

**BLACK DIAMOND PARK**  
**DECLARATION OF PROTECTIVE COVENANTS**  
**AND BUILDING RESTRICTIONS**

**AMENDED**

**HUERFANO COUNTY, COLORADO**

THIS DECLARATION of Protective Covenants and Building Restrictions is made this \_\_\_ 4th \_\_\_ day of \_\_\_\_\_ June \_\_\_\_\_, 2004 \_\_ by the Black Diamond Park LLC, his successors or assigns as owner of certain property to be described below, and is hereinafter described referred to as the “DECLARANT”.

**WITNESSETH:**

WHEREAS, the DECLARANT is the owner of certain lots of land shown and designated on recorded plats and master plans defined as follows:

**LEGAL DESCRIPTION OF ALL LOTS TO BE FILED WITH HUERFANO  
COUNTY CLERK & RECORDER’S OFFICE WITH THE APPROVED FINAL  
PLAT FOR BLACK DIAMOND PARK**

WHEREAS, it is the intent and desire of the DECLARANT to create a master planned community and establish certain Protective Covenants and Building Restrictions to maintain the authenticity and natural beauty of the Subdivision for the mutual benefit and enjoyment of purchasers and future residents of lots within the Subdivision.

WHEREAS, the DECLARANT, in order to insure that the purposes of the declaration are carried out, has caused under the laws of Colorado, of the Black Diamond Park Homeowner’s Association, a corporation not for profit with the power of administering and enforcing the Protective Covenants and Building Restrictions hereinafter set forth for the Black Diamond Park Subdivision.

NOW THEREFORE, BE IT RESOLVED, that the DECLARANT does hereby declare the creation and existence of the Protective Covenants and Building Restrictions for the Black Diamond Park Subdivision.

## ARTICLE I

### DEFINITIONS:

- A. **“DECLARANT”** shall mean and refer to the Owner, it’s successors and/or assigns of that land as described above, which is covered by these Protective Covenants and Building Restrictions.
- B. **“SUBDIVISION”** shall mean and to that land shown on the plat herein described.
- C. **“HOMEOWNER”** shall mean and to the record owner, whether on or more persons or entities, of fee simple title to any lot which is a part of the Subdivision, including contract purchasers, but excluding those having an interest merely as a security for the performance of an obligation.
- D. **“LOT”** shall mean and refer to any parcel of land shown and designated on the plat of the subdivision as herein described.
- E. **“ASSOCIATION”** shall mean and refer to the Black Diamond Park Homeowner’s Association as defined by the Declaration of the Black Diamond Park Homeowner’s Association Protective Covenants and Building Restrictions as so established.
- F. **“ARCHITECTURAL CONTROL COMMITTEE”** shall mean and refer to a group composed of three (3) persons appointed by the Board of Directors of the Association to approve in writing any plans, specifications, and modifications to any structures, improvements and the like and further defined in Article III of this declaration of Protective Covenants and Building Restrictions.
- G. **PARK “PRESERVE”** shall mean and refer to all real property or easements that are owned or controlled by the ASSOCIATION for the common use and enjoyment of the members of the ASSOCIATION.
- H. **“MINIMUM CONSTRUCTION STANDARDS”** shall mean and refer to Minimum Construction Standards promulgated by the Architectural Committee from time to time, which shall serve as a guideline of the acceptable standards for the Subdivision.
- I. **“ANNUAL MAINTENANCE CHARGE”** shall mean and refer to the assessment made and levied by the Association against each Homeowner and his lot in accordance with the provisions of this Declaration.

- J. **“MAINTENANCE FUND”** shall mean and refer to any accumulation of the Annual Maintenance Charges collected by the Association in accordance with the provisions of the Declaration and interest, penalties, and other sums collected by the Association pursuant to the provisions of this Declaration.
- K. **“IMPROVEMENTS”** shall mean and refer to every structure and all appurtenances of every type, whether temporary permanent, including but not limited to buildings, outbuildings, sheds, patios, tennis courts, swimming pools, garages, driveways, storage buildings, gazebos, signs, fences, screening walls, retaining walls, stairs, decks, landscaping, landscape improvements, poles, mailboxes, antennae, exterior lighting fixtures, playground equipment, pipes, lines, meters, towers, or and other facilities, used in connection with water, sewage disposal, gas, electric, telephone, television, other utilities or otherwise.
- L. **“PLANS”** shall mean and refer to the final construction plans and specification (including a related site plan) of any Residential Dwelling, building or Improvement of any kind to be erected, placed, constructed, maintained, or altered on any portion of the Property.
- M. **RESIDENTIAL DWELLING”** shall mean and refer to a single family residence and appurtenances constructed on a lot.
- N. **“RESTRICTIONS”** shall mean and refer to The Protective Covenants, Building Restrictions, conditions, easements, reservations, and stipulations that shall be applicable to and govern the improvement, use, occupancy, and conveyance of all the Lots and Park Preserve Areas in the Subdivision as set out in this Declaration or any amendments thereto.

## ARTICLE II

### ARCHITECTURAL CONTROL COMMITTEE HOMEOWNER'S ASSOCIATION

- A. **THE PURPOSE:** of the Architectural Control Committee and Homeowners Association shall be to protect the equity and property values for all owners in the Subdivision by setting fair, minimum construction standards and maintenance upkeep requirements that protect the continuity and peaceful harmony of the Subdivision. The minimum construction standards will also serve to create as maintenance free structures as possible that all homeowners in the Subdivision will enjoy and benefit from. It is the intent of the Architectural Control Committee to work closely with all homeowners to achieve the goals of the Master Plan for the Community. Likewise, all Owners who purchase property in the subdivision do so with the desire and assurance that protective covenants are in place to preserve and protect property values of all homeowners equally and fairly.
- B. **APPROVAL OF BUILDING PLANS:** No Residential Dwelling or Improvement shall be erected, placed, or altered on any lot until the construction plans and specifications and plot plan showing the location of the Residential Dwellings or Improvement have been approved in writing by the Architectural Control Committee as to the harmony of the exterior design and color with existing structures, as to the location with respect to topography and finished ground elevation, and as to compliance with minimum construction standards.

A Geo-Technical Soil test by a qualified geo-technical engineer shall be performed on each Lot prior to approval of construction plan to insure proper construction methods are employed.

Three copies of the construction plans and specifications and a plot plan shall be submitted. In the event the Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of receipt of all required documents, approval shall not be required and said plans will be considered approved. In the event of the failure of the Architectural Control Committee to approve or disapprove plans and specifications for a proposed Residential Dwelling within such a 30 day period shall not affect the enforceability of any other provision of this Declaration. The Architectural Control Committee shall have full and complete authority to approve or disapprove the construction of any Residential Dwelling or Improvement to any Lot, and further authorized to grant special "Variance Permits" to Owners who may request said Variance, the denial of which may impose a hardship to the Owner due to location, lots size, neighbors etc.,. Despite the possibility of such hardship the opinion of the Architectural Control Committee shall be final and conclusive.

- C. **COMMITTEE OWNERSHIP:** The Architectural Control Committee shall initially consist of three (3) members, Richard B. McEntee, Mario Alberici, and a third member to be named. Following the appointment of the third member, the Architectural Control Committee shall at all times consist of three (3) members. After 70 % of the initial Lots are sold, elections shall take place for board members for terms of 3 years each on the Architectural Control Committee. Each Lot shall have one vote and in the case of multiple owners of one lot, one representative will have one vote for each Lot owned.
- D. **REPLACEMENT.** In the event of the death or resignation or any member or members of the Architectural Control Committee, the Declarant shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to approve or disapprove plans, specifications, and plot plans submitted or to designate a representative with like authority.
- E. **TRANSFER OF AUTHORITY.** The duties, rights, powers, and authority of the Architectural Control Committee, may be assigned at any time, at the sole Election of a majority of the members of the Architectural Control Committee, and to the Board of the Homeowners Association once 70% of the Lots in the Subdivision have been sold at the discretion of the Declarant and by majority vote of the Home Owners Association.
- F. **MEMBERSHIP IN THE ASSOCIATION:** Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become and shall remain a member of the Association until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Lot and may not be separated from such ownership.
- G. **VOTING OF MEMBERS:** Each Member, including the Declarant, shall have one vote per lot owned. In the event that ownership interests in a Lot are owned by one or more members of the Association, such members shall exercise their right to vote in such a manner as they may among themselves determine, but in no event shall more than one vote be cast for each Lot. All members of the Association may attend meetings of the Association and all voting members may exercise their right to vote at such meetings either in person or by proxy.

- H. **MAINTENANCE FUND:** All Owners of Lots including the Declarant shall be subject to a Annual Maintenance charge. All annual maintenance charges collected by the Association and all interest, penalties, assessments and other sums and revenues collected by the Association constitute the Maintenance Fund. The Maintenance Fund shall be held, managed, invested, and expended by the Board, at its discretion, for the benefit of the Subdivision and owners of the Lots therein.
- I. **THE ANNUAL MAINTENANCE CHARGE:** on each Lot shall commence on the date of the Conveyance of the first Lot by the Declarant to an individual and shall be prorated according to the number of days remaining in the calendar year. Bulk Sales to builders shall be exempted from this provision until the home on the Lot is sold to an individual.
- J. **ENFORCEMENT OF THE ANNUAL MAINTENANCE CHARGE:** The Annual Maintenance Charge assessed against each Lot shall be due and payable, in advance, on the date of the sale of such Lot by the Declarant for that portion of the calendar year remaining, and on the (15<sup>th</sup>) day of each January thereafter. Any annual maintenance charge which is not paid and received by the Association by the thirty-first (31<sup>st</sup>) of January thereafter shall be deemed to be delinquent, and without notice, shall bear an interest at the rate of ten (10%) per annum from the date originally due until paid. Further the Board of the Association shall have the authority to impose a monthly late charge on any delinquent Annual Maintenance Charge. The monthly late charge, if imposed, shall be in addition to interest.
- K. **SPECIAL ASSESSMENTS:** If the board at anytime or from time to time determines that the Annual Maintenance Charge assessed for any period are insufficient for the continued operation of the Subdivision, the maintenance of the common areas, or any other purposes contemplated by these Restrictions, then the Board shall have the authority to levy special assessments for such continued operation and maintenance of the Subdivision.
- L. **ANNUAL PAYMENT OF THE ANNUAL MAINTENANCE CHARGE BY THE DECLARANT.** Each Lot owned by the Declarant shall be subject to Annual Maintenance Charges and special assessments.

- M. **PRIVATE ROADS WITHIN THE SUBDIVISION:** All streets within the interior boundaries of the SUBDIVISION shall be owned and maintained by the ASSOCIATION. Snow removal, repaving, cleaning, pothole repairs, ditch maintenance, and any other maintenance duties shall be the responsibility of the ASSOCIATION and shall be paid for from MAINTENANCE FUND. Maintenance will not be the responsibility of the Huerfano County or the City of Walsenburg at anytime. There shall be no parking along the streets at any time.

A permanent access is hereby granted for all emergency vehicles to include but not be limited to Police, Fire, and Ambulance vehicles. In addition, access is hereby granted for utility maintenance vehicles, postal delivery, package pick up and delivery, construction vehicles, taxis, school buses, and any other commercial vehicles making picking up or making deliveries to HOMEOWNERS.

### ARTICLE III

#### GENERAL PROVISIONS RELATING TO USE AND OCCUPANCY

##### SECTION 3.1

##### USE RESTRICTIONS

- A. **GENERAL:** The Property shall be held, transferred, sold, conveyed, used and Occupied subject to the Protective Covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration.
- B. **SINGLE-FAMILY RESIDENTIAL USE:** Each owner shall use his Lot and the Residential Dwelling on his lot, if any, for single-family residential purposes only.
- C. **PASSENGER VEHICLES:** No owner, lessee, or occupant on the Lot, including all persons who reside with such Owner, lessee or occupant on the Lot, shall park, keep or store on the Lot: (i) more passenger vehicles and/or pick-up trucks, than the number of persons who reside in the Residential Dwelling on the Lot who have a valid driver's license EXCEPT that 2 additional passenger vehicles may be parked on the Lot in excess of the garage spaces on such lot. All passenger vehicles must be properly registered with a valid license plate and non-operable vehicles may be parked on any lot within the view of any neighboring lot or the Golf Course. No passenger vehicle may be parked overnight on any street within the Property. The term pick-up truck is limited to one-ton capacity pick-up and trucks which have not been modified for commercial use. There shall be no limitations upon the number of vehicles which may be parked on the Property by guests of the Owner, lessee, or other occupant of the Lot.

- D. **OTHER VEHICLES:** No mobile home trailer, recreational vehicles or boats shall be parked, kept, or stored on the Property if visible from any neighboring Lot, the Golf Course or Lathrop State Park. A mobile home trailer, recreational vehicle, or boat may be parked in the garage of a lot if it is totally concealed.
- E. **NUISANCES:** No rubbish or debris or any kind shall be placed or permitted to accumulate upon or adjacent to any Lot and no odors shall be permitted to arise therefrom, so as to render any such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other lot, the Golf Course, Park Preserve Area, Lathrop State Park or in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate on any lot.
- F. **DIASEASE AND INSECT CONTROL:** No owner shall permit any thing or condition to exist on any Lot which shall induce, breed or harbor infectious plant diseases or noxious insects. Trees removed for construction shall be disposed properly of to prevent formation of breeding sites for IPS Beetles.
- G. **TRASH CONTAINERS:** No garbage or trash shall be placed or kept within the Subdivision except in covered containers of a type, size and style approved by The Architectural Committee. In no event shall any such containers be maintained on a Lot so as to be visible from any neighboring Lot, the Golf course, or the Lathrop State Park except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. No trash, brush, or other material shall be burned on any Lot.
- H. **ANIMALS:** Dogs, cats, birds and other household pets may be kept as long as they are domestic pets and not raised for commercial purposes. No animal or bird may be allowed to make an unreasonable amount of noise or to become a nuisance. No horses, cattle, or livestock of any kind are permitted. No more than 4 domestic pets may be kept on any Lot. Dog houses or other structures intended for the confinement of animals must be located in the rear or to the side of a Residential Dwelling and must conform to the standards espoused by The Architectural Committee from time to time. The maximum size for a doghouse is six (6) feet by eight (8) feet by six (6) feet in height.
- I. **SIGNS:** For Sale signs 2 feet wide by 2 feet high, which are similar to signs customarily used by realtors in Huerfano County, Colorado, are permitted to advertise individual parcels or residential parcels of residential property. No commercial, political, or similar signs shall be erected or maintained on any Lot within the subdivision that is visible from any neighboring lot, the Golf Course, or The Lathrop State Park. During the time of construction of any Residential Dwelling, building or Improvement, one job identification sign not larger than eighteen inches in height, and twenty-four inches in width are permitted.

- J. **EXEMPTIONS:** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by the Declarant, or its duly authorized agents of structures or signs necessary or convenient to the development, advertisement, sale or operation or other disposition of Property within the Subdivision. Moreover, any bank or other lender providing financing to the Declarant in connection with the development of the subdivision or improvements thereon may erect signs in the Subdivision on in the Park Preserve Common Area or on Lots owned by the Declarant to identify such lender and the fact that it is supplying such financing.
- K. **RESTRICTION OF FURTHER SUBDIVISION:** No lot shall be further subdivided, and no portion less than all of any such Lot., No easement or other interest therein, shall be conveyed by any Owner without the prior written approval of the Architectural Committee.
- L. **CLOTHES DRYING:** No outside clothesline or other outside facilities for drying or airing of clothes shall be erected, placed or maintained on any Lot if visible from a neighboring Lot, the Golf Course, or the Lathrop State Park.
- M. **REPAIR OF BUIDLINGS:** No Residential Dwelling or other building or structure upon any lot shall be permitted to fall into disrepair, and each such Residential Dwelling, building, or structure shall at all times be kept in good condition and Repair and adequately painted or otherwise finished by the Owner of the Lot at the Owner's sole cost and expense.
- N. **LIVE TREES:** Planting of Native Trees is encouraged. Live Trees having a diameter of 8" or more may not be removed without the written consent of the Architectural Committee except for the Construction of a Residential Dwelling or for Fire Protection measures.
- O. **FIRE PROTECTION:** Fire Hydrants will be placed no further than 1,000 feet from any structure resulting in lower fire insurance premiums. All structures should have a defensible space of 30 feet around all structures on gentle slopes and up to 75 feet on structures located on steep slopes or as approved by the Huerfano County Fire District for structures manufactured from highly retardant non- flammable construction materials.

- P. **DRIVEWAYS:** In order to provide for adequate access for emergency vehicles all driveways will be required to have a minimum width of 16 feet and a maximum grade of 12%. The entrance to the driveway should be as close to 90 degrees from the edge of the roads where terrain will permit and no curves or turns be greater than 90 degrees in order to provide access for emergency vehicles. A culvert shall be installed in the ditch or driveway to each Residential Dwelling so as to not interfere with proper road and Lot drainage. All driveways must be constructed properly as to not to affect drainage onto a neighboring Lots and must meet minimum standards set forth by the County Building Department. Driveways shall be paved and must meet standards set by the Architectural Control Committee.
- Q. **MAILBOXES.** If the U.S. Postal Service allows, individual mailboxes are permitted at the Discretion of the Architectural Control Committee provided that the design of the mailbox is similar to the design of the Residential Dwelling on the Lot and the type and location of the mailbox is approved by the Architectural Control Committee. If individual mailboxes are not permitted, keyed cluster boxes will be located in the area of the entrances.

### **SECTION 3.2 TYPE OF CONSTRUCTION AND MATERIALS**

- A. **STORAGE OF BUILDING MATERIALS:** Without the prior written consent of the Architectural Control Committee, no building materials of any kind or character shall be placed or stored upon any Lot more than thirty (30) days before the commencement of construction of a Residential Dwelling, structure, or improvement is commenced. Upon completion of the construction, any unused materials shall be removed immediately from the Lot.
- B. **CONSTRUCTION COMPLETION:** The construction of a Residential Dwelling shall be performed diligently, to the end that the Residential Dwelling, structure, or Improvement shall not remain in a partly finished condition any longer than necessary. Unless otherwise authorized in writing by the Architectural Committee prior to the Commencement of Construction, the completion of any Residential Dwelling, structure or Improvement on a Lot shall be completed with (11) months, if market asking price and/or construction cost is less than \$500,000.00 and (15) months is the market asking price and/or construction cost is over \$500,000.00 from the date of Commencement of Construction, excepting delays due to strikes, war, acts of God or other causes beyond the control of the Owner or his contractor.

- C. **TEMPORARY STRUCTURES:** No basement, tent, shack, barn, trailer camper, mobile home or other outbuilding shall at any time be used as a residence, temporary or permanent, nor shall any residence of temporary character be erected or permitted to remain. Exemptions: The Declarant reserves the exclusive right to erect, place and maintain , and to permit builders to erect, place and maintain, such facilities in and upon the Property as in its sole discretion that may be necessary or convenient during the period of an in connection with the sale of Lots, construction and sale of Residential Dwellings and construction of other improvements in the Subdivision.
- D. **EXTERIOR WALLS:** It is the intent of the Declarant to create a Master Planned Community with a minimum need of Homeowner maintenance to the exterior of Residential Dwellings within the subdivision. The exterior walls of any Residential Dwelling shall consist of one hundred percent (100%) brick, stone, or stucco or other materials which are approved in the Minimum Construction Standards espoused by the Architectural Control Committee. Some wood trim is permitted though aluminum maintenance free windows are encouraged.
- E. **EXTERIOR LIGHTING:** In order to protect nighttime star and sky views, night friendly lighting is required on all exterior lighting which is affixed to the Residential Dwelling, Improvement, or other buildings. All exterior lighting must first be approved by the Architectural Control Committee.
- F. **ROOFS:** Roofs of Residential Dwellings shall be constructed of long lasting and maintenance free materials such as colored cement tile, colored pro-panel metal roofs, synthetic tile or other non-flammable materials, which are approved by the Architectural Control Committee.
- G. **ANTENNAS:** No external antenna shall be permitted on any Lot within the Subdivision, if such antenna is visible from any other Lot, the Golf Course or The Lathrop State Park. Small typical 18" TV satellite dishes are permitted and should be located to the rear of the Residential Dwelling.
- H. **INDIVIDUAL SEPTIC DISPOSAL SYSTEMS:** All Lots must perform a perk test and receive a septic permit from the Las Animas/Huerfano Health District. All Individual Septic Disposal Systems must employ Infiltrator Chamber leach field systems, which efficiently require up to 50% less leach field area than conventional pipe and stone leach fields. All Lots must meet or exceed Huerfano County Health Department requirements. In any areas that are unsuitable for an Infiltrator Chamber disposal system, evapo-transpirative or an alternative system may be employed with the approval of local Huerfano County Health Department regulating Individual Septic Disposal Systems.

- I. **MINIMAL AREA OF INTERIOR LIVING SPACE:** All Lots that are less than .75 acres in size, must have a Residential Dwelling with a minimum of 1250 sq. feet of interior living space exclusive of porches, and garages. All Lots that are .75 acres or more in size, must have a Residential Dwelling with a minimum of 1,500 sq. feet of interior living space, exclusive of porches, and garages. No more than 50% of any lot area may be used for home living space.
- J. **WATER:** Water service is to be provided through the City of Walsenburg's water treatment plant located west of the Subdivision and will be subject to all City of Walsenburg Ordinances for extraterritorial water.

The subdivision will be serviced from the existing water line east of the Subdivision. The water lines will be designed in accordance with design standards and specifications of the City of Walsenburg. The developer will install and warrant the main water lines for 5 years and maintain the main water lines in the subdivision until the development is 75% sold. At that time the Homeowner's Association will take over maintenance of the main water lines within the subdivision for the remainder of the 5 year warranty period and will charge a surcharge so funds are available for any repairs to the water lines that might be necessary in the future.

You will be charged the current one-time water tap fee of \$4,000.00 to the City of Walsenburg at the time the connection or tap is made into the water system. In addition the current water use fee of \$45.00 per month per 5,000 gallons of water will be charged to each Homeowner.

In addition to the water tap fee and water service charge explained above, you will be responsible for the cost of construction and maintenance of service lines to any improvements you build on your lot, plus the cost of water meters, cut-off valves or other equipment which may be related to your water connection.


- K. **WATER CONSERVATION:** As part of the Water Agreement between The City of Walsenburg and Black Diamond Park LLC and the future homeowners in Black Diamond Park it shall be the duty and commitment for all homeowners to conserve water, whenever and wherever possible inside and outside their homes. All homeowners will use and install the latest in water saving technology for showerheads, toilets, dishwashers, hot water heaters, and washing machines. Homeowners are encouraged to also voluntarily employ conservation measures such as washing full loads of clothes and full loads of dishes and smart use and reuse of water within the household such as for watering of plants. Outside the home, native grasses and plants are required and also use less water, last longer, look better, and cost less to maintain and keep beautiful and will be further addressed below.

- L. **LANDSCAPING:** The Environmental Landscaping Master Plan promotes the conservation of water and the creative use of natural local indigenous plants, rye grasses, cactuses, bushes, and trees that preserve the natural landscape, have the best rate of survival, require less water and are relatively maintenance free to the owner. In addition, all homeowners are limited to a lawn area equal to a maximum of 100% of their total interior square footage of their home and must be approved by the Architectural Control Committee.

All landscaping plans must be approved by the Architectural Control Committee. Blue grass and other high water consumption grasses are not permitted. The Architectural Control Committee shall include within the Minimum Construction Standards a list of approved grasses, trees, bushes, and perennials.

- M. **BLACK DIAMOND PARK EXTERIOR FENCES.** All security walls and fences that are located on the exterior boundaries of the subdivision will be paid for and installed by the Declarant and maintained by the Homeowner's Association.
- N. **HOMEOWNER FENCES:** Shall be of a split rail variety stained with a black stain and preservative. Split rail fences may be screened for animal control and electronic invisible fencing is encouraged for animal control. Block fences that match existing Block Fence on the north side of the development are permitted. All fencing shall be approved by the Architectural Control Committee.
- O. **ENFORCEMENT:** of the Protective Covenants and Building Restrictions contained herein shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. The Declarant and every person hereafter having any right, title or interest in any tract in the said Subdivision, shall have the right to seek enforcement of these covenants by applying to any appropriate court or agency for an injunction or other lawful remedy and to recover any damages resulting from such violation.
- O. **FAILURE TO ENFORCE:** any restriction, condition, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter As to the same breach or as to one occurring prior to subsequent thereto. In the event any covenant or condition or restriction herein above contained, or any portion thereof, is invalid or void, such invalidity shall in no way effect any of the other covenants, conditions, or restrictions which shall remain in full force and effect.
- Q. **INVALIDATION:** of any one of the covenants contained herein by judgment, Court order or for any other reason shall in no way affect any of the other covenants, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration on this \_\_\_\_ day of \_\_\_\_\_, 2009\_\_, to become effective upon the recording in the office of the County Clerk of Huerfano, Colorado.

By: 

Richard B. McEntee  
President

**STATE OF COLORADO**  
**COUNTY OF HUERFANO**

BEFORE ME, the undersigned Notary Public, on this day personally appeared Richard B. McEntee, Manager of Black Diamond Park LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes of consideration therein expressed and in the capacity stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE

on this 15<sup>th</sup> day of July 2009