein shall include the right to enter upon any Lot within Dancing Bear Ranch, or any road or driveway therein, with men and equipment for the purpose of repairing, maintaining, improving, correcting or otherwise modifying the surface water drainage system and water augmentation system within Dancing Bear Ranch. Any entry upon the Property or individual Lot for the purpose of maintaining or working on the surface water drainage system and the water augmentation system shall not constitute a trespass or breach of any covenant of quiet enjoyment.

Page 3 of 42

190189 12/30/2005

Section 2.08 **Easements for Encroachment.** Pursuant to the provisions of C.R.S. § 38-33.3-214, if any part of the Common Elements encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same shall and does exist.

ARTICLE 3

THE ASSOCIATION

Section 3.01 **General Purposes and Powers.** The Dancing Bear Ranch Owners Association, shall perform all functions required to manage Dancing Bear Ranch as provided in this Declaration so as to further the interests of the residents, occupants, tenants, and guests of the Dancing Bear Ranch and members of the Dancing Bear Ranch Owners Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.02 **Authority.** The business affairs of the Dancing Bear Ranch shall be managed by the Dancing Bear Ranch Owners Association. The Association shall be governed by its Bylaws. The Board of Directors may, by written resolution, delegate authority to a manager for the Dancing Bear Ranch Owners Association, provided no such delegation shall relieve the Board of final responsibility.

Section 3.03 **Specific Powers.**

(a) The Association shall have the powers, authority, and duties necessary and proper to manage the business and affairs of Dancing Bear Ranch.

(b) The Association shall have all of the powers, authority and duties permitted or set forth in Section § 38-33.3-302 of the Act.

Section 3.04 **Membership.** Every person who is a record Lot Owner of a fee interest in any Lot which is subject to this Declaration shall be a member of the Dancing Bear Ranch Owners Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. Where more than one person holds an interest in any Lot, all such persons shall be members, however, each Lot shall be entitled to only one vote.

Section 3.05 **Directors.** The affairs of Dancing Bear Ranch and the Dancing Bear Ranch Owners Association shall be governed by the Board of Directors which, until the termination of the period of Declarant Control, shall consist of three persons appointed by the Declarant, and following such date, shall consist of three persons, the majority of whom, excepting the Directors appointed by the Declarant, shall be Lot Owners.

Section 3.07 **Declarant Control.**

(a) The Declarant shall have the reserved power to appoint and remove officers and members of the Board of Directors. This power of Declarant (the period of Declarant Control) terminates no later than the earlier of:

- (i) sixty (60) days after conveyance of seventy-five percent (75%) of all Lots in the ordinary course of business to Lot Owners other than the Declarant; or
- (ii) two (2) years after the last conveyance of a unit by the Declarant in the ordinary course of Business; or
- (iii) two (2) years after the right to add new Lots to Dancing Bear Ranch was last exercised.

190189 12/30/2005 Page 4 of 42

(b) Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that maybe created to Lot Owners other than Declarant, at least one member or twenty-five percent (25%) of the members of the Board of Directors must be elected by lot owners other than the Declarant.

(c) Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to lot owners other than the Declarant, thirty three and one-third percent (33 1/3%) of the members of the Board of Directors must be elected by the Lot Owners other than the Declarant.

(d) The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the period of Declarant Control, but, in that event, the Declarant may require for the duration of the period of Declarant Control that specified actions of the Dancing Bear Ranch Owners Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

ARTICLE 4

LOTS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS

Section 4.01 **Division into "Lots."** Declarant, by this Declaration, has organized the Dancing Bear Ranch into a "Common Interest Community" pursuant to the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, by creating ten (10) Lots, each to be identified on the Plat Map and throughout this Declaration as a Lot. Each Lot consists of a separate fee simple estate.

Section 4.02 **Common Interest Community Map.** Concurrently with the recording of this Declaration, there shall be filed a Plat Map for Dancing Bear Ranch, hereafter referred to as "Plat Map," which depicts:

- (a) The legal description of the Dancing Bear Ranch and a survey thereof;
- (b) The name and general location of the Dancing Bear Ranch;
- (c) The measurements, location, and general description, with reference to the exterior boundaries of each Lot identified as a Lot;
- (d) Location and legal description of all easements, Dancing Bear Trail and Black Bear Trail;
- (e) Any other Map inclusions required by the Act;
- (f) Identification of Lots committed to separate ownership as Dancing Bear Ranch.

In interpreting any and all provisions of this Declaration, the actual location of a Lot shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding any minor deviations from the location of said Lot indicated on the Plat Map.

Section 4.03 **Description of Lots.** The separate physical portions of the Dancing Bear Ranch, each of which is designated for separate ownership, is a "Lot," and each is identified on the Map as a particularly enumerated "Lot." Every contract for sale, deed, lease, mortgage, or other interest, shall legally describe a "Lot" by its identifying "Lot Number" (as shown on the Map), followed by the words, "Dancing Bear Ranch, a Common Interest Community," followed by: "in accordance with and subject to the Map and Declaration of Common Interest

Community for Dancing Bear Ranch," along with actual recordation identification and data.

Every such description shall be good and sufficient for all purposes to sell, convey, transfer, encumber, or otherwise effect not only the respective Lot, but also the appurtenant easement rights in and to the Common Elements of the Association, and any exclusive easement right or use of particular Limited Common Elements. Each such description shall be construed to include a non-exclusive easement for ingress and egress over the Common Elements; non-exclusive use of Common Elements, which are not Limited Common Elements; and any other easements, obligations, limitations, rights, encumbrances, covenants, conditions, and restriction created by this Declaration.

Section 4.04 Inseparability. An Owner's easement(s) and other use rights in the Common Elements, obligations for Common Expense liabilities and vote in the Association, shall not be separated from the Lot to which they are appurtenant.

Section 4.05 No Partition. The Common Elements shall remain in title with the Dancing Bear Ranch Owners Association, and no Owner or any other person shall bring any action for partition or division of the Common Elements. Similarly, no action shall be brought for partition of a Lot between or among the Owners thereof. Each Lot Owner expressly waives any and all such right of partition he/she may have by virtue of his/her ownership of a Lot.

Section 4.06 Subdivision of Lots by Owners. Except as reserved by Declarant herein, no other Owner may subdivide or affect a subdivision of any Lot into two or more Lots.

Section 4.07 Separate Titles and Taxation. Each Lot that has been created, together with its interest in the Common Elements, constitutes for all purposes a separate parcel of real estate and shall be separately assessed and taxed. Declarant shall give written notice to the Assessor of the creating of Common Interest Community Ownership of Dancing Bear Ranch, as is provided by law. The lien for taxes assessed to any Lot, shall be confined to that Lot for delinquent taxes, assessments, or other governmental charges and shall not divest or in any way affect the title to any other Lot. The taxes for the Common Elements assessed by the county for payment by the Association shall be reserved by the Association as proportionate assessments for Common Expenses allocated to each Lot.

Section 4.8 Membership in Association. The Owners of Record of each Lot shall be members of the Association. There shall be one vote for each Lot depicted on the Map. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 4.9 Common Elements and Limited Common Elements.

(a) The Dancing Bear Trail, Black Bear Trail, utilities, surface water drainage facilities and water augmentation facilities shall become Common Elements.

(b) The Declarant reserves, for a period of ten (10) years following the recording of this Declaration, the right to allocate areas of Dancing Bear Ranch as Common Elements, such as additional surface water drainage and water augmentation facilities and further, to allocate areas which constitute a part of the Common Elements as Limited Common Elements for the exclusive use of the owners of Lots to which those specified areas shall become appurtenant. The Declarant may allocate or assign Common Elements or Limited Common Element areas by:

(i) by making such an allocation in a recorded instrument; or

(ii) in the deed to the Lot to which such Limited Common Element shall be appurtenant; or

190189

- 190189, 12/30/2005 Page 6 of 42
- (iii) by recording an appropriate amendment or supplement to this Declaration; or
 - (iv) by recording a supplement to the Plat Map; or
 - (v) by recording the allocation or assignment in the minutes or records of the Association. Such allocations by the Declarant may be made as a matter of reserved right by the Declarant and may be made to Lots owned by the Declarant.

Section 4.10 Lot Owners' Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in and to any Common Elements and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to promulgate and publish rules and regulations with which each Lot Owner and their guests shall strictly comply.

(b) The right, power, and authority of the Association to grant any easement, right of way, license, lease, dedication, transfer or conveyance or grant of any similar interest affecting the Common Elements, to the extent permitted by the Act, if the grant is approved by the affirmative vote of Lot Owners having sixty-six and two-thirds percent (66 2/3%) of the votes appurtenant to all Lots, and consented to, in writing, by the holders of first lien Security Interests in the Lots whose Lot Owners vote affirmatively; provided, further, that if the grant affects any Limited Common Element, such grant shall also require the express written consent of all Lot Owners having the right to use such Limited Common Element and of all holders of first lien Security Interest in the Lots to which such Limited Common Element is appurtenant; provided further that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause. Any easement, right of way, license or similar interest granted by the Association pursuant to this Section shall state that the grant was approved:

(i) by Lot Owners having at least sixty-six and two-thirds percent (66 2/3%) of the votes, and by the corresponding holders of first lien Security Interests,

(ii) if appropriate, by all Lot Owners having the right to use any Limited Common Element affected by the grant, and by the corresponding holder of first lien Security Interests.

(d) The right of the Association to close or limit the use of the Common Elements, Limited Common Elements while maintaining, repairing and making replacements to the Common Elements, Limited Common Elements and Lots.

(e) The Development and Special Declarant Rights of the Declarant reserved in this Declaration.

Section 4.11 Title to the Common Elements. The Declarant hereby covenants that it will convey to the Association fee simple title to the Common Elements. Declarant hereby discloses for itself, its successors, and assigns, that it may convey easements, licenses, or rights to use the Common Elements to others and that title to the Common Elements to be conveyed is subject to the reserved Development Rights, Special Declarant Rights, and other rights reserved to the Declarant and/or its assigns in this Declaration.

Section 4.12 Compliance with Rules. Each Owner, their guests and invitee, shall comply strictly with all of the provisions of this Declaration, the Articles and Bylaws, and the Design Guidelines, decisions, rules, regulations, and resolutions of the Association or the Board, adopted pursuant thereto, and any applicable laws or regulations of any appropriate sovereign body. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damage or injunctive relief or both, and reimbursement of all costs and attorneys' fees

190189 12/30/2005 Page 7 of 42

incurred in connection therewith, which action shall be maintainable by the Board of Directors of the Association in the name of the Dancing Bear Ranch Owners Association on behalf of the Owners, or in a proper case, by an aggrieved Owner.

Section 4.13. Construction and Maintenance Easement. Declarant shall have an easement through the Lots as may be reasonably necessary for the purpose of discharging the reserved rights in these Covenants, Conditions and Restrictions, including specific easements to construct any road, driveway, drainage structure, water storage, water augmentation structure or utility. Such easement includes the right to construct and maintain underground utility lines, pipes, wires, ducts, conduits, and other facilities across any real property within Dancing Bear Ranch. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements.

ARTICLE 5

MAINTENANCE, REPAIR AND REPLACEMENT

Section 5.01 Common Elements. The Dancing Bear Ranch Owners Association shall be responsible for the maintenance, repair, and replacement of any Common Elements, including Dancing Bear Trail, Black Bear Trail, utilities, surface water drainage water augmentation facilities and snow removal.

Section 5.02 Limited Common Elements. In the event a Common Expense is associated with the maintenance, repair, or replacement of a Limited Common Element, those Common Expenses may be assessed equally against the Lots to which the Limited Common Element is assigned.

Section 5.03 Lots. Lot Owners shall be responsible for the maintenance and repair of their Lot and the properties located within the boundaries of their Lot.

ARTICLE 6

ALLOCATED INTERESTS

Section 6.01 Allocated Interests. The votes in the Dancing Bear Ranch Owners Association allocated to each Lot are set forth in Exhibit C. The Common Expense liability is allocated to each Lot in accordance with the formula set forth below in Section 6.02.

Section 6.02 Determination of Allocated Interests. The interests allocated to each Lot have been calculated as follows:

- (a) **Portion of Liability for Common Expenses:**
 - (i) Fifty percent (50%) of the annual cost of road maintenance shall be apportioned to each separate subdivided Lot according to a fraction, the numerator of which is the number one (1) for the subdivided Lot and denominator of which is the number of then existing Lots within Dancing Bear Ranch; and
 - (ii) Fifty percent (50%) of the annual cost of road maintenance shall be apportioned to each separate subdivided lot according to a percentage which represents the acreage contained in the individual lot divided by the total number of acres within Dancing Bear Ranch.
- (b) **Number of votes in the Dancing Bear Ranch Owners Association:**
 - (i) The Owner of each Lot with Dancing Bear Ranch shall be entitled to one (1) vote within

190189 12/30/2005 Page 8 of 42

the Dancing Bear Ranch Ranch Owners Association.

Section 6.03 Reallocation. When Lots are added to Dancing Bear Ranch, or use rights are redesignated, or the number of Lots is changed, pursuant to the provisions of this Declaration and the Act, the formulas set forth above shall be used to reallocate the Allocated Interests.

ARTICLE 7

COVENANT FOR COMMON EXPENSE ASSESSMENTS

Section 7.01 Creation of Association Lien and Personal Obligation to pay Common Expense Assessments. Declarant, for each Lot, shall be deemed to covenant and agree, and each Lot Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Dancing Bear Ranch Owners Association annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), utility assessments (assessed in proportion to usage) and such other assessments as imposed by the Association. Such assessments, including fees, charges, late charges, attorneys' fees, fines and interest, charged by the Association shall also be the personal obligation of the Lot Owner of such Lot at the time when the assessment or other charges became or fell due. The obligation to pay any past due sums due the Dancing Bear Ranch Owners Association shall also be the personal obligation of a successor in title. No Lot Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Common Expense Assessments are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted by any reason including, without limitation, any claim that the Dancing Bear Ranch Owners Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

The Association's annual Common Expense Assessments, insurance assessments (assessed in proportion to risk), utility assessments (assessed in proportion to usage), and such other assessments as imposed by the Dancing Bear Ranch Owners Association, including fees, charges, late charges, attorneys' fees, fines and interest charged by the Association, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such assessment or charge is made. If a Common Expense Assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

Section 7.02 Common Expense – San Juan Ranch Road Maintenance Contribution. The Common Expenses shall also include, but not be limited to, the maintenance and preservation of the roads to and within the Dancing Bear Ranch known as Dancing Bear Trail and Black Bear Trail and Hull Ridge Road and Lower Ranch Road within San Juan Ranch (herein after referred to as the "Roads"), together with such other access roads as may come under the control of the Association. The location of the Roads are more particularly shown on the recorded plat maps for Dancing Bear Ranch and San Juan Ranch, County of Montrose and County of Ouray, State of Colorado, which are incorporated herein by reference as though fully set forth. The obligation to contribute to the maintenance of the Hull Ridge Road and Lower Ranch Road is set forth in the Declaration of Mutual Covenants recorded June 16, 2003 at Reception No. 181372 and August 11, 2003 at Reception No. 707505 in Montrose County, Colorado (the "Mutual Covenant"). Under the terms of the Mutual Covenants the Association is obligated itself to pay San Juan Ranch Owners' Association ("SJROA") thirty seven percent (37%) of SJROA's annual assessments and of any special assessments or 4.11% of any such assessments per residential lot included (exclusive of any caretaker or ranch manager residence) in Dancing Bear Ranch for such assessments, whichever is greater, related to San Juan Ranch road maintenance and repair of its common element roads. The above referenced obligation to contribute to the San Juan Ranch road maintenance shall be a Common Expense of the Association.

Section 7.03 Apportionment of Common Expenses. Except as provided in this Declaration, all Common Expenses shall be assessed against all Lots in accordance with formula for liability for the Common

190189 12/30/2005 Page 9 of 42

Expenses as set forth in Section 6.02 of this Declaration and as initially shown on Exhibit C of this Declaration.

Section 7.04 Purpose of Assessments. The assessments levied by the Dancing Bear Ranch Owners Association through its Board of Directors shall be used exclusively for the purposes of promoting the health, safety, and welfare of the residents and guests of Dancing Bear Ranch and the members of the Dancing Bear Ranch Owners Association. Such purposes shall include, but shall not be limited to the following: the improvement, maintenance, repair, upkeep and reconstruction of any utility or road maintenance obligations, including snow removal, which may be deemed desirable for the common benefit of the Lot Owners or for the maintenance of property values, or for the payment of expenses which may be incurred by virtue of agreement with or requirement of Montrose or Ouray County or other governmental or quasi-governmental authorities. The assessments may also be used to provide insurance of various types and in such amounts deemed appropriate by the Board of Directors. Also, a portion of the assessments may be used to provide a reserve fund for the replacement, repair, and maintenance of roads and utilities which must be replaced or upgraded from time to time.

Section 7.05 Annual Assessment/Commencement of Common Expense Assessments. The Common Expense Assessment may be made on an annual basis against all Lots and shall be based upon the Dancing Bear Ranch Owners Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. Common Expense Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. Common Expense Assessments shall begin on the first day of the month in which conveyance of the first Lot to a Lot Owner other than the Declarant occurs. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification, or a release of the Lot Owners from their obligation to pay.

Section 7.06 Effect of Non-Payment of Assessments. Any assessment, charge, or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate of eighteen percent (18%) per annum from the due date, and the Dancing Bear Ranch Owners Association may assess a reasonable late charge thereon as determined by the Board of Directors. Failure to make payment within sixty (60) days of the due date thereof shall cause the total amount of such Lot Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. Further, the Dancing Bear Ranch Owners Association may bring an action at law or in equity, or both, against any Lot Owner personally obligated to pay such overdue assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Lot Owner's Lot. An action at law or in equity by the Association against a Lot Owner to recover a money judgment for unpaid assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Dancing Bear Ranch Owners Association without foreclosing, or in any way waiving, the Association's lien therefor. If such action at law or equity is commenced, or if Dancing Bear Ranch Owners Association in any way consults with legal counsel concerning payment of assessment, charge or fee, and Lot Owner desires to pay the levied assessment, charge or fee, such Lot Owner will be required to pay all attorney's fees incurred by Dancing Bear Ranch Owners Association in obtaining payment of levied assessment, charge or fee. Foreclosure or attempted foreclosure by the Dancing Bear Ranch Owners Association of its lien shall not be deemed to estop or otherwise preclude the Dancing Bear Ranch Owners Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessment, charges, or fees, or monthly or other installments thereof, which are not fully paid when due. The Dancing Bear Ranch Owners Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment Lien, and a Lot Owner abandons or leaves vacant his/her Lot, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot without prior notice to the Lot Owner. The rights of the Dancing Bear Ranch Owners Association shall be expressly subordinate to the rights of any holder of a first lien Security Interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

190189 12/30/2005 Page 10 of 42

Section 7.07 Lien Priority. The lien of the Dancing Bear Ranch Owners Association under this Section is prior to all other liens and encumbrances on a Lot except:

- (a) liens and encumbrances recorded before the recordation of the Declaration;
- (b) a first lien Security Interest on the Lot (except as allowed by the Act with regard to the limited lien priority allowed to the Dancing Bear Ranch Owners Association); and
- (c) liens for real estate taxes and other governmental assessments or charges against the Lot.

This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Dancing Bear Ranch Owners Association under this Article is not subject to the provision of any homestead exemption as allowed under State or Federal law. Sale or transfer of any Lot shall not affect the lien for said assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of assessment charges as provided by applicable State law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any assessment charges thereafter becoming due, nor from the lien thereof.

Section 7.08 Common Expenses Attributable to Fewer than All Lots.

- (a) Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to or a part of a Lot or Lots or to a Lot or Lots to which a Limited Common Element is assigned may be assessed against that or those Lots. If any such Limited Common Element is assigned to more than one Lot, the Common Expenses attributable to the Limited Common Element may be assessed equally among the Lots to which it is assigned.
- (b) Any Common Expense for services provided by the Dancing Bear Ranch Owners Association to an individual Lot at the request of the Lot Owner may be assessed exclusively against that Lot.
- (c) Any insurance premium increase attributable to a particular Lot by virtue of activities in or construction of the Lot shall be assessed against that Lot.
- (d) An assessment to pay a judgment against the Dancing Bear Ranch Owners Association may be made only against the Lots in Dancing Bear Ranch at the time the judgment was entered, in proportion to their Common Expense liabilities.
- (e) If a Common Expense is caused by the misconduct of a Lot Owner, the Dancing Bear Ranch Owners Association may assess that expense exclusively against that Lot Owner's Lot.
- (f) Fees, charges, taxes, impositions, late charges, fines, attorney's fees, collection costs and interest charged against a Lot Owner pursuant to this Section are enforceable as Common Expense assessments.

ARTICLE 8

RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Lots and to the Common Elements:

190189 12/30/2005 Page 11 of 42

Section 8.01 Use/Occupancy. The use and occupancy of a Lot or Dwelling shall be limited to residential use by owners. Notwithstanding the foregoing limitation, an Owner may use the Lot or Dwelling thereon with Board and Design Review Board approval, to operate a home occupation, as long as such home occupation does not create a nuisance; does not entail any kind of manufacturing activity; does not create any environmental pollution, including offensive noise; and does not require employees. The Declarant shall have the right to expand or further limit the allowable uses on any additional Lots which may be added to Dancing Bear Ranch pursuant to the Reserved Expansion Rights set forth in Section 9.04.

Section 8.02 Lots to be Maintained. Each Lot, at all times, shall be kept in a clean, sightly, and wholesome condition. No trash, abandoned automobiles, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring homesite, or any road, except as necessary during a period of construction. Declarant, its agents and assigns and the Dancing Bear Ranch Owners Association, and its agents, shall have the authority to enter and clean up Lots which do not conform to the provisions of this Section, and to charge and collect from the Lot Owners thereof all reasonable costs related thereto.

Section 8.03 Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible for Declarant, its employees and agents, to perform such reasonable activities, and to maintain upon portions of Dancing Bear Ranch such facilities as they deem reasonably necessary or incidental to the construction of infrastructure improvements and sale of Lots in the development of Dancing Bear Ranch, specifically including, without limiting the generality of the foregoing, the maintenance of temporary storage areas, construction yards and equipment, signs, temporary sales offices and equestrian facilities.

Section 8.04. Construction and Size of Residential Dwelling. Subject to the attached Design Guidelines for Dancing Bear Ranch and the Ouray County, Colorado, land use and building code, the owner of each Lot shall have the exclusive right to construct, at the owner's expense one (1) primary residential dwelling unit, one (1) guest house or caretaker's unit and related out buildings such as barns and stables. All of the above referenced structures shall be constructed within a circular area on the individual Lots which shall not exceed three (3) acres in size. Any construction of improvements outside of the designated three (3) acre area shall require the written approval of the Design Review Board. All structures shall be completed and certified for occupancy within two (2) years of commencing construction. An Owner must submit plans and specifications for any planned Dwelling, accessory or out buildings and appurtenant landscaping to the Design Review Board for approval in advance of commencing construction. A Lot Owner shall thereafter have not more than one year within which to commence construction in accordance with his/her approved plans. Owner shall pay any and all permit fees, recording fees, and utility hook up fees required to complete the contemplated improvements. Construction and construction vehicles are prohibited in Dancing Bear Ranch and on the access roads through San Juan Ranch, except on weekdays and only between the hours of 7:00 AM and 6:00 PM. Lot owners and their construction contractors shall be subject to the bonding requirements of San Juan Ranch regarding construction and attendant road use as more particularly set forth in Article 4.2 of the Declaration for San Juan Ranch recorded at Book 858, pages 971-972, in the records of Montrose County Clerk and Recorder, Colorado. The expense associated with the repair of any damage to the roads and utility infrastructure within Dancing Bear Ranch that occurs during or as the result of the construction of improvements, shall be the responsibility of the Lot owner or owners engaged in said construction.

Section 8.05. Size of Primary Residential Dwellings. No primary residential Dwelling shall be constructed on any Lot, the habitable floor space of which, exclusive of basement, decks, and porches, is less than 2500 square feet. The habitable floor space of any guest house or caretaker's unit shall be no more than fifty percent (50%) of the habitable floor space of the primary residential structure with a maximum allowed square footage of 2500 square feet.

Section 8.06. Waste Water Systems. It shall be the responsibility of the owner of each Lot to provide

190189 12/30/2005 Page 12 of 42

an individual wastewater disposal or septic system to be approved under Ouray County and State of Colorado rules and regulations.

Section 8.07 Water Supply. It shall be the responsibility of the owner of each Lot to provide a domestic water supply by obtaining a well permit from the appropriate State of Colorado agencies and then constructing a water well on the Lot. The San Miguel Development makes no representation as the quantity or quality of well water within Dancing Bear Ranch.

Section 8.08. Fire and Building Code Compliance and Fire Prevention. All construction within Dancing Bear Ranch shall comply with applicable Ouray County, Colorado, Construction Codes and Regulations, including Building and Fire Codes. All Dwellings in Dancing Bear Ranch shall have approved fire suppression sprinkler systems installed at the time of construction, together with an on-site emergency fire suppression water supply that shall consist of a cistern storage and pumping system and an emergency power generation system with at least a 20 k generating capacity. Every submittal for review shall include plans for sprinklers, on-site emergency water storage, pumps and emergency power generation. The above referenced plans must be shown to meet all applicable Ouray County Building Codes prior to approval by the Design Review Board.

Section 8.09. Prohibition on Mobile Homes, Recreational Vehicles, and other Similar Residential Structures. The owners of Lots within Dancing Bear Ranch, including tenants, guests or other invitees, are prohibited from erecting, constructing, placing, using, occupying or living in any mobile home, recreational vehicle, or other similar structure (hereinafter referred to as a "Temporary Residential Structure") on any Lot within Dancing Bear Ranch. In addition, the owners of Lots are prohibited from parking recreational vehicles, boats, trailers, campers, camping trailers, vehicles of any kind and ranch equipment on Lots within Dancing Bear Ranch, except in an approved enclosed structure that is constructed in accordance with Dancing Bear Ranch Design Guidelines. The use, operation and storage of motorized "dirt bikes" of any kind or nature are strictly prohibited in Dancing Bear Ranch and on the roads, driveways and trails situated therein. In the event a Lot owner or San Miguel Development brings an action to enjoin the use and parking of the above referenced temporary Residential Structures and/or equipment or any other violation of these Covenants, Conditions and Restrictions, each Lot owner shall be deemed to have covenanted and agreed to the entry of a temporary restraining order, preliminary injunction and permanent injunction, without the requirement of a security bond being posted under the provisions of the Colorado Court Rules or applicable state statutes. The foregoing restriction shall not apply to residential structures erected by modular or panelized construction.

Section 8.10. Building Setbacks. "Building Setbacks" are the areas within each Lot designated on the Plat Map for Dancing Bear Ranch, or supplements thereto, which may not be used for the construction of improvements, including without limitation residential dwelling units, guest houses, any related out buildings such as barns and stables or any other related structures. The foregoing restriction shall not apply to pedestals or related utility facilities servicing the Lots within Dancing Bear Ranch. The prohibition on construction within setbacks is strictly enforced within Dancing Bear Ranch.

Section 8.11. Use and Occupancy. The use and occupancy of a Lot, structure or Dwelling within Dancing Bear Ranch shall be limited to residential use and occupancy and ranch related uses by owners. No Dwelling shall be occupied by more than three (3) unrelated persons. The Lots within Dancing Bear Ranch are for the private use of the Owners and the guests. The Lots within Dancing Bear Ranch may not be used for public gatherings or functions, such as festivals, music events, religious events or other similar functions in which the public is invited to attend. Notwithstanding the foregoing limitation, an owner may use a Lot or dwelling structure to operate a home occupation, as long as such home occupation (i) does not constitute a nuisance; (ii) does not entail any kind of manufacturing activity; (iii) does not create or generate any environmental pollution, including offensive noise or odor; (iv) and does not require any employees.

190189 12/30/2005 Page 13 of 42

Section 8.12. No Hazardous Activities. No activities shall be conducted on or in any Lot, which are or may be unsafe or hazardous to any person or property located within Dancing Bear Ranch. Without limiting the generality of the foregoing, not fires shall be ignited upon any portion of the Dancing Bear Ranch except in a contained barbeque unit, while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or woodstove. No firearms may be discharged on Dancing Bear Ranch, except in the instances of special hunting as set forth herein. No hunting of mammals, reptiles or birds within Dancing Bear Ranch shall be permitted other than to eliminate a nuisance or to protect the health, safety and welfare of the Lot owners. Individuals may hunt with bow and muzzle loaders for purposes of elk and deer management only. The discharge of any firearm over or across a residential structure or access road shall be absolutely prohibited.

Section 8.13. Fences. An owner desiring to restrict livestock from his or her Lot or desiring to enclose his or her own livestock must erect and maintain suitable fences on his or her Lot. Owners are encouraged to construct fences on their Lot, as long as such fence comports with the style and design of existing road fencing on Dancing Bear Trail and Black Bear Trail within Dancing Bear Ranch. No fence shall be constructed which prohibits or hinders the migration of elk, deer and other wildlife within Dancing Bear Ranch. Use of barbed wire is strictly prohibited. Perimeter fencing of entire Lots or portions of Lots is permissible, but is restricted and must be consistent with existing fencing in Dancing Bear Ranch, including size, height, color and finish.

Section 8.14 Restriction on Animals. No animal shall be kept within Dancing Bear Ranch, which unreasonably bothers or constitutes a nuisance to other owners, livestock or wildlife. Any dogs that chase, stalk or pursue elk, deer or other wildlife are absolutely prohibited within Dancing Bear Ranch and the San Miguel Development or any lot owner may enjoin the maintenance of such animals within Dancing Bear Ranch. Each person bringing or keeping animals on his or her lot shall be absolutely liable to each and all other Lot owners, their family members, guests, invitees, licensees, and contract purchasers for any damages or personal injuries resulting from the maintenance of such animal or animals.

Section 8.15. No Unsightliness. No unsightliness shall be permitted on any portion of Dancing Bear Ranch. In accordance with said restriction:

- (a) Garbage and trash shall be kept in a covered container at all times and any such container shall be kept within an enclosed structure to avoid disturbance by wild animals or domestic livestock;
- (b) Pipes for water, gas, sewer, propane gas tanks, and sewage disposal systems or devices shall be kept and maintained within an enclosed structure or below the surface of the ground;
- (c) Wires, poles, antennas, and other facilities for the transmission or reception of audio or visual signals may be installed and maintained above ground, but with due consideration to visibility from adjacent lots or roads; and
- (d) Recreational vehicles, boats, trailers, campers, camping trailers, vehicles of any kind and ranch equipment shall not be parked or stored on Lots within Dancing Bear Ranch, except in approved enclosed structures that are constructed in accordance with Dancing Bear Ranch Design Guidelines and Design Review Board approval.

Section 8.16. Utilities. All utilities, utility line extensions, installations and connections shall be placed underground. Declarant shall provide available utilities to the boundary of each Lot. It shall be the responsibility of individual Lot owners at the time of construction to extend utility service from the Lot boundary to the selected site for construction of a residential Dwelling or other allowed structures. All costs associated with extending utility service within individual Lots shall be responsibility of the Lot owner at the time of construction.

Section 8.17. Livestock Permitted. Each owner of a Lot shall be permitted to maintain a reasonable

number of horses and/or livestock animals. The commercial business of breeding animals is prohibited.

Section 8.18. Trees/Landscaping. No tree of six inches or greater diameter or eight feet or greater height may be removed from any portion of Dancing Bear Ranch, except as required for the construction of an allowed Dwelling, accessory unit or out building. Vegetation on Dancing Bear Ranch must be maintained to minimize erosion and encourage growth of ground cover and all tree and shrub planting must be consistent with the natural vegetation on Dancing Bear Ranch.

Section 8.19 Design Guidelines. No improvement or structure or addition thereto, shall be constructed, erected, placed or installed within Dancing Bear Ranch, unless plans and specifications thereto (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the board) shall comply with the Design Guidelines for Dancing Bear Ranch. The Design Guidelines for Dancing Bear Ranch are attached hereto as Exhibit B and incorporated herein by reference as though fully set forth. Notwithstanding the Design Guidelines for Dancing Bear Ranch, a Lot Owner may make reasonable modifications to his or her Lot, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) to afford one or more Persons With a Disability residing at or intending to reside at such Lot the full enjoyment of such Lot.

Section 8.20 Restriction on Signs. No signs shall be erected on the Ranch except a "For Sale" sign which may be displayed to the public view on or from any Lot. The foregoing limitation shall not apply to the Declarant or its designees for the purpose of developing, selling, and improving Lots within Dancing Bear Ranch. All of Declarant's signs shall be removed after Declarant's last Lot is sold. All signs must comply with the signage code enacted by San Miguel County.

Section 8.21 No Time Shares. A Lot may not be conveyed pursuant to a timesharing arrangement as described in C.R.S. § 38-33-110 - 113, without the written consent of Declarant for ten (10) years from the date of recording of this Declaration, and thereafter, without the consent of the Dancing Bear Ranch Ranch Owners Association.

Section 8.22 Rules and Regulations. In furtherance of the provisions of this Declaration, and the general plan, rules and regulations concerning and governing the Dancing Bear Ranch Ranch or any portion thereof may be adopted, amended, or repealed, from time to time, by the Board of Directors, or its successors and assigns. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 8.23 Indemnification. Each Owner shall be liable to the remaining Owners and/or Association for any damage to the Common Elements which may be sustained by reason of the construction of said Owner's Dwelling or the negligence of said Owner, members of the Owner's family, the Owner's contract purchaser, contractors, lessees, renters, guests or invitee, to the extent that any such damage shall not be covered by insurance. Each Owner does further, by acceptance of the deed, agree for the Owner, and for the members of the Owner's family, the Owner's contract purchasers, contractors, lessees, renters, guests or invitee, to indemnify each and every other Owner, and the Association, and to hold him, her or it harmless from and to defend him, her or it against, any claim of any person or persons for personal injury or property damages occurring within the Lot of that particular Owner and any Limited Common Elements appurtenant thereto. In the event of any legal action between the Declarant, Association or Owners, the prevailing party shall be awarded reasonable attorneys' fees and costs. This provision shall apply to all causes of action arising out of the development, maintenance and sale of Dancing Bear Ranch.

ARTICLE 9

DEVELOPMENT RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 9.01 Development Rights and Special Declarant Rights. The Declarant reserves, through ten (10) years after the recording of this Declaration, or such maximum period allowed by law, whichever is greater, the following Development Rights and Special Declarant Rights. In exercising the Development Rights and Special Declarant Rights, the consent of the existing Lot Owners or holders of first lien Security Interests shall not be required for any such exercise, and Declarant may proceed with such exercise without limitation at its sole option.

- (a) The right to relocate boundaries between adjoining Lots, to enlarge Lots, to enlarge the Common Elements, to reduce or diminish the size of Lots, to reduce or diminish the size of areas of the Common Elements, or to complete or make improvements indicated on Plat Maps filed of record or filed with the Declaration;
- (b) The right to exercise any development rights reserved below or allowed in the Act;
- (c) The right to amend the Declaration in connection with the exercise of any development right;
- (d) The right to amend the Plat Map in connection with the exercise of any development right;
- (e) The right to establish, vacate and relocate utility and road easements; to establish Common Elements, and convert Common Elements to Limited Common Elements;
- (f) The right to subdivide Lot 10;
- (g) To permit third parties to use the easements through Dancing Bear Ranch and the right to establish, vacate and relocate utility easements within Dancing Bear Ranch;
- (h) To grant to San Juan Ranch Homeowners' Association, Inc. and its invitees a perpetual cross easement for pedestrian and equestrian use over and upon any roads or hiking or equestrian trails developed within Dancing Bear Ranch; and
- (i) To enter into contracts for the use, repair and maintenance of road and utility easements for the benefit of the Lot Owners.

The rights set forth above may not be exercised by the Declarant in such a way as to alter the boundaries of Lots previously sold to third parties.

Section 9.02 Additional Reserved Rights. In addition to the Special Declarant Rights set forth above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

- (a) The right to maintain informational signs and advertising signs on the Dancing Bear Ranch.
- (b) The right to establish, from time to time, by dedication or otherwise, utility and other easements for purposes including but not limited to roads, paths, trails, walkways, and drainage, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Lot Owners and the general public including the Lot Owners within San Juan Ranch.
- (c) The right to enter into, establish, execute, amend, and otherwise deal with contracts and

190189 12/30/2005 Page 16 of 42
agreements for the use, lease, repair, maintenance or regulation of roads including snow removal and utilities which may or may not be a part of Dancing Bear Ranch for the benefit of the Lot Owners and/or the Association.

(d) The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 9.03 Rights Transferable/Rights Transferred.

(a) Any Special Declarant Right, any of the Additional Reserved Rights, any Expansion Rights created or reserved under this Article or the Act for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the real property records of Montrose and Ouray County. Such instrument shall be executed by the transferor Declarant and the transferee.

Section 9.04 Reservation of Expansion and Development Rights.

(a) **Expansion Rights.** Declarant expressly reserves the right for a period of ten (10) years to subject additional real estate, including the Real Estate described in Exhibit D, to the provisions of this Declaration and to thereby add additional Lots to Dancing Bear Ranch. Such additional Lots shall then be subject to the provisions of the Declaration, Articles and Bylaws, Design Guidelines, Rules and Regulations and each Lot shall be entitled to one membership in the Association. Allocation of votes and obligations for assessments shall be based on a proration of all Lots then part of the Dancing Bear Ranch. The consent of the existing Lot Owners or holders of first lien Security Interests shall not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option.

(b) **Development Rights.** Declarant expressly reserves the right to construct additional Lots, Common Elements and Limited Common Elements (the "Additional Improvements") and to subdivide Lot 10 and to convert Lots into Common Elements on the real estate constituting Dancing Bear Ranch and on all or any portion of the Development Property which may be added to Dancing Bear Ranch in the future. Declarant may exercise its Development Rights in whatever order of development Declarant, in its sole discretion, determines. If all or any part of the Development Property is submitted to this Declaration, this right to reserve property for future development shall apply to such property as well. Declarant expressly reserves the right to withdraw all or any portion of the Development Property by recording a document evidencing such withdrawal in the office of the Clerk and Recorder of Montrose and/or Ouray County. The property withdrawn from Dancing Bear Ranch shall be subject to whatever easements, if any, are reasonably necessary for access to or for the operation of Dancing Bear Ranch. Declarant shall prepare and record in the office of the Clerk and Recorder of Montrose and/or Ouray County, whatever documents are necessary to evidence such easements.

(c) **Amendment of the Declaration.** If Declarant elects to submit the Development Property, or any part thereof, or Additional Improvements, to this Declaration, or to subdivide or to convert Lots, Declarant shall record an Amendment to the Declaration reallocating the Allocated Interests so that the Allocated Interests appurtenant to each Lot will be apportioned according to the total of Lots submitted to the Declaration. The Amendment to the Declaration shall contain at a minimum the legal description of the Development Property, or a part thereof, or a description of the property being submitted to this Declaration and a schedule of the Allocated Interests appurtenant to the Lots.

(d) **Amendment of the Plat.** Declarant shall, contemporaneously with the Amendment of the Declaration, file, if deemed necessary by Declarant, an Amendment of the Plat. The Amendment to the plat shall substantially conform to the requirements contained in this Declaration.

(e) **Interpretation.** Recording of amendments to the Declaration and the plat in the office of the Clerk and Recorder of Montrose and/or Ouray County shall automatically:

- (i) Vest in each existing Lot Owner the reallocated Allocated Interests appurtenant to their Lot; and
- (ii) Vest in each existing Security Interest a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

Further, upon the recording of an Amendment to the Declaration, the definitions used in this Declaration shall automatically be extended to encompass and to refer to Dancing Bear Ranch Ranch, as expanded and, the Development Property, or any part thereof, and the Additional Lots shall be added to and become a part of the Property for all purposes. All conveyances of Lots after such expansion shall be effective to transfer rights in all Common Elements as expanded, whether or not reference is made to any Amendment to the Declaration or plat or map. Reference to the Declaration and plat or map in any instrument shall be deemed to include all Amendments to the Declaration, and the plat and/or map without specific reference thereto.

(f) **Construction and Maintenance Easement.** Declarant has an easement through the Common Elements and Lots as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Declarant's reserved rights in this Declaration, including specific easements to construct any road, or utility. Such easement includes the right to construct and maintain underground utility lines, pipes, wires, ducts, conduits, and other facilities across the land not designated as reserved for future development in the Declaration or on the plat or map for the purpose of furnishing utility and other services to buildings and improvements to be constructed on the property so reserved for future development. Declarant's reserved construction easement includes the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Common Elements. If Declarant grants any such easements, the Declaration will be amended by Declarant to include reference to the recorded easement.

(g) **Reciprocal Easements.** If all or part of the Development Property is not submitted to this Declaration:

- (i) The Lot Owner(s) of the Development Property shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across Dancing Bear Ranch; and
- (ii) The Lot Owner(s) of Dancing Bear Ranch shall have whatever easements are necessary or desirable, if any, for access, utility service, repair, maintenance and emergencies over and across the Development Property.

Further, Declarant shall prepare and record in the office of the Clerk and Recorder of Montrose and /or Ouray County, whatever documents are necessary to evidence such easements and shall amend to the Declaration to include reference to the recorded easement(s). Such recorded easement(s) shall specify that the Lot Owners of the Development Property and the Lot Owners of Dancing Bear Ranch shall be obligated to pay a proportionate share of the cost of the operation and maintenance of any easements utilized by either one of them on the other's property upon such reasonable basis as the Declarant shall establish in the easement(s). Preparation and recordation by Declarant of an easement pursuant to this Section shall conclusively determine the existence, location and extent of the reciprocal easements that are necessary or desirable as contemplated by this Section.

(i) **Termination of Expansion Rights.** The expansion rights reserved to Declarant, for itself, its successors and assigns, shall expire on December 31, 2015, unless the expansion rights are:

- (i) Reinstated or extended by the Association, subject to whatever terms, conditions, and limitations the Executive Board may impose on the subsequent exercise of the expansion rights by Declarant, or
- (ii) Extended as allowed by law.

ARTICLE 10

DESIGN REVIEW APPROVAL

Section 10.01 Required Approvals and Design Criteria. No improvement or structure or addition thereto, shall be constructed, erected, placed or installed within Dancing Bear Ranch, unless plans and specifications thereto (said plans and specifications to show exterior design, height, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the board) shall have been first submitted to and approved in writing by the Design Review Board. However, the Design Review Board shall not refuse to permit a Lot Owner to make reasonable modifications to their Lot or to any Limited Common Element which the Lot Owner has the right to use, if such modifications are necessary under the Federal Fair Housing Act (as heretofore and hereafter amended) to afford one or more Persons With a Disability residing at or intending to reside at such Lot the full enjoyment of such Lot and/or the Limited Common Elements appurtenant thereto. The Design Review Board shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to Lots or Common Elements, and within Dancing Bear Ranch shall comply with the requirements set forth herein. The approval or consent of the Design Review Board on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious; decisions shall be conclusive and binding on all interested parties. Approval shall be based upon, but not limited to, effective location and use of improvements on nearby Lots, and preservation of the natural beauty of Dancing Bear Ranch.

(a) **Expense of Review.** Upon its review of such plans, specifications and submittal, the Design Review Board may require that the applicant(s) reimburse the board for actual expense incurred by it in its review and approval process.

Section 10.02 Establishment of the Design Review Board. The initial Design Review Board shall consist of the Declarant. Real estate owned by the Declarant (including both Lots and Common Elements) shall be exempt from any control by the Design Review Board. On the Turnover Date, the Design Review Board shall consist of three (3) members who may then be comprised completely of Lot Owners without regard to special qualifications and the members shall then be appointed by the Association. Until the Turnover Date, Declarant, in its sole discretion, may at any time grant the power of appointment of the members of the Design Review Board, and the chairman thereof, to any entity succeeding to substantially all of the assets of Declarant, or to the Association. Notwithstanding the above, appointments shall be for staggered terms of a years different in termination so as to provide reasonable continuity to the design review process. During the period of Declarant Control, the Declarant may remove any appointee to the Design Resign Board at any time upon written notice to such appointee.

Section 10.03 Reply and Communication. The Design Review Board shall reply to all submittal of plans made in accordance herewith in writing within thirty (30) days after receipt. Where prior written consent of approval of the Design Review Board is required under the Declaration with respect to the making of an

190189 12/30/2005 Page 19 of 42

Improvement, such Improvements shall be conclusively deemed to have been made in compliance with this Declaration unless a notice of intention to commence legal action challenging and objection thereto is issued by the Design Review Board within a reasonable period of time after completion of such Improvement. All communications and submittal shall be addressed to the Design Review Board at such address as the chairman of the Design Review Board shall hereafter designate in writing addressed and mailed to the Lot Owners.

Section 10.04 Variances. The Design Review Board may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in these covenants or in the development guide. Such variances or adjustments shall be granted only when the granting thereof shall not be materially detrimental or injurious to the other Lots or Common Elements nor deviate substantially from the general intent and purpose of these Covenants.

Section 10.05 Waivers. The approval or consent of the Design Review Board, or appointed representative thereof, to any application for design approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the committee as to any application or other matters subsequently or additionally submitted for approval or consent pursuant to these covenants.

Section 10.06 Liability. The Design Review Board and the members thereof, as well as any representative of the committee designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants.

Section 10.07 Records. The Design Review Board shall maintain written records of all applications submitted to it and of all actions taken by it with respect thereto. Such records shall be open and available for inspection by any interested party during reasonable hours of the business day.

Section 10.08 Enforcement. Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Design Review Board and any interested Lot owner shall have the right but not the obligation to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure of the Design Review Board or of any Lot Owner to enforce any covenant or restriction herein contained, shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE 11

INSURANCE/CONDEMNATION

Section 11.01 Insurance Carried. The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein and as set forth in the Act, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. Commencing not later than the time of the first conveyance of a Lot to a person other than a Declarant, the Association shall maintain, to the extent reasonably available, policies with the following terms or provisions:

- (a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Lot Owner and shall provide that such policies may not be canceled or modified without at least twenty (20) days prior written notice to all of the Lot Owners, holders of first lien Security Interests and the Association.

(b) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, the officers of the Association, the Declarant, holders of first lien Security Interests, their successors and assigns and Lot Owners as insured.

(c) Lot Owners shall carry other insurance for their benefit and at their expense, provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Lot Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if a Lot Owner has other insurance that covers the same loss or losses as covered by policies of the Association. In this regard, Declarant discloses that the Association's insurance coverage, as specified hereunder and under the Act, does not obviate the need for Lot Owners to obtain insurance for their own benefit.

Section 11.02 Hazard Insurance on the Lots and Common Elements. The Association shall obtain adequate hazard insurance covering loss, damage or destruction by fire or other casualty to the Common Elements and the other property of the Association. If coverage purchased by the Association includes improvements and betterment installed by Lot Owners, the cost thereof shall be assessed to each Lot in proportion to risk. All policies shall contain a standard non-contributory mortgage clause in favor of each holder of first lien Security Interests, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such holders of first lien Security Interests, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the County of Montrose and/or Ouray, Colorado.

Section 11.03 Liability Insurance. The Association shall obtain adequate comprehensive policy of public liability and property damage liability insurance, in such limits as the Board may from time to time determine and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of Dancing Bear Ranch Ranch. All liability insurance shall name the Association as the insured.

Section 11.04 Officers' and Directors' Personal Liability Insurance. The Association shall obtain officers' and directors' personal liability insurance to protect the officers and directors from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 11.05 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 11.06 Insurance Premium. Except as assessed in proportion to risk, if permitted under the terms of this Declaration, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual assessments levied by the Association.

Section 11.07 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Lot Owners, the Association and the Lot Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of or breach of any agreement by and of said persons.

Section 11.08 Annual Insurance Review. The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 11.9 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any holder of a first lien Security Interest. The Association shall hold any insurance proceeds in trust for the Association, Lot Owners and holders of first lien Security Interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, Lot Owners and holders of first lien Security Interests are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 11.10 Duty to Repair. Any portion of Dancing Bear Ranch Ranch for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

ARTICLE 12

SPECIAL RIGHTS OF HOLDERS OF FIRST LIEN SECURITY INTERESTS

Section 12.01 General Provisions. The provisions of this article are for the benefit of holders, insurers, or guarantors of holders of first lien Security Interests recorded within Dancing Bear Ranch Ranch. To the extent applicable, necessary or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of the Association. A holder, insurer or guarantor of a first lien Security Interest who has delivered a written request to the Association containing its name, address, the legal description and the address of the Unit upon which it holds a Security Interest, shall be considered an "Eligible Holder." Eligible insurers and guarantors of a first lien Security Interest shall have the same rights as Eligible Holder.

Section 12.02 Special Rights. Eligible Holders shall be entitled to:

- (a) timely written notice from the Association of any default by a mortgagor of a Unit in the performance of the mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default;
- (b) examine the books and records of the Association during normal business hours;
- (c) receive a copy of financial statements of the Association, including any annual audited financial statement;
- (d) receive written notice of all meetings of the Board of Directors or Members of the Association;
- (e) designate a representative to attend any such meetings;
- (f) written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (g) written notice of abandonment or termination of the Association of the plan contemplated under this Declaration;
- (h) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration, the Articles of Incorporation, or the Bylaws;
- (i) thirty (30) days written notice prior to the effective date of termination of any agreement for professional management of the Association or the Common Elements, when professional management had

been required previously under the legal documents for Dancing Bear Ranch Ranch or by an Eligible Holder; and

(j) immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Common Elements or a Lot if the cost of reconstruction exceeds Twenty Thousand Dollars (\$20,000) and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Common Elements or any Lots.

Section 12.03 Special Approvals. Unless at least sixty-seven percent (67%) of the Eligible Holders of first lien Security Interests (based on one vote for each mortgage owned) of Lots in the Association and requisite Lot Owners have given their written approval, neither the Association nor any Member shall:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or any improvements thereon which are owned, directly or indirectly, by the Association (except that the granting of access easements, utility easements, drainage easements and water facilities easements or easements for other public purposes consistent with the intended use of such real estate by the Association shall not be deemed within the meaning of this provision);
- (b) change the method of determining the obligations, Assessments or other charges which may be levied against Members or the method of allocating distributions of hazard insurance policy proceeds or condemnation awards;
- (c) by act or omission change, waive or abandon any scheme or regulation, or enforcement thereof, pertaining to approval of improvement of Lots or the upkeep of the Common Elements;
- (d) fail to maintain the casualty, fire and extended coverage insurance as elsewhere provided in this Declaration;
- (e) use hazard insurance proceeds for losses other than the repair, replacement or reconstruction of the improvements which were damaged or destroyed;
- (f) take action to terminate the legal status of Dancing Bear Ranch after substantial destruction or condemnation occurs;
- (g) amend any material provision of this Declaration; and (h) establish self-management by the Association when professional management has previously been required by the legal documents for Dancing Bear Ranch or by an Eligible Holder. An amendment shall not be deemed material if it is for the purpose of correcting technical errors, or for clarification only. If an Eligible Holder of a first lien Security Interest receives written request for approval of the proposed act, omission, change or amendment by certified or registered mail, with a return receipt requested, and does not deliver or post to the requesting party a negative response within 30 days, it shall be deemed to have approved such request.

Section 12.04 Right to Pay Taxes and Insurance Premiums. Any holder of a first lien Security Interest shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against a Unit or any of the Common Elements and may pay any overdue premiums on hazard insurance policies or secure new hazard insurance coverage for the Common Elements or Lots, and the holder of a first lien Security Interest making such payments shall be entitled to immediate reimbursement therefor from the Association.

ARTICLE 13

190189 12/30/2005 Page 23 of 42

GENERAL PROVISIONS

Section 13.01 Enforcement. The Association or a Lot Owner or Lot Owners of any of the Lots may enforce the restrictions, conditions, covenants and reservations imposed by the provisions of this Declaration by proceedings at law or in equity against any person or persons, either to recover damages for such violation, including reasonable attorneys fees incurred in enforcing these covenants, or to restrain such violation or attempted violation. Failure of the Association or of any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Board of Directors may post on a bulletin board at a conspicuous place on the Common Area notices of any covenant violations by members and copies of any recorded statements. Failure to post shall not affect the validity of any lien or covenant violation.

Section 13.02 Compliance with Federal Fair Housing Act. In order to comply with the requirements of the Federal Fair Housing Act (as heretofore and hereafter amended):

(a) The Board of Directors may, to the extent permitted by law, make reasonable accommodations in the rules and regulations to the extent such accommodations are necessary under the aforesaid Federal Fair Housing Act or otherwise appropriate to afford a Person With A Disability equal opportunity to use and enjoy a Lot, the Limited Common Elements appurtenant thereto, and/or the Common Elements, which accommodations may include waivers and modifications (of such rules and regulations) that are applicable only to a particular Person With a Disability or to a particular category of Persons With A Disability. Unless required by law,

- (i) the Board need not follow procedural requirements in making such waivers and modifications, and
- (ii) such waivers and modifications need not be approved by, or be subjected to disapproval by, the members of the Association.

(b) No rule or regulation of Dancing Bear Ranch Ranch shall be interpreted or enforced in such a way as to make unavailable or deny a Unit to any person, or to discriminate against any person in the providing of services or facilities in connection with the sale or rental of a Unit to such person, because of the familial status of such person, as the term "familial status" is defined under the aforesaid Federal Fair Housing Act.

Section 13.03 Severability. Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 13.04 Term of Declaration. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 13.05 Amendment of Declaration by Declarant. Until the first Lot has been conveyed by Declarant by deed recorded in the office of the County Clerk and Recorder of the County of San Miguel, Colorado, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting forth such amendment or termination. Thereafter if Declarant shall determine that any amendments to this Declaration

190189 12/30/2005 Page 24 of 42

shall be necessary in order to make non-material changes, such as the correction of a technical, clerical or typographical error or clarification of a statement, then, subject to the following sentence of this Section, Declarant shall have the right and power to make and execute any such amendments without obtaining the approval of any Lot Owners. Each such amendment of this Declaration shall be made, if at all, by Declarant prior to December 31, 2004. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant to make or consent to an amendment under this Section on behalf of each Lot Owner and holder of a Security Interest. Each deed, Security Interest, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of Declarant to make, execute and record an amendment under this Section.

Section 13.06 Amendment of Declaration by Unit Owners. Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of at least 67% of the votes in the Association and with the written consent of the Association. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Montrose and/or Ouray County, State of Colorado, of a certificate, setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 13.07 Amendment Required by Government Mortgage Agencies. Prior to December 31, 2004, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which FHA, VA, FHLMC, GNMA, FNMA or any similar entity authorized to insure, guarantee, make or purchase mortgage loans requires to be amended or repealed may be amended or repealed by Declarant or the Association. Any such amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of San Miguel County, State of Colorado, of a certificate, setting forth the amendment or repeal in full.

Section 13.08 Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate on December 31, 200__, or upon conveyance of one hundred percent (100%) of the Lots to Lot Owners, whichever occurs first.

Section 13.09 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purposes of creating a uniform plan for the development of the Lots and of promoting and effectuating the fundamental concepts as set forth in the recitals of this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 13.10 Singular Includes the Plural. Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

Section 13.11 Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized agents this ____ day of _____, _____.

12/27/2005 12:22 FAX 970 626 9886

SECURITY TITLE RIDGWAY

002

190189 12/30/2005 Page 25 of 42

DECLARANT: SAN MIGUEL DEVELOPMENT CO. VIII, LLC.

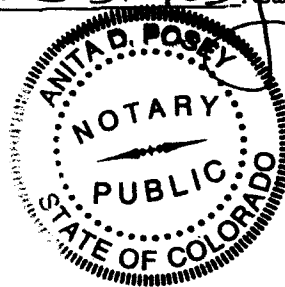
By: *Ron Kurucz*
Ron Kurucz, Manager

STATE OF Colorado }
COUNTY OF Ouray } ss.

The foregoing Declaration was acknowledged before me by Ron Kurucz on this 27th day of Dec., 2005

My commission expires: 10-18-2006

Anita D. Posey Notary Public



EXHIBITS

Exhibit A - Description of Real Estate

Exhibit B - Common Elements

Exhibit C - Table of Interests

Exhibit D - Properties Which May Be Added to the Declaration

Exhibit E - Design Guidelines

EXHIBIT A

DESCRIPTION OF REAL ESTATE

(Attached)

LEGAL DESCRIPTION:

Portions of Section 35, Township 46 North, Range 10 West, together with portions of Sections 1, 2, and 12, Township 45 North, Range 10 West, and portions of Sections 6 and 7, Township 45 North, Range 9 West of the New Mexico Principal Meridian in the Counties of Montrose and Ouray, State of Colorado, described as follows:

BEGINNING at the corner common to Sections 1, 2, 11 and 12, Township 45 North, Range 10 West, of the New Mexico Principal Meridian; Thence South $89^{\circ}16'42''$ West along the line common to said Sections 2 and 11, a distance of 1361.28 feet to the East $1/16$ corner common to said Sections 2 and 1; Thence North $40^{\circ}09'31''$ West, a distance of 41.53 feet to a point in the Easterly line of Lot 19, San Juan Ranch Amended Filing 3, said point being the beginning of a curve, concave to the Southeast and having a radius of 200.00 feet; Thence Northeasterly along said curve through a central angle of $39^{\circ}32'34''$, an arc distance of 138.03 feet, the chord of which bears North $69^{\circ}36'46''$ East, a distance of 135.31 feet; Thence North $89^{\circ}23'03''$ East, a distance of 140.91 feet to the beginning of a curve, concave to the Northwest and having a radius of 300.00 feet; Thence Northeasterly along said curve through a central angle of $62^{\circ}10'44''$ an arc distance of 325.57 feet, the chord of which bears North $58^{\circ}17'41''$ East a distance of 309.83 feet, to a point of compound curvature, said point being the beginning of a curve, concave to the Northwest and having a radius of 500.00 feet; Thence Northeasterly along said curve through a central angle of $12^{\circ}17'36''$ an arc distance of 107.28 feet, the chord of which bears North $21^{\circ}03'31''$ East a distance of 107.07 feet; Thence North $14^{\circ}54'43''$ East, a distance of 163.54 feet to the beginning of a curve, concave to the Southeast and having a radius of 300.00 feet; Thence Northeasterly along said curve through a central angle of $7^{\circ}04'20''$ an arc distance of 37.03 feet, the chord of which bears North $18^{\circ}26'53''$ East a distance of 37.01 feet; Thence North $57^{\circ}18'35''$ West a distance of 1974.89 feet; Thence North $08^{\circ}33'43''$ West a distance of 715.35 feet; Thence North $42^{\circ}47'15''$ West a distance of 436.74 feet; Thence North $07^{\circ}01'51''$ West a distance of 92.32 feet; Thence North $77^{\circ}51'21''$ East a distance of 206.01 feet; Thence North $42^{\circ}34'11''$ East a distance of 3964.42 feet to the corner common to Sections 35 and 36, Township 46 North, Range 10 West and Sections 1 and 2, Township 45 North, Range 10 West of the New Mexico Principal Meridian; Thence South $87^{\circ}17'43''$ East a distance of 2703.50 feet to the north $1/4$ corner of said Section 1; Thence South $00^{\circ}35'23''$ West a distance of 1469.30 feet to the North $1/16$ corner of said Section 1; Thence North $89^{\circ}44'09''$ East a distance of 2676.90 feet to the North $1/16$ corner common to Section 1, Township 45 North, Range 10 West and Section 6, Township 45 North, Range 9 West of the New Mexico Principal Meridian; Thence South $01^{\circ}38'35''$ West a distance of 1327.77 feet to the $1/4$ corner common to Section 1, Township 45 North, Range 10 West and Section 6, Township 45 North, Range 9 West of the New Mexico Principal Meridian; Thence South $89^{\circ}39'06''$ East a distance of 1517.20 feet to the West $1/16$ corner of said Section 6; Thence South $89^{\circ}33'49''$ East a distance of 1306.75 feet to the center $1/4$ corner of said Section 6; Thence South $04^{\circ}04'23''$ West a distance of 1349.81 feet to the South $1/16$ corner of said Section 6; Thence South $04^{\circ}02'26''$ West a distance of 1349.98 feet to the $1/4$ corner common to said Sections 6 and 7; Thence South $00^{\circ}44'13''$ East a distance of 1404.58 feet to the North $1/16$ corner of said Section 7; Thence $S89^{\circ}29'10''$ West a distance of 2640.38 feet to the North $1/16$ corner common to Section 7, Township 45 North, Range 9 West and Section 12, Township 45 North, Range 10 West of the New Mexico Principal Meridian; Thence North $89^{\circ}42'57''$ West a distance of 2646.49 feet to the North $1/16$ corner of said Section 12; Thence North $01^{\circ}49'14''$ West a distance of 1369.62 feet to the $1/4$ corner common to Sections 1 and 12, Township 45 North, Range 10 West of the New Mexico Principal Meridian; Thence North $89^{\circ}57'48''$ West, along the south line said Section 1, a distance of 2687.25 feet to the POINT OF BEGINNING,

Counties of Montrose and Ouray,
State of Colorado.

EXHIBIT B

190189 12/30/2005 Page 29 of 42

COMMON ELEMENTS

The Common Elements within Dancing Bear Ranch consist of interior access roads known as Dancing Bear Trail and Black Bear Trail; the utilities installed within the above referenced interior access roads; the surface water drainage system; and the water augmentation system, including water storage ponds. Common Elements do not include the driveways and utilities constructed or installed within individual lots.

EXHIBIT C

TABLE OF INTERESTS

<u>Lot No.</u>	<u>Allocated Interest</u>
1	1/10th
2	1/10th
3	1/10th
4	1/10th
5	1/10th
6	1/10th
7	1/10th
8	1/10th
9	1/10th
10	1/10th

EXHIBIT D

**PROPERTIES WHICH MAY
BE ADDED TO THE DECLARATION**

(See Attached)

10/21/2005 11:05:03 TLC

File No.: S0088603, Amend. No. 4

190189 12/30/2005 Page 32 of 42

Exhibit **D**

PARCEL A :

The Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 6, Township 45 North, Range 9 West of the New Mexico Principal Meridian,

County of Ouray,
State of Colorado,

PARCEL B:

A portion of Section 2, Township 45 North, Range 10 West together with a portion of Section 35, Township 46 North, Range 10 West of the New Mexico Principal Meridian, according to the survey plat recorded July 22, 2003 under Reception No. 775, records of Montrose County, Colorado, being more particularly described as follows:

BEGINNING at the West sixteenth corner of said Section 35. Thence North $00^{\circ}42'32''$ West, 1338.21 feet to the northwest sixteenth corner of said Section 35;

Thence North $88^{\circ}59'03''$ East, 1331.24 feet to the north sixteenth corner of said Section 35; Thence North $88^{\circ}57'13''$ East, 2663.22 feet to the north sixteenth corner common to Sections 35 and 36;

Thence South $00^{\circ}05'34''$ East, 1316.50 feet to the east quarter corner of said Section 35;

Thence South $00^{\circ}05'36''$ East, 2633.64 feet to the section corner common to Sections 35 and 36, Township 46 North, Range 10 West and Sections 1 and 2, Township 45 North, Range 10 West of the New Mexico Principal Meridian;

Thence South $42^{\circ}34'11''$ West, 3964.42 feet to a point on the easterly boundary of High Point Ranch according to the plat of San Juan Ranch – Amended Filing 3, Ouray County Reception No. 623802;

Thence North $12^{\circ}56'57''$ West, 1353.88 feet;

Thence North $44^{\circ}00'55''$ West, 521.27 feet;

Thence North $18^{\circ}42'16''$ West, 805.41 feet;

Thence South $63^{\circ}47'29''$ West, 725.13 feet;

Thence North $87^{\circ}58'16''$ West, 757.15 feet;

Thence North $20^{\circ}52'03''$ East, 737.53 feet to the southerly line of the Boundary Agreement as disclosed in Book 12 at page 334, records of Montrose County, Colorado;

Thence North $79^{\circ}45'23''$ East, 673.73 feet;

Thence North $33^{\circ}01'29''$ East, 253.17 feet;

Thence North $00^{\circ}51'54''$ West, 2274.68 feet to the POINT OF BEGINNING,

TOGETHER WITH AN perpetual non-exclusive 10 foot wide easement for access form the private road known as Dancing Bear Trail to Telluray Ranch Property over and across an exisiting dirt road on Lot 10, Dancing Bear Ranch recorded October __, 2005 at Reception No. _____ (TO BE RECORDED)

And as further evidence by map recorded October __, 2005 at Reception No. _____. (TO BE RECORDED)

Counties of Ouray and Montrose,
State of Colorado.

(SEE REQUIREMENTS)

DANCING BEAR RANCH

DESIGN GUIDELINES

(Exhibit E)

San Miguel Development Co. - VIII, LLC ("San Miguel Development") as the Declarant and sole owner of the Dancing Bear Ranch, has submitted said real property to the Declaration for Dancing Bear Ranch. Pursuant to said Declaration for Dancing Bear Ranch, San Miguel Development and the Dancing Bear Ranch Owners' Association do hereby adopt the Design Guidelines set forth herein, which shall be attached to and incorporated into said Declaration. San Miguel Development further declares that the Lots within Dancing Bear Ranch shall be held, sold and conveyed subject to the following Design Guidelines which are adopted for the purpose of architectural control and to further protect the value and desirability of said Lots. The following Design Guidelines shall be binding on all parties having any right, title or interest in Dancing Bear Ranch or any portion thereof, their heirs, legal representatives, successors and assigns and shall inure to the benefit of each and every Lot owner within Dancing Bear Ranch.

1. **GENERAL REQUIREMENTS.** All improvements, including construction and landscaping, on any Lot within Dancing Bear Ranch, shall conform with other structures as to design, materials, color, siding, height and other design features. All improvements shall be constructed within a circle to be identified by the owner of the individual Lots with Dancing Bear Ranch which shall not exceed three (3) acres in size. The seclusion and view from each Lot shall be protected insofar as is reasonably possible and practical. For that reason, residential structures and related buildings shall not be constructed within the designated setbacks for each Lot as more particularly described and set forth on the Plat Map for Dancing Bear Ranch. Owners and design professionals are cautioned that certain Lots have 75 foot set backs from the Lot lines and other Lots have 200 foot set backs from the Lot lines. Set backs are strictly enforced in Dancing Bear Ranch. All development shall endeavor to protect and preserve the visual and ranch character of Dancing Bear Ranch and the wildlife on the ranch. Landscaping shall be consistent with the natural setting and native trees and vegetation within Dancing Bear Ranch.

2. **DESIGN GUIDELINES**

(a) **SITE EVALUATION:**

(i) The initial step in building design shall be an evaluation of the site. The object of site evaluation is to identify site problems and opportunities, which include, but are not limited to: land mass features (such as ridges, buttes, slopes, streams); existing trees and vegetation; prevailing wind direction; sunlight patterns and existing road access and circulation patterns.

(ii) In considering the site elevation, the Lot owner should make use of professional consultants such as architects, engineers, landscape architects, and other specialists as dictated by site conditions. All site evaluation materials must be preserved and submitted with the application for approval.

(b) **MAJOR SITE DEVELOPMENT ISSUES:**

190189 12/30/2005 Page 34 of 42

(i) The preservation of significant land features is critical to site development. Each Lot within Dancing Bear Ranch has its own unique features. Whenever possible, these features should be preserved as part of any development and construction. The object is to situate structures on each Lot in a way that preserves the natural features of Dancing Bear Ranch and treats the structures as an integral part of the ranch, rather than isolated objects that are at odds with their surroundings.

(ii) Preservation of existing trees and vegetation is critical to site development. Existing concentrations of trees and vegetation are one of the amenities of Dancing Bear Ranch. Existing trees and vegetation should be preserved as part of any development and construction. The object is to build on what trees and vegetation exists by adding new trees and vegetation that are compatible with the indigenous plant life on Dancing Bear Ranch. All alterations to the natural landscape and natural vegetation must be revegetated as part of any plan submitted for approval.

(iii) Preservation of significant views is critical to site development. Two kinds of views are important at Dancing Bear Ranch: those that owners have from their site and Lot, and those that owners have through other Lots to features beyond. Both views should be preserved as part of site development. The object is to create as many opportunities for views as possible within the constraints posed by the site itself and these design guidelines.

(iv) Residential structures and out building should be placed on the Lot in a way that creates a carefully scaled relationship between the structures and the site features. The object is to give each structure a sense of unity with the Lot and surroundings, and to scale each structure so that it does not dominate the site. Where possible, structures should be fitted into existing tree masses and land forms. Where this is not possible, structures should be placed at the periphery of tree or land masses, overlooking open spaces. Structures must be grouped whenever possible. Where neither of these alternatives is possible, buildings may be placed out in the open. Where open meadow construction occurs, it is important to use building massing and landscaping as tools for relating the development to the natural features of the Lot and Dancing Bear Ranch generally. In particular, clustering is recommended as a means of reducing the buildings' impact on an open site. Lot owners and their design professionals are cautioned that all structures shall be constructed within a circle to be designated on the individual Lots by the owners which shall not exceed three (3) acres in size. Any construction of improvements outside of the designated three (3) acre area shall require the written approval of the Design Review Board.

(c) **MAJOR ARCHITECTURAL DESIGN GUIDELINES:**

(i) **BUILDING MASSING**

Building massing, envelope, roofscape and site relationship should emphasize the following:

190189 12/30/2005 Page 35 of 42

- human scale;
- the avoidance of allusions to "alpine" (implying Swiss Chalet or A Frame architecture) and all other building forms that are foreign to the area;
- the avoidance of allusions to "mineshaft" architecture (for example, the local Lewis Mine) and other industrial building forms even if indigenous to the area;
- proximity to the ground, so that the buildings "hug" the ground, rather than dominate the site; and
- adaptation to the site in every possible way, responding to its severe climate, terrain, pattern of shade and sunlight, trees and vegetation and land forms.

(ii) BUILDING SCALE AND EXPANSE

Each owner shall have the right to construct one main residential dwelling along with accessory buildings, which shall include one caretaker's unit or guesthouse, upon a platted Lot within Dancing Bear Ranch. No primary residential structure shall be constructed on any Lot, the habitable floor space of which, exclusive of basement, decks and porches, is less than 2500 square feet. No caretaker's unit or guesthouse shall be constructed on any Lot, the habitable floor space of which, exclusive of basement, decks and porches, is greater than 2500 square feet. It is important that the massing of buildings at Dancing Bear Ranch be scaled in such a way that they relate to the people living there and harmonize with the area and its natural features, particularly when buildings are located at tree or land mass edges or in the open. The object of this requirement is to ensure that the buildings do not become overpowering. Changing the plane of walls, changing direction and some variety in the roof form gives variety and visual interest.

No unbroken expanse of building mass can exceed 70 feet. When the 70 foot limit is reached, one of the following must occur: the building mass must bend; the wall line must be offset a minimum of 10 feet; or the roof line should shift up or down at least 10 feet, or take on a different ridge alignment.

(iii) BUILDING HEIGHT REGULATIONS.

No building or structure shall be placed, erected or altered in Dancing Bear Ranch which exceeds more than two and one-half stories, and no such building or structure shall be permitted which rises more than thirty nine (39) feet, both of which restrictions shall be measured vertically from the average grade level of the building footprint according to the site plan thereof. In addition, no such building or structure shall be permitted which rises more than thirty nine (39) feet at any point in the structure. The object is to break up the structural façade presented to a downhill viewer.

(iv) **ROOFSCAPE**

(A) **ROOF SLOPES**

Roof shape is a major element of building form, and one of the most important contributors to a human scale. The slope of the roof is one determinant of this scale. Roof Slopes should be between 6/12 and 12/12. Roofs with greater or lesser slope will generally be prohibited, unless there are compelling reasons for their consideration.

(B) **ROOF DESCENT**

Roofs should not descend closer than seven feet to the ground. It should be clear, when looking at the building, that the function of the roof is to provide a covering for the building, and not to become a major element in the building's horizontal massing (i.e., the roof is not to be a substitute for a wall). Roofs descending from the ridge of the predominate main roof must have the same slope, however they need not be the same length.

(C) **ROOF OVERHANGS**

Roof overhangs protect walls and wall openings from rain and snow and contribute to a building's character. Roofs should overhang walls a minimum of 12"

(D) **ROOF ASSEMBLY**

It should be kept in mind that building in snow country requires special engineering and insulation considerations that should be incorporated into the home design.

(E) **ROOF SURFACING MATERIALS**

Roof surfacing materials are important as a means of blending the new construction to the existing character of the area. Careful selection of these materials can help to relate the buildings to its surroundings, the wrong color and texture can make the building garish and distracting. From a functional standpoint, the choice of materials depends not only on slope and assembly of the roof, but upon applicable state and county building and fire codes. Therefore, the following metals can be used as roof surfacing materials: Kor-ten Steel; copper, Zinc and Terne. No non-metal roof surfacing material is allowed in Dancing Bear Ranch. All roof flashing must be of a color harmonious with roof and upper wall

surfacing. All roof surfacing material must be "non-reflective" in nature. Roof surfaces may only be finished in colors such as Hunter Green, brown and other natural colors.

(F) DORMERS.

Dormers can be placed at the roof eave or within field of the roof.

(G) SNOW DIVERTERS

Snow diverters and retainers may be a necessary installation on roofs. They should be handled as an integral part of the roofscape

(H) SKYLIGHTS

Skylights can be placed flush against the roof or up to one foot above the roof's surface. Skylights higher than one feet above the roof plane, or placed at an angle with the roof plane, should be avoided. Skylights should not extend to the eave line.

(I) CHIMNEYS

Chimneys made of concrete and masonry finished flues are permitted. A flat top is preferred, and side venting of the flue (with a flat cap and spark arrestor) is recommended.

(J) SOLAR COLLECTORS.

Solar collectors shall lie flat on pitched roofs.

(K) SUNSHADE.

Sunshade devices like awnings, screens, trellises, etc, may be used if in conformance with wall material and color guidelines.

(v) WALLS

(A) CONTINUING THE LOWER WALL TO THE GROUND

The sense or impression of a building should be that its walls continue down to the ground to give a feeling of solidity and repose, and that undue "chewing out" or eroding of the building form should be avoided.

(B) PROTECTED LOWER WALL

The lower wall shall be four (4) feet in height above the ground in accordance with the Ouray County, Colorado, Building and Fire Code. The lower portions of exterior walls should be protected from extreme weathering and staining as a result of snow accumulation. Snow accumulation varies throughout Dancing Bear Ranch. Generally, the lower two to four feet (though at some locations the lower 8 feet) of exterior walls should be surfaced in materials such as: Concrete block, Concrete with an exposed aggregate, bush hammered or sandblasted finish, or Stone. No "Dryvit" finishes shall be allowed on the external façade of any building in Dancing Bear Ranch.

(C) UPPER WALL MATERIALS

The upper wall materials should convey a sense of human scale and warmth, and the character they convey should be rural rather than urban or industrial. The upper wall material can differ from that of the lower portion of the wall, or be of the same material.

Upper walls can be surfaced in the following materials: Stone, Concrete or Slate tiles, Wood siding, Logs or Wood framing. The external façade must be consistent with other existing homes in Dancing Bear Ranch. No "Dryvit" finishes shall be allowed on the external façade of any building in Dancing Bear Ranch.

The upper wall may not be made of the following materials: Brick, Plastic siding, Aluminum siding, Steel siding, Simulated stone or brick, Asphalt or hardboard siding, Cedar or Redwood plywood, stained or painted.

(D) NUMBER OR EXTERIOR WALL MATERIALS.

Changes in wall material can lend visual interest to a building. Too many changes can make the wall visually discordant. The object should be to create walls that are interesting, but not in competition with their surroundings. Walls can be surfaced with one to three different materials.

(E) COLOR PALETTE

Exterior wall colors should harmonize with the site and surrounding buildings. Accent colors on wall surfaces can enliven buildings, however their location should be confined to entries and

gathering points. Accents should not jar the overall harmony of the area. On exterior walls, the predominate tone should tend toward warm, earthly hues, whether for the natural patina or weathered color of the wall surface itself or the color paint, stain or other coating. Bright and dramatic colors can be used for accent on exterior wall areas hidden from general view.

(F) WALL APPURTENANCES.

Wall appurtenances can help enhance the functioning of windows and doors, and lend visual interest to the building façade. They can also strengthen the relationship between a building's interior and its exterior surroundings.

(G) BALCONIES

Balconies, like other wall appurtenances, should be simply designed. They must respect the guidelines for wall openings. Long vertical or horizontal bands of balcony space are discouraged. Balconies must be designed to prevent snow accumulation, interior leaks, or the build-up of icicles. They should be located so neither snow nor ice falling from them can endanger passerby.

(H) BAY WINDOWS

Bay windows and flower boxes should be designed in a simple and direct manner.

(I) WINDOWS AND DOOR SHUTTERS

Windows and door shutters are useful in protecting building entries and openings. They should be operable, and made of wood. Their design should be simple and straightforward, without undue decoration.

(J) WALL OPENINGS

Window, door and porch openings are an important element of a building's form and appearance. It is important that the walls of buildings give the impression of thickness and substance. Door openings separate two completely different climate conditions. Door openings should be protected from the wind and from overhanging or drifting snow. Vegetation, fences, extended walls, roofs, and other features of the site or building can help shelter people in the vicinity of building entries. Where possible, doors

should open onto exterior areas that receive sunlight. Windows may be constructed of wood or of wood covered with color – fast vinyl or aluminum. Metal or metal covered windows must be coated with an approved finish.

(K) SCREENING SERVICE AREAS

New construction often includes: service areas; garages and other parking areas; storage sheds; mailbox areas; places for garbage; snow equipment sheds; outbuildings for mechanical or electrical equipment; solar collectors; etc. These things often detract from an otherwise well-designed site, and need to be dealt with in a way that keeps this from happening. They also need to be placed so that they can be easily accessible to the people who need to use them. Garage, open parking and mechanical sheds, if placed away from main building, should be shielded from view by vegetation, fences and building forms. The object is to design and locate these service areas so they function well and do not become an eyesore to fellow owners. They should be adequately screened, placed whenever possible away from other site uses. Screening can be accomplished using vegetation, fencing or building placement.

(vi) SUNLIT EXTERIOR SPACES

In Dancing Bear Ranch, it is critical that attention be paid to patterns of sunlight in planning exterior spaces in relation to building. Places that are mostly in shadow will be relatively cold and unusable, while places that enjoy winter sunlight will get used. The objective is to create exterior spaces around buildings that will be used, so it is important that these be placed to get as much sunlight as possible over the course of the day.

Architects and owners should remember that: (1) buildings, vegetation and land forms can cast shadows and block sunlight; (2) The surfaces of buildings play a big role in reflecting sunlight into adjoining exterior spaces (color and choice of materials are important in this regard); (3) Building faces reflects sunlight into open space; and (4) Careful consideration given to shadows cast by buildings, fences and trees.

(vii) NIGHT LIGHTING

Good night lighting is essential for safe movement. However, good lighting is often equated with large amounts of lighting, which can detract from site quality by obliterating night views and interfering with people's rest. The object is to provide night

lighting discretely. Illumination only what needs to be lit. In general, light sources should be shielded and directional. Bright lighting of large areas should only occur where absolutely required by safety considerations. Every submittal for review should include an indication of how night lighting is to be provided. This should be shown in plan, with accompanying specifications and any other material necessary to make an evaluation by the committee possible. Exterior lighting shall be limited to one (1) overhead light or two (2) lanterns at the entrance gate to each Lot or driveway. The Lot owner shall be responsible for extending power to the entrance gate and complying with the applicable provisions of the Ouray County Building Code with respect to said lighting.

(viii) **FENCES AND WALLS**

Fences and walls may be used where they make sense architecturally and functionally. Materials used for walls and fences should be limited to stone and wood. If stone is used it should be of the type found in the Telluride region and set in a random pattern, preferably in conjunction with wood. In no event should the impression be that of a brick wall with precise levels and angles. Use of barbed wire is strictly prohibited. Perimeter fences of entire Lots or portions of Lots is permissible, but is restricted and must be consistent with existing Dancing Bear Trail and Black Bear Trail fencing in Dancing Bear Ranch in size, height, color and finish.

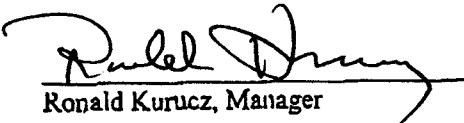
(ix) **RETAINING STRUCTURES**

Retaining structures should make use of natural material such as boulders, rocks, logs, wood timbers and /or concrete with rock facing.

The foregoing Design Guidelines were promulgated and adopted by San Miguel Development Co. - VIII, LLC, as the Declarant of Dancing Bear Ranch.

SAN MIGUEL DEVELOPMENT CO. - VIII, LLC

By:


Ronald Kurucz, Manager

12/27/2005 12:22 FAX 970 626 9888

SECURITY TITLE RIDGWAY

004

190189 12/30/2005 Page 42 of 42

State of Colorado,

County of Ouray)ss.

The foregoing Dancing Bear Ranch Design Guidelines were acknowledged before me this 27th
day of Dec 2005 by Ronald Kurucz, Manager, of San Miguel Development Co. - VIII,
LLC.

Witness my hand seal
My commission expires: 10-18-2006

Anita D. Posey
Notary Public

