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1 of 25 R 125.00 D 0.00 Huerfano Co.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHISPERING CREEK CONDOMINIUMS,
HUERFANO COUNTY, COLORADO

ARTICLE I

DEFINITIONS 2

Section 1. "Association" 2

Section 2. "Association Property" 2

Section 3. "Board" 2

Section 4. "Commercial Unit" 2

Section 5. "Committee" 2

Section 6. "Common Areas" 2

Section 7. "Condominium Unit" 2

Section 8. "Contractor" 2

Section 9. "Declarant" 2

Section 10. "Declaration" 2

Section 11. "Dependent" 2

Section 12. "Fiscal Year" 2

Section 13. "Open Space" 2

Section 14. "Whispering Creek Condominiums" 2

Section 15. "Guest" 2

Section 16. "Improvement" 3

Section 17. "Member" 3

Section 18. "Owner" 3

Section 19. "Person" 3

Section 20. "Plans and Specifications" 3

Section 21. "Repairman" 3

Section 22. "Unaccompanied Guest" 3

Section 23. "Unit" 3

Section 24. "Voting Member" 3

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION 3

Section 1. Existing Property 3

Section 2. Planned Future Additions 3

Section 3. Other Additions 3

Section 4. Additions: Effect 3

Section 5 4

ARTICLE III

Whispering Creek Condominiums Owners Association 4

Section 1. Organization 4

Section 2. Composition of the Organization 4

Section 3. Duties of the Association 4

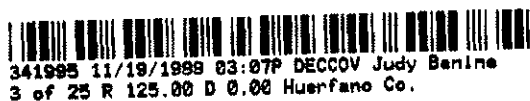
ARTICLE IV

PROPERTY RIGHTS 5

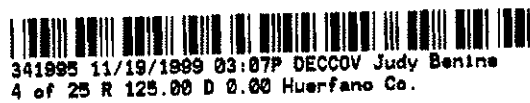
Section 1 5



Section 2.	Unaccompanied Guests	6
Section 3.	Tenancies	6
Section 4.	.....	6
 ARTICLE V		
	MEMBERSHIP AND VOTING RIGHTS	7
Section 1.	Membership	7
Section 2.	Classes of Membership: Voting Rights	7
Section 3.	Joint or Common Ownership	7
Section 4.	Proxies	7
Section 5.	Cumulative Voting	8
Section 6.	Internal Ownership	8
 ARTICLE VI		
	ASSESSMENTS	8
Section 1.	Levy of Assessments and Lien	8
Section 2.	Purpose of Assessments	8
Section 3.	Maximum Annual Assessment	8
Section 4.	Special Assessments	8
Section 5.	Notice and Quorum for Any Action Authorized Under Sections 3 and 4	8
Section 6.	Uniform Rate of Assessment	8
Section 7.	Date of Commencement of Annual Assessments: Due Dates ..	9
Section 8.	Date of Commencement of Special Assessments	9
Section 9.	Effect of Nonpayment of Assessments: Remedies of the Association	9
Section 10.	Mortgagee Protection	9
Section 11.	Subordination	10
 ARTICLE VII		
	ENVIRONMENTAL CONTROL COMMITTEE	10
Section 1.	Creation of Environmental Control Committee	10
Section 2.	Committee Control of Plans and Specifications	10
Section 3.	No Waiver of Future Approval	10
Section 4.	Reimbursement of Member	10
Section 5.	Meetings of the Committee	10
Section 6.	Inspection of Work	11
Section 7.	Non-Liability of Committee Members	11
Section 8.	Variances	11
Section 9.	Obligations with Respect to Zoning and Subdivisions	11
Section 10.	Committee Control of Contractors: Committee Power to Grant Temporary Ingress and Egress	12
Section 11.	Other Committee Powers	12



ARTICLE VIII		
PROTECTIVE COVENANTS	.....	12
ARTICLE IX		
GENERAL PROVISIONS	.....	14
Section 1. Enforcement	.....	14
Section 2. Violation a Nuisance	.....	14
Section 3. Severability	.....	14
Section 4. Life of Declaration	.....	14
Section 5. Amendments	.....	14
Section 6. Reservation of Right to Amend	.....	14
Section 7. Notices	.....	14
Section 8. Nondiscrimination Between Classes	.....	15
ARTICLE X		
OTHER PROVISIONS WITH RESPECT TO DECLARANT	.....	15
Section 1. Condominium Unit Sales and Sales Models	.....	15
Section 2. Construction Work	.....	15
Section 3. Recreational Facilities	.....	15
LIST OF EXHIBITS		
EXHIBIT A	Overall property covered by Covenants	
EXHIBIT B	Reserved for additions to land	
EXHIBIT C	Warranty Deeds to Open Space	



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WHISPERING CREEK CONDOMINIUMS, HUERFANO COUNTY, COLORADO

THIS DECLARATION, made and executed this 17 day of November, 1999, by Cuchara Partners, Ltd., a Texas limited partnership, under the laws of the State of Colorado, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property described in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as "Whispering Creek Condominiums"; and

WHEREAS, Declarant desires to create thereon a subdivision for the enjoyment and convenience of persons who wish to live in Whispering Creek Condominiums with (a) access to it reserved for and restricted to those parties designated in Article IV; (b) Common Areas and Deeded Open Space for the use, enjoyment and recreation of those parties designated in Article IV hereof; and

WHEREAS, the development is designed for a maximum of thirty two (32) condominium units; and

WHEREAS, Whispering Creek Condominiums is a staged development subdivision to be developed over a period of time; and

WHEREAS, Declarant desires to reserve the right to add to Whispering Creek Condominiums part or all of the real property described in Exhibit B attached hereto; and

WHEREAS, Declarant desires to insure the attractiveness of Whispering Creek Condominiums, to prevent nuisances, to preserve, protect and enhance the values and amenities of Whispering Creek Condominiums and to provide for the maintenance of the Common Areas and Open Space therein. To accomplish these purposes, Declarant (a) desires to subject the real property described in Exhibit A, together with such additions as may hereafter be made thereto, to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said real property and each Owner thereof; (b) has caused to be incorporated Whispering Creek Condominiums Land Owners Association (hereinafter referred to as "Association"), as a non-profit corporation under the laws of the State of Colorado for the purpose of exercising the powers and functions granted to it by this Declaration and by as Articles of Incorporation and Bylaws; and (c) desires that an Environmental Control Committee be created; and

WHEREAS, Declarant desires to grant to the Association Deeds of Open Space for recreational use and enjoyment as set forth in Exhibit D attached hereto and made a part hereof.

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A, attached hereto, and such additions thereto as may hereafter be made, shall be held, transferred, sold, conveyed, improved and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, which shall run with the real property in Whispering Creek Condominiums and all additions thereto and be binding on all parties having any right, title or interest in Whispering Creek Condominiums or any additions thereto or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof, and Declarant hereby further declares that the real property described in Exhibit C attached hereto and such additions thereto as may hereafter be made, shall be owned by Declarant but dedicated and set aside for the common use, enjoyment and recreation of Owner, pursuant and subject to the nonexclusive perpetual easement described in Exhibit C attached hereto. Declarant may, at any time and from time to time, convert all or portions of the Exhibit C properties to Association Property by conveying all or portions of Exhibit C properties to the Association in fee simple.


341995 11/19/1999 03:07P DECCOV Judy Benina
5 of 25 R 125.00 D 0.00 Huerfano Co.

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to Whispering Creek Condominiums Owners Association, its successors and assigns.

Section 2. "Association Property" shall mean all real property described in Exhibit D attached hereto and all real property and personal property and Improvements hereafter conveyed or leased to the Association. Association Property shall not include the real property described in attached Exhibit C until all or portions of the Exhibit C properties are later added to Exhibit D by Declarant.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

Section 4. "Commercial Unit" are not permitted.

Section 5. "Committee" shall mean and refer to the Environmental Control Committee.

Section 6. "Common Areas" shall collectively mean and refer to (a) all Association Property; (b) the easement described in Exhibit C and such additions thereto as may hereafter be made; and (c) such other real property and Improvements as may hereafter be conveyed or leased to the Association for the common use and enjoyment of the Owners, Declarant and Whispering Creek Condominiums.

Section 7. "Condominium Unit" shall mean only a residential condominium unit as defined in C.R.S. 38-33-103, as amended.

Section 8. "Contractor" shall mean and refer to each period who has been selected by an Owner to provide goods, materials or services of any kind for such Owner and who has been authorized by the Committee to enter Whispering Creek Condominiums for any such purpose.

Section 9. "Declarant" shall mean and refer to Cuchara Partners, Ltd., its successors and assigns. Declarant shall be a Member of the Association but not an Owner.

Section 10. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time, applicable to Whispering Creek Condominiums and recorded in the Office of the Clerk and Recorder of Huerfano County, Colorado.

Section 11. "Dependent" shall mean and refer to a family member of an Owner or tenant of Owner who resides in such Owner's or tenant's primary residence and who is primarily dependent on such Owner or tenant for financial support.

Section 12. "Fiscal Year" shall mean and refer to the period from October 1 to September 30, inclusive.

Section 13. "Open Space" shall mean property kept in its natural "as is" condition without alteration or modification by structures or buildings, except for recreational facilities built and maintained by the Whispering Creek Condominiums Owners Association such as hiking, skiing and biking trails or other "park like" amenities, in accordance with the Land Planning Guide of Huerfano County, Sections 4.02.09, 4.10.01, 4.10.02, 5.05.02 and 5.07.04.

Section 14. "Whispering Creek Condominiums" shall mean and refer to that certain real property described in Exhibit A, the real property subject to the easement described in Exhibit C and Association Property and such additional lands as may hereafter be added thereto by Declarant in accordance with the provisions hereof and subjected to this Declaration by Declarant.

Section 15. "Guest" shall mean and refer to any person who is a visitor or invitee and who is accompanied by an Owner, Dependent, the Declarant or a tenant.



Section 16. "Improvement" shall mean every structure and all appurtenances thereto of every type and kind, including but not limited to buildings outbuildings, patios, tennis courts, swimming pools, antennas, exterior lights, roads, driveways, parking areas, fences, screening walls, retaining walls, landscaping, plantings, signs, and poles, tanks, reservoirs, pipes, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

Section 17. "Member" shall mean and refer to every Owner and Declarant.

Section 18. "Owner" shall mean (a) the person or persons holding a fee simple title interest in a Condominium Unit, or, as the case may be; (b) the purchaser or purchasers of a fee simple interest in a Condominium Unit under an installment sales contract. Declarant shall not be an Owner.

Section 19. "Person" shall mean a natural individual or any other entity having the legal right to hold title to real property.

Section 20. "Plans and Specifications" shall mean any and all documents designed to guide or control the Improvement or other proposal in question, including but not limited to those indicating size, shape, configuration or materials, all site plans, excavation and grading plans, drainage plans, elevation drawings, samples of exterior colors, building products and materials, plans for utility services and all other documentation or information relevant to the Improvement or proposal in question.

Section 21. "Repairman" shall mean and refer to each person who has been selected by an Owner to provide goods, materials or services of any kind for such Owner and who has not been authorized by the Committee to enter Whispering Creek Condominiums for any such purpose.

Section 22. "Unaccompanied Guest" shall mean and refer to any visitor or invitee in Whispering Creek Condominiums who is not accompanied by an Owner, Dependent or Declarant, or a tenant.

Section 23. "Unit" shall mean and refer to a subdivided area of Whispering Creek Condominiums which designated as a Unit on a subdivision plat map.

Section 24. "Voting Member" shall mean and refer to any Member of the Association with respect to whose Condominium Unit all assessments due the Association have been paid.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Existing Property. The real property which initially is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is the real property described in Exhibit A attached hereto, the easement described in Exhibit C and the real property described in Exhibit D, Open Space.

Section 2. Planned Future Additions. Additional real property within the area described in Exhibit B may be added to Whispering Creek Condominiums by Declarant without the consent of the Members within ten (10) years of the date of this Declaration provided that such addition is in accord with the general plan of development of Whispering Creek Condominiums.

Section 3. Other Additions. Real property not described in Exhibit B may be added to Whispering Creek Condominiums by the affirmative vote of not less than two-thirds (2/3) of each class of Voting Members of the Association.

Section 4. Additions: Effect. The additions herein described may be made by the execution and recording of a supplemental declaration describing the real property constituting the addition and containing an


341995 11/19/1999 03:07P DECCOV Judy Benine
7 of 25 R 125.00 D 0.00 Huerfano Co.

appropriate reference to this Declaration, whereupon the provisions of this Declaration shall become applicable to such real property in all respects as if this Declaration had included such real property from the beginning, provided, however, that nothing herein contained shall subject such additional real property to assessments for the years prior to the year of addition.

Section 5. Real property described in Exhibit D which constitutes open space in perpetuity, subject to restrictions placed on its use in the recorded Deeds thereto.

ARTICLE III
WHISPERING CREEK CONDOMINIUM OWNERS ASSOCIATION

Section 1. Organization. The Whispering Creek Condominiums Owners Association is a Colorado nonprofit corporation created for the purposes, charged with duties and invested with the powers prescribed by law or set forth in its Articles of Incorporation, Bylaws and in this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted except in accordance with this Declaration.

Section 2. Composition of the Organization. The Whispering Creek Condominiums Owners Association shall be comprised of owners' representatives elected by vote of the owners of Whispering Creek Condominiums.

Section 3. Duties of the Association. The Association shall have and perform each of the following duties for the benefit of its Members.

(a) To accept, own, operate and maintain all Association Property, which may be conveyed or leased to it by Declarant or Whispering Creek Condominiums, together with all improvements of whatever kind and for whatever purpose which may be located thereon.

(b) To pay over or convey, upon dissolution of the Association, the assets of the Association to one or more exempt organizations of the kind described in Section 501(c) of the Internal Revenue Code of 1954, as amended from time to time.

(c) To maintain in good repair and condition the Common Areas, all Open Space, and all Improvements and facilities now or hereafter located thereon and all interior and access roads and railroad grade crossings and culverts on such roads, unless such access roads, railroad grade crossings and culvert are maintained by a governmental authority.

(d) To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to Association Property. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(e) To obtain and maintain in effect policies of insurance adequate, in the opinion of the Board, in kind and amount. Without limiting the generality of the preceding sentence, such policies of insurance shall include fire and extended coverage insurance on all Improvements, bodily injury and property damage liability insurance, workmen's compensation insurance and such other insurance, including indemnity and other bonds, as the Board shall deem necessary.

(f) To make, establish, promulgate, and in its discretion to amend or repeal and reenact, such rules and regulations, not in contradiction of this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of the Common Areas. Each Member shall be entitled to examine such rules and regulations at any time during normal working hours at the principal office of the Association.

(g) To appoint and remove members of the Environmental Control Committee as provided in Article VII hereof, and to insure that at all reasonable times there is available a duly constituted and appointed Environmental Control Committee.



(h) To enforce, in its own behalf and in behalf of all Owners, all of covenants, conditions and restrictions set forth in this Declaration and to perform all other acts, whether or not anywhere expressly authorized as may be reasonably necessary to enforce any of the provisions of the Environmental Control Committee and the Articles Incorporation and Bylaws of the Association.

(i) To provide an annual audit of the accounts of the Association and to make a copy of such audit available to each Member during normal business hours at the principal office of the Association. Any Member may at any time and at his own expense, cause an audit or inspection to be made of the books and records of the Association by a certified public accountant provided that such audit or inspection is made during normal business hours and without unnecessary interference with the operations of the Association.

ARTICLE IV PROPERTY RIGHTS

Section 1. Right and Easement of Use and Enjoyment, Powers of Association and Board. Declarant, Whispering Creek Condominiums and every Owner shall have a right and easement of ingress and egress and of use and enjoyment in and on the Common Areas including any Improvements and recreational facilities; provided, however, that no Improvements or recreational facilities of any kind shall be placed on the property described in Exhibit C except with the written consent of Declarant. Such right and easement shall be appurtenant to and shall pass with the title to every Condominium Unit, subject to the following authority and powers of the Association as hereinafter specified.

(a) The right and power of the Association to levy general and special assessments against all Condominium Units in Whispering Creek Condominiums in accordance with the provisions of Article VI of this Declaration.

(b) The right of the Association to suspend any Owners right and easement of use and enjoyment of the Common Areas and any Improvement or facility thereon (1) for any period during which an assessment against a Condominium Unit remains unpaid and (2) for a period not to exceed one hundred eighty (180) days for each infraction of the provisions of the Declaration or the rules and regulations of the Association by Owner or an Owner's guest, agent, employee or servant.

(c) The right of the Association to charge reasonable admission and other fees for the use of Association Property and Improvements thereon except roads.

(d) The right of the Association, with Declarant's consent to allow the general public, or certain segments thereof, to use all or portions of the properties constituting Common Area or Open Space, and in the discretion of the Board, to charge use or other fees therefor.

(e) The right of the Association to make, establish, promulgate, and in its discretion to amend, repeal and reenact, such rules and regulations, not in contradiction of this Declaration, as it deems proper covering any and all aspects of its functions, including the use and occupancy of the Common Areas.

(f) The right of the Association to enter, without being liable any Owner, upon any Condominium Unit or Commercial Unit or onto any Common Area, for the purpose of enforcing by peaceful means the provisions of this Declaration and the restrictions contained herein or for the purpose of maintaining or repairing any area, improvement or other facility, if for any reason whatsoever the Owner thereof fails to maintain or repair any such area as required by this Declaration.

(g) The right of the Association with respect to Association Property and the right of Declarant with respect to property owned by Declarant and which comprises part of the Common Areas, to use and reserve or to grant and convey to any person real property and interests therein, including fee titles, leasehold estate, easements, rights of way, mortgages and deeds of trust, out of, in, on, over or under such property for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder.



- (1) Parks, parkways or other recreational facilities;
- (2) Roads, steels, walks, driveways, trails and paths;
- (3) Lines, cables, wires, conduits, pipelines or other, devices for utility purposes;
- (4) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines, and
- (5) Any similar improvements or facilities.

No transfer or dedication of Association properties or properties comprising any part of the Common Areas shall be made for any purposes other than those purposes stated above except with the approval of not less than two-thirds (2/3) of each class of Voting Members. The effect of any transfer or dedication for purposes other than those above-stated shall be the termination of the application of this Declaration to the property transferred.

(h) The right of the Association to take all necessary acts to enforce the conditions contained in the Deeds to the Open Space listed in Exhibit D regarding who may use the Open Space, the permitted uses of the Open Space, the non-permitted uses of the Open Space.

(i) The right of the Association to provide watchmen, guards or police at points of entry onto Whispering Creek Condominiums and at such other places and for such other purposes as the Board shall determine.

(j) The right of the Association to construct, own, operate, maintain and repair improvements and all types of facilities for recreation on Association Property.

(k) The right of the Association to indemnify any person who was or is a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, officer, employee, servant or agent of the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of directors who are not parties to such action, suit or proceedings, or (2) if such a quorum is not attainable, or, even if obtainable, a quorum of disinterested directors so direct, by independent legal counsel in a written opinion; provided, however, that if a director, officer, employee, servant or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or indemnification proceeding referred to above, or in defense of any claim, issue or matter therein, then, to the extent that the Association has elected to provide indemnification, he shall automatically be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith without the necessity of any such determination that he has met the applicable standard of conduct set forth above.

Section 2. Unaccompanied Guests. The Association may require that an Owner or Dependent or the person in charge of the entry gate to Whispering Creek Condominiums shall have the authority to issue permits to Unaccompanied Guests authorizing their entry to Whispering Creek Condominiums for the purpose of visiting a specific Units in Whispering Creek Condominiums. An Owner or Dependent may authorize such visitation only to a Unit owned by such Owner. Such permits shall be dated and shall cover a period of not more than twenty-four (24) hours. Unaccompanied Guests shall use only those roads in Whispering Creek Condominiums which provide the most direct route from the entry gate to a specified dwelling.

Section 3. Tenancies. An Owner may lease of rent his Condominium Unit to one Person. A tenant shall have the same rights as an Owner to the use of the Common Areas. The Association shall be given written notice of all tenancies longer than seven (7) nights.

Section 4. Should at any time the Condominium Owners Association fail to perform its duties hereunder as to the maintenance and upkeep of the common areas or the open space described herein, Huerfano County,

Colorado shall be permitted at its sole discretion to enter upon the described property and make such necessary repairs, alterations or maintenance to the property in order to provide for the health, safety and welfare of the owners, guests and general public or to insure the property remains open and in a natural condition on the property herein described, upon giving written notice to the Association of such deficiencies. The Association shall be liable for all costs incurred by Huerfano County in taking such remedial action.

ARTICLE V
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner and Declarant shall be a Member of the Association. If any property interest is shall, at the time of purchase, designate for the Association one address to which all notices to such joint or common owners shall be sent. No property interest may be initially acquired jointly or in common by more than four (4) persons and such four (4) persons shall not represent more than two (2) households.

Section 2. Classes of Membership: Voting Rights. The Association shall have Class A, Class B and Class C membership as follows:

Class A.

Each Owner of a Condominium Unit other than Declarant, shall be a Class A Member and shall be entitled to one (1) vote for each Condominium Unit owned on which all assessments due the Association have been paid.

Class B.

Declarant shall be a Class B Member and shall be entitled to one (1) vote for each unsold condominium unit. Declarant's Class B membership shall cease and be converted to Class C membership as to all Condominiums then owned by Declarant on the occurrence of either of the following events.

- (a) When the total votes of the Class A Members in all Units equals or exceeds seventy-five percent (75%) of the total aggregate votes of the Class A and Class B Members in all Units regardless of voting eligibility; or
- (b) Ten (10) years from the date of this Declaration.

Class C.

Declarant shall become a Class C Member upon the occurrence of (a) or (b) above and shall be entitled to one (1) vote for each unsold Condominium Unit owned only with respect to any vote to amend those provisions of Articles V or VI of this Declaration which affect Class C membership. Upon the sale of a Condominium Unit subject to Class C membership to an Owner either by fee simple conveyance or by installment sales agreement, the Class C membership for such Condominium Unit shall cease and such Owner shall become a Class A Member subject to all the provisions of Class A membership. Once Declarant's Class B membership has been converted to Class C membership, it shall continue to be Class C regardless of any future subdividing of Whispering Creek Condominiums by Declarant or any other event affecting Declarant's ownership Condominium Units in Whispering Creek Condominiums.

Section 3. Joint or Common Ownership. If any property interest is held jointly or in common by more than one (1) person the vote for such Condominium Unit shall be cast as a unit and neither fractional votes nor split votes shall be allowed. Any joint or common Owner shall be entitled to cast the vote or votes belonging to the joint or common Owners unless another joint or common Owner shall have delivered to the Secretary of the Association prior to the election a written statement to the effect that the Owner wishing to cast the vote has not been authorized to do so by the other joint or common Owner or Owners. In the event that such joint or common Owners are unable to agree among themselves as to how their vote or votes shall be cast as a unit, they shall lose their right to cast their vote or votes on the matter in question.

Section 4. Proxies. A Member may cast an eligible vote in person or by proxy at any meeting of the Members.



Section 5. Cumulative Voting. The cumulative system of voting shall not be used for any purpose.

Section 6. Internal Ownership. Voting shall be as in Section 3 "Joint or Common Ownership" above.

ARTICLE VI
ASSESSMENTS

Section 1. Levy of Assessments and Lien. The Association shall have the right to levy and collect general and special assessments in accordance with the provisions of this Article VI against all Condominium Units owned under a Class A membership; provided, however, that no general or special assessment shall be levied against any Condominium Unit which is owned by Declarant under a Class C membership. No person shall be personally liable for any assessment; however, the annual and special assessments, together with interest costs of collecting the same, and reasonable legal fees, shall be a charge on each Condominium Unit and shall be a continuing lien on each such Condominium Unit upon which each such assessment is made. Such lien shall be prior to any declaration of homestead. However, the obligation for prior or delinquent assessments shall not pass to Declarant if Declarant regains possession of a Condominium Unit previously sold by installment sales agreement. If Declarant regains possession of such Condominium Unit, all prior assessments and/or liens shall immediately cease and be extinguished.

Section 2. Purpose of Assessments. All amounts realized from assessments by the Association shall be used as determined by the Board for any lawful purpose consistent with this Declaration and the Articles of Incorporation and Bylaws of the Association, including, but not by way of limitation, the following (a) to promote the recreation, health, safety, and welfare of the Members; (b) for the restoration, improvement, and maintenance of the Common Areas and Open Space; (c) for all services, equipment and facilities relating to the use and enjoyment thereof, including, the operation of an entrance gate; and (d) for the payment of taxes, insurance and other costs and expenses on Association Properties.

Section 3. Maximum Annual Assessment. Until June 1, 2000, the maximum annual assessment shall be Fifty Dollars (\$50.00) per Condominium Unit. Thereafter such annual assessments may be increased or decreased by vote of Declarant and Owners as called for herein.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any Fiscal Year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements on Association Properties, including fixtures and personal property related thereto; provided, however, that all special assessments shall be approved by the affirmative vote of not less than two-thirds (2/3) of the votes of each of the Class A and Class B Voting Members voting in person or by proxy at the annual meeting or at a meeting or at a meeting called for that purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of the time and location of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 of this Article shall be sent not less than thirty (30) days nor more than sixty (60) days in advance of the meeting to all Class A and Class B Voting Members eligible to vote as of the date of the notice. At the first meeting called, Voting Members present in person or by proxy entitled to cast sixty percent (60%) of the votes of each of the Class A and Class B Members shall constitute a quorum. If the required quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at the same amount for each Condominium Unit subject to assessment regardless of Condominium Unit size, price or


341995 11/19/1999 03:07P DECCOV Judy Benina
12 of 25 R 125.00 D 0.00 Huerfano Co.

value. Annual assessments and special assessments, if any, may be collected on a semi-annual or annual basis, set by the Board.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessment for all Units shall commence on the 1st of January, 2000, following the sale of the first such Unit to a Class A Member, either by fee simple conveyance or installment sales agreement; however, the assessment for the first full Fiscal Year following the date of sale of a Condominium Unit to a Class A Member shall be paid by Declarant. Assessments for subsequent years shall be paid by the Owner of such Condominium Unit. Declarant shall pay the assessments on all Condominium Units which it owns as a Class B Member. For each Condominium Unit owned by a Class A Member the annual assessment shall commence on the 1st day of January, 2000, following the recording of the Deed for such Condominium in the real property records of Huerfano County, Colorado, and shall be paid by Owner.

The annual assessment shall be paid in advance. The Board shall fix the amount of the annual assessment on each Condominium Unit for the next Fiscal Year at the annual meeting. The due date for the annual assessment shall be January 31st of the Fiscal Year for which the assessment is made unless the Board determines that such annual assessment shall be collection on a semi-annual basis, in which event the due dates shall be set by the Board.

Written notice of the amount of the annual assessment shall be sent to every Member subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium Unit have been paid.

Section 8. Date of Commencement of Special Assessments. Any special assessments under Section 4 of this Article VI shall be applicable only to those Condominium Units subject to the obligation for annual assessments on the 31st day of January of the Fiscal Year in which such special assessment is levied. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such special assessment.

Section 9. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within sixty (60) days after the due date shall be delinquent and shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may, if any assessment remains delinquent for ninety (90) days, foreclose the lien against the property in the same manner as is provided in the laws of Colorado for the foreclosure of mortgages on real property. No Condominium Unit shall be exempt from liability for the assessments provided for herein because of a Member's non-use of the Common Areas.

Section 10. Mortgagee Protection. Notwithstanding any other provisions of this Declaration, no lien created under this Article VI or under any other Article of this Declaration, nor any lien arising by reason of any breach of this Declaration, nor the enforcement of any provision of this Declaration or of any supplemental declaration shall defeat or render invalid the rights of the beneficiary under any recorded mortgage or deed of trust of first and senior priority now or hereafter upon a Condominium Unit made in good faith and for value. However, after the foreclosure of any such mortgage or deed of trust or after any conveyance in lieu of foreclosure, such Condominium Unit shall remain subject to this Declaration and shall be liable for all regular annual assessments and all special assessments levied subsequent to completion of such foreclosure or delivery of such conveyance in lieu of foreclosure, and to all installments of all regular annual and special assessments levied prior to completion of such foreclosure or delivery of such conveyance, but, falling due after such completion or such delivery. Sale or transfer of any Condominium Unit will not affect or extinguish the assessment lien; however, the repossession of any Condominium Unit pursuant to delinquency or default under an installment sales agreement with Declarant shall extinguish the lien of such assessments as to payments, penalties or interest which become due prior to such repossession. No such repossession shall relieve such Condominium Unit from liability for any assessments thereafter coming due on the next annual assessment date or the lien thereof unless such Condominium Unit has become subject to a Class C membership.



No amendment of this Section 10 shall affect the rights of any mortgagee or beneficiary of any deed of trust or mortgage whose mortgage or deed of trust has the first and senior priority as above provided and who does not join in the execution of any such amendment; provided, that his mortgage or deed of trust is recorded in the real property records of Huerfano County, Colorado, prior to the recordation of such amendment; provided, however, that after foreclosure or conveyance in lieu of foreclosure, the property which was subject to such mortgage or deed of trust shall be subject to such amendment.

Section 11. Subordination. By subordination agreements executed by the Association, the benefits of preceding Section 10 may, in the sole and absolute discretion of the Board, be extended to beneficiaries not otherwise entitled thereto.

ARTICLE VII ENVIRONMENTAL CONTROL COMMITTEE

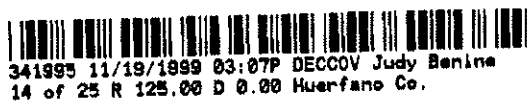
Section 1. Creation of Environmental Control Committee. There shall be an Environmental Control Committee consisting of three (3) persons appointed by the Board to exercise the controls and powers assigned it in this Declaration.

Section 2. Committee Control of Plans and Specifications. Excepting any prior or future construction by Declarant of Whispering Creek Condominiums, no Improvements shall be commenced, installed, built or erected upon a Condominium Unit nor shall any exterior addition to or change or alteration thereon be made until all Plans and Specifications shall have been submitted to and approved by the Committee. The Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Committee. The Committee shall approve Plans and Specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area or Whispering Creek Condominiums as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures. The Committee may condition its approval of Plans and Specifications on such changes therein as deems appropriate and may require submission of additional Plans and Specifications or other information prior to approving or disapproving the materials submitted. The Committee may also issue rules or guidelines regarding anything relevant to its function, including but not limited to minimum standards and procedures for the submission of Plans and Specifications for approval. The Committee may require such detail in Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Committee of all required Plans and Specifications and other information, the Committee may postpone review of anything submitted for approval. In the event the Committee fails to notify a Member of its approval or disapproval of such plans and specifications in writing by certified mail within sixty (60) days after all Plans and Specifications and any other required information has been submitted to it, either in person or by certified mail, approval of the Committee shall be deemed to have been fully obtained.

Section 3. No Waiver of Future Approval. The approval or consent of the Committee to any Plans or Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or Specifications or other matter whatever subsequently or additionally submitted for approval or consent by the same or a different Owner.

Section 4. Reimbursement of Member. The members of the Committee shall be entitled to reimbursement for expenses incurred by them in performance of their duties hereunder.

Section 5. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing designate one of its members to take any action or perform any duty for and on behalf of the Committee,



except the granting of variances. In the absence of such designation, the vote of a majority of all of the members of the Committee, or the written consent of a majority of all of the members of the Committee taken without a meeting shall constitute an act of the Committee.

Section 6. Inspection of Work. Upon the completion of any Improvement for which approved Plans or Specifications are required under this Declaration, the Owner shall give written notice of completion to the Committee. Within such reasonable time as the Committee may set in its rules, but not to exceed fifteen (15) days thereafter, the Committee or its duly authorized representative may inspect such Improvement, if the Committee finds that such work was not done in strict compliance with all approved Plans and Specifications submitted or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance and shall require the Owner to remedy the same. If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy noncompliance, the Committee shall notify the Board in writing of such failure. Upon notice and hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board's ruling. If the Owner does not comply with the Board's ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an assessment against such Owner and the Improvement in question and the land on which the same is situated for reimbursement and the same shall constitute a lien upon such land and Improvement and be enforced as in this Declaration provided. The Committee may inspect all work in progress and give notice of noncompliance as provided above. If the Owner denies that such noncompliance exists, the procedures set out above shall be followed, except that no further work shall be done, pending resolution of the dispute, which would hamper correction of the noncompliance if the Board shall find that such noncompliance exists.

Section 7. Non-Liability of Committee Members. Neither the Committee nor any member thereof nor the Board nor any member thereof shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Committee or its members or the Board or members, as the case may be. Except insofar as its duties may be extended with respect to a particular area by the Association, the Committee shall review and approve or disapprove all Plans and Specifications submitted to it for any proposed Improvement, including the construction, alteration or addition thereof or thereto, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding area and Whispering Creek Condominiums generally. The Committee shall take into consideration the esthetic aspects of the architectural designs, placement of buildings, landscaping, exterior finishes and materials and similar features, but shall not be responsible for reviewing nor shall its approval of any Plans and Specifications be deemed approval thereof from the standpoint of structural safety, engineering, soundness or conformance with building or other codes.

Section 8. Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, setbacks, colors, materials or similar restrictions when circumstances such as topography, natural obstructions, hardship or esthete or environmental consideration may, in its sole and absolute discretion, warrant such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the Committee. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular and in the particular instance covered by the variance.

Section 9. Obligations with Respect to Zoning and Subdivisions. The Committee shall require all persons to comply fully with the zoning ordinances and subdivision regulations, if any, of Huerfano County, Colorado, insofar as the same are applicable and as they may hereafter be amended.

Section 10. Committee Control of Contractors: Committee Power to Grant Temporary Ingress and Egress. The Committee shall have the power to approve or disapprove any Contractor to be used for any of the purposes approved in Section 2 above; provided, however, that the Committee shall only disapprove a Contractor for a reasonable cause stated in writing. The Committee approve or disapprove a Contractor in writing within seven (7) days of the time the Committee is informed of the Contractor's identity.

The Committee shall have the power to grant temporary licenses permitting ingress and egress over specified roads in Whispering Creek Condominiums to a Contractor and shall only grant such licenses to a Contractor for a specific period of time. The Committee may withdraw such licenses at any time such Contractor (a) uses nonspecified roads; (b) does not diligently pursue the work to be done; or (c) violates any of the Protective Covenants hereinafter set forth.

Section 11. Other Committee Powers. The Committee shall have the power to approve, control, permit, license and regulate such other activities and matters as the Board may from time to time determine.

ARTICLE VIII PROTECTIVE COVENANTS

The following restrictions, conditions and covenants, collectively called "Protective Covenants", are imposed upon all the Condominium Units applicable, and Common Areas without limiting or altering the provisions of Article VII.

(a) Any tank for the storage of gas or liquid shall be hidden from the view of other Condominium Units and the Common Area.

(b) No kennel or other facility for raising or boarding dogs or other animals for commercial purposes shall be kept in Whispering Creek Condominiums. No animals of any kind shall be raised, bred or kept in Whispering Creek Condominiums except reasonable numbers of dogs, cats or other ordinary household pets. No poultry may be kept in Whispering Creek Condominiums. No dog shall be allowed to run loose except when accompanied by a person capable of keeping such dog under surveillance and control.

(c) All refuse, rubbish, trash, garbage or waste shall be kept disposed of or removed in a sanitary manner. All household refuse and rubbish, trash, garbage or waste shall be kept in closed containers inside a building or other approved enclosure until taken to a disposal place operated or licensed by the proper public authority for such disposal. Nonhousehold refuse, rubbish, trash, garbage or waste, other than dead leaves and fallen limbs shall not be permitted to remain exposed.

(d) Any vehicle, whether self-propelled or not, permitted to remain on any Common Area shall be kept in a licensed and operable condition. Any vehicle, whether self-propelled or not shall be parked in such a manner that it is not a nuisance, aesthetically or otherwise, to other Members. A truck larger than three-quarter (3/4) ton rating shall only be kept on a parking area near an approved building except during any period of authorized construction. A vehicle shall not be parked on that part of any road normally used by vehicles being driven on such road. The provisions of this paragraph shall not apply to Declarant during time of construction of roads.

(e) Noxious, obnoxious, noisy, unsightly or otherwise offensive objects or activities, specifically including vehicle repairs, barking dogs and littering shall not be permitted nor shall anything be permitted that may be an unreasonable annoyance or nuisance to the Owners.

(f) A professional quality sign of not more than four (4) square feet in area shall be allowed to be displayed on the property for any purpose and one (1) additional sign of not more than four (4) square feet in area shall be allowed to be displayed for advertising such Condominium Unit or Improvement thereon for sale, lease or rent. The display of any for sale or other signs for any purpose shall be prohibited by any owner, occupant or tenant, or their agents or employees, except that the Declarant may utilize such signs as it deems advisable for the promotion and sale of the development.

- (g) A structure of a temporary or mobile nature, motorhome, mobile home, camper truck, travel trailer, camping trailer, other vehicle used or designed for camping, or tent, shall not be placed on the property.
- (h) Interval ownership of the units is expressly permitted only for sales made by Declarant or its related entities. No other interval ownership arrangement shall be permitted without Board approval.
- (i) Any outdoor fire shall be made in a facility or a receptacle having a properly operating spark screen. All fireplaces whether inside a building or out doors shall have an operational approved spark screen covering the top of the chimney. Any condition which creates a fire hazard shall not be permitted.
- (j) No single-family Condominium Unit, exclusive of open porches, garages and carports, shall be less than six hundred (600) square feet in main floor area. No common cooperative or similar type living arrangement shall be permitted anywhere in Whispering Creek Condominiums.
- (k) All decisions relating to water service, repair or transmission shall be made by the Association or Declarant.
- (l) No commercial enterprise shall be operated.
- (m) Building materials shall not be placed on the property nor shall foundation work be started for any improvement until such improvement has previously been approved by the Committee. Once approval is obtained, such improvement must be completed within twelve (12) months after building materials are first placed on such property or foundation work is begun.
- (n) A wire fence shall not be permitted
- (o) Hunting shall not be permitted.
- (p) Firearms, explosives, fireworks or arrows shall not be used, shot or discharged except in such areas as may be designated by the Association for such use, shooting or discharging.
- (q) Explosives shall not be used for construction purposes unless such use has been approved by the Committee.
- (r) Excessively noisy vehicles of any kind, all-terrain vehicles, trail-bikes, helicopters, aircraft or motorcycles shall not be used anywhere in Whispering Creek Condominiums.
- (s) Chain saws shall not be used without a proper spark arrester on the exhaust and chain saws or other noisy equipment shall not be operated before 8:00 a.m. or after 5:00 p.m.
- (t) All telephone, electrical power, and other receiving or transmission lines shall be placed underground except that such lines on poles shall be permitted (1) in the case of major lines to areas of Whispering Creek Condominiums as Declarant deems appropriate; and (2) temporary lines for purposes of construction only.
- (u) Existing tree lines shall not be disturbed and, wherever practicable, all improvements shall be placed a reasonable distance behind such tree lines as determined by the Committee.
- (v) Any tree having a diameter at the base greater than four (4) inches shall not be cut down without prior approval of the Committee.
- (w) Snowmobiles shall not be operated.



(x) Any vehicle requiring its operator to have an operator's license under the laws of the State of Colorado shall be operated only by a person having valid operator's license.

(y) All improvements shall be maintained in such a manner that they do not become (1) unsightly, (2) in disrepair, (3) unsanitary or (4) a fire hazard.

(z) No guest house, garage, carport or other outbuilding shall be constructed.

ARTICLE IX
GENERAL PROVISIONS

Section 1. Enforcement. The Association, the Board or any Member at his own expense, shall have the right to enforce, by any proceeding at law or in equity, the following: (a) all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration; and (b) all rights, conditions, and obligations of the easement for recreational use set forth in Exhibit C. Any monies received by any member from any other Member or former Member on account of assessments levied by the Association, less all reasonable enforcement costs, shall be paid by such enforcing Member to the Association. Failure by the Association or by any Member to enforce any provisions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Violation a Nuisance. Every act or omission whereby any provision of this Declaration or any rules and regulations promulgated by the Association or the Committee is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated by any Member, at his own expense, or by the Board.

Section 3. Severability. Invalidation of any one of the provisions of this Declaration by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Life of Declaration. The covenants and restrictions of this Declaration, as they may be amended from time to time, shall run with and bind the property now or hereafter subjected to this Declaration for a term of ten (10) years from the date of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years, unless extinguished by a written instrument executed by at least three-fourths (3/4) of both the Class A and Class B Members of the Association and recorded in the Huerfano County, Colorado, real property records.

Section 5. Amendments. This Declaration may be amended, except as it relates to the rights of a Class C Member as provided in Articles V and VI hereof, during the first ten (10) year period by an affirmative vote of not less than two-thirds (2/3) of the votes of each of the Class A and Class B Voting Members and thereafter by an affirmative vote of at least two-thirds (2/3) of the votes of the Class A Voting Members. This Declaration may be amended as it relates to the rights of a Class C Member in Articles V and VI by the affirmative vote of not less than two-thirds (2/3) of the votes of each of the Class A and Class B Voting Members and of the Class C Member. All amendments shall be recorded.

The County Commissioners of Huerfano County have the right, but not the obligation, to review and accept any amendments to these declarations.

Section 6. Reservation of Right to Amend. Declarant reserves the right to unilaterally amend this Declaration to comply with any lender requirement or take any other action it deems necessary to further the aims of the Development. This right shall terminate upon transfer of control of the development from the developer to its owner and shall not have any affect on the Deeded Open Space and restrictions and conditions contained in those Deeds to such Open Space.

Section 7. Notices. Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been



delivered on the third day (including Sundays or holidays) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the Person at the address given by such Person to the Association for the purpose of service of notices or to the residence of such Person if no address has been given to the Association. Such address may be changed from time to time, by notice in writing given by such Person to the Association.

Section 8. Nondiscrimination Between Classes. Except as to voting rights and assessments, there shall be no discrimination between classes of membership and no amendment shall alter this nondiscrimination provision.

ARTICLE X
OTHER PROVISIONS WITH RESPECT TO DECLARANT

Section 1. Condominium Unit Sales and Sales Models. Notwithstanding any provisions to the contrary herein contained, Declarant shall be allowed to show and sell Condominium Units designated by it as sales models, conducting thereon usual sales activities for a period of ten (10) years from the date hereof. In addition, Declarant may maintain for said period such signs as may be required, in Declarant's discretion, to advertise Condominium Units for sale.

Section 2. Construction Work. Notwithstanding any provision to the contrary herein contained, Declarant shall be entitled to conduct development and construction activities even though such activities would otherwise be in violation of this Declaration.

Section 3. Recreational Facilities. At anytime, and from time to time hereafter, the Declarant may, in its sole discretion, convey or lease to the Association, if acceptable to the Association, all or some of the recreational and other facilities which it may now or hereafter own, including Open Space. Such facilities shall be transferred to the Association as is and free of charge and shall be deemed to be a part of the Common Areas or Open Space and shall be administered as such by the Association.

IN WITNESS WHEREOF, this Declaration has been executed the day and year first above written.

Cuchara Partners, Ltd.

By: [Signature]

STATE OF New Mexico)
COUNTY OF Bernalillo) ss:

This instrument was acknowledged and executed before me this 17th day of November, 1999, by Lourence C. Smith.

[Signature]
Notary Public

My Commission Expires:

7-27-2002

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19 of 25 R 125.00 D 0.00 Huerfano Co.

EXHIBIT A

OVERALL PROPERTY COVERED BY COVENANTS

The land referred to in Schedule A is situated in the State of Colorado, County of Huerfano and is described as follows:

WHISPERING CREEK CONDOMINIUMS AT CUCHARA MOUNTAIN RESORT,

TRACT 8,
PANADERO DEVELOPMENT FILING NO. 3, A PLAT OF WHICH WAS FILED MARCH 14, 1993 UNDER
RECEPTION NO. 289993
COUNTY OF HUERFANO, STATE OF COLORADO



EXHIBIT B
RESERVED FOR FUTURE USE

17


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21 of 25 R 125.00 D 0.00 Huerfano Co.

WARRANTY DEED

EXHIBIT C

CUCHARA PARTNERS, LTD., ("Grantor"), whose mailing address is 946 Panadero Avenue, Cuchara, Colorado 81055, for consideration of ten (\$10.00) Dollars and other good and valuable consideration, in hand paid, hereby sells and conveys to WHISPERING CREEK CONDOMINIUM OWNERS ASSOCIATION, INC., whose address is 946 Panadero Avenue, Cuchara, Colorado 81055, the following real property, to remain common area open space in perpetuity and this dedication shall run with the land, in the County of Huerfano, State of Colorado, to-wit:

A PARCEL OF LAND SITUATED IN TRACT "8" OF PANADERO DEVELOPMENT FILING NO. 3, AS FILED FOR RECORD IN THE HUEFANO COUNTY RECORDS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE 1/4 CORNER COMMON TO SECTIONS 16 AND 17, T 31 S, R 69 W. OF THE 6TH P.M.

THENCE S 85°49'06" E, ON THE EAST-WEST CENTERLINE OF SECTION 16, A DISTANCE OF 486.99 FEET;

THENCE N 19°20'20" E, A DISTANCE OF 77.70 FEET; TO A POINT IN THE NORTH-EASTERN R.O.W. LINE OF RAINBOW RIDGE ROAD AS SHOWN ON THE RECORDED PLAT OF PANADERO DEVELOPMENT FILING NO. 3; THENCE THE FOLLOWING FIVE (5) COURSES;

- 1) N 70°39'40" W, A DISTANCE OF 118.35 FEET;
 - 2) ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 4°59'45" WHOSE RADIUS IS 2270.00 FEET WITH AN ARC LENGTH OF 197.93 FEET;
 - 3) N 65°39'55" E, A DISTANCE OF 150.28 FEET;
 - 4) ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 44°59'20" WHOSE RADIUS IS 90.00 FEET WITH AN ARC LENGTH OF 70.67 FEET;
 - 5) N 20°40'35" W, A DISTANCE OF 59.40 FEET; TO THE POINT OF BEGINNING OF THE FOLLOWING PARCEL:
- THENCE ON SAID NORTH-EASTERN R.O.W. LINE N 20°40'35"W, A DISTANCE OF 101.21 FEET;
- THENCE ON THE ARC OF A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10°53'58" WHOSE RADIUS IS 230.00 FEET WITH AN ARC LENGTH OF 43.75 FEET;
- THENCE N 52°21'45" E, A DISTANCE OF 110.38 FEET;
- THENCE ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 16°16'45" WHOSE RADIUS IS 120.00 FEET WITH AN ARC LENGTH OF 34.10 FEET;
- THENCE N 68°38'30" E, A DISTANCE OF 237.01 FEET;
- THENCE ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09°41'15" WHOSE RADIUS IS 120.00 FEET WITH AN ARC LENGTH OF 20.29 FEET;
- THENCE N 78°19'45" E, A DISTANCE OF 219.56 FEET;
- THENCE ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 04°47'30" WHOSE RADIUS IS 120.00 FEET WITH AN ARC LENGTH OF 10.04 FEET;
- THENCE N 83°07'15" E, A DISTANCE OF 5.67 FEET;
- THENCE S 06°52'45" E, A DISTANCE OF 104.69 FEET;
- THENCE S 73°46'23" W, A DISTANCE OF 124.39 FEET;
- THENCE N 83°19'01" W, A DISTANCE OF 63.07 FEET;
- THENCE S 78°21'25" W, A DISTANCE OF 39.56 FEET;
- THENCE S 63°55'36" W, A DISTANCE OF 60.08 FEET;
- THENCE S 28°03'29" W, A DISTANCE OF 27.67 FEET;
- THENCE S 58°28'02" W, A DISTANCE OF 31.30 FEET;
- THENCE N 89°27'36" W, A DISTANCE OF 24.80 FEET;
- THENCE N 70°54'21" W, A DISTANCE OF 54.33 FEET;
- THENCE S 84°04'47" W, A DISTANCE OF 24.94 FEET;
- THENCE S 66°50'40" W, A DISTANCE OF 33.92 FEET;
- THENCE S 53°44'14" W, A DISTANCE OF 50.21 FEET;
- THENCE S 45°36'42" W, A DISTANCE OF 32.09 FEET;
- THENCE S 25°55'58" W, A DISTANCE OF 32.90 FEET;

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THENCE S 40°28'55" W, A DISTANCE OF 37.63 FEET;
THENCE S 62°41'51" W, A DISTANCE OF 36.50 FEET;
THENCE S 73°03'48" W, A DISTANCE OF 22.63 FEET TO A POINT ON THE NORTH-
EASTERN R.O.W. LINE OF RAINBOW RIDGE ROAD SAID POINT BEING THE BEGINNING
OF THE PARCEL, CONTAINING 1.546 ACRES MORE OR LESS

Purported Street Address Known As: _____

with all its appurtenances, and warrants the title to the same, subject to any easements, restrictions, reservations, rights of way or covenants of record, if any, recorded _____, 19____, in Book _____, Page _____ of the records of the Huerfano County Clerk and Recorder.

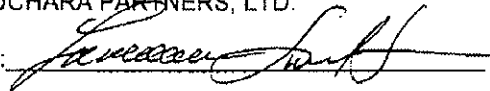
The Grantor hereby stipulates the land described herein shall remain recreational open space in perpetuity, and left in its natural state "as is" without alteration or modification by structures or buildings. That the Grantee and its successors or assigns shall maintain this property in such state forever. That the Grantee and its successors or assigns agrees not to transfer, sell or otherwise dispose of the property except to a successor or related homeowners association or to a master homeowners association which may incorporate Grantee or its successors and assigns within it. That the property may be subject to easements for recreational use such as the building of trails for cross country skiing, hiking, biking or other park like uses of this property. That no camping, motorized vehicles except for snow grooming and maintenance machinery be permitted on the property. That only owners, tenants, and guests of Grantee or Cuchara Mountain Resort may have access to the property for the use described herein and in accordance with the Declaration of Covenants on file for Whispering Creek Condominiums, Huerfano County, Colorado. These listed restrictions and conditions shall run with the land and be perpetual in nature. Further Huerfano County shall have the unilateral right to take by any lawful means actions to enforce these perpetual conditions which run with the land.

Signed this 13 day of Oct, 1998.

GRANTOR:

CUCHARA PARTNERS, LTD.

By:



10/14/1998 02:32P WD
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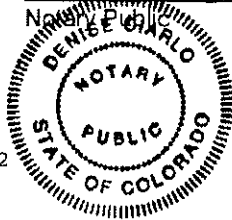
STATE OF COLORADO)
) ss.
COUNTY OF Huerfano)

The foregoing instrument was acknowledged before me this 13th day of October, 1998, by Lawrence Smith.

Witness my hand and official seal.

Denise Carlo

My commission expires: 3-15-99
[SEAL]



1-2

11/19/1998 03:07P DECCOV Judy Benine
2 of 25 R 125.00 D 0.00 Huerfano Co.

WARRANTY DEED

EXHIBIT C

CUCHARA PARTNERS, LTD., ("Grantor"), whose mailing address is 946 Panadero Avenue, Cuchara, Colorado 81055, for consideration of ten (\$10.00) Dollars and other good and valuable consideration, in hand paid, hereby sells and conveys to WHISPERING CREEK CONDOMINIUM OWNERS ASSOCIATION, INC., whose address is 946 Panadero Avenue, Cuchara, Colorado 81055, the following real property, to remain common area open space in perpetuity and this dedication shall run with the land, in the County of Huerfano, State of Colorado, to-wit:

A PARCEL OF LAND SITUATED IN TRACT "8" OF PANADERO DEVELOPMENT FILING NO. 3, AS FILED FOR RECORD IN THE HUERFANO COUNTY RECORDS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE 1/4 CORNER COMMON TO SECTIONS 16 AND 17, T 31 S, R 69 W, OF THE 6TH P.M.

THENCE THE FOLLOWING FOUR (4) COURSES

- 1) S 85°49'06" E, ON THE EAST-WEST CENTERLINE OF SECTION 16, A DISTANCE OF 486.99 FEET;
- 2) N 19°20'20" E, A DISTANCE OF 77.70 FEET;
- 3) N 51°14'45" E, A DISTANCE OF 292.92 FEET;
- 4) N 06°52'45" W, A DISTANCE OF 349.43 FEET;

TO THE POINT OF BEGINNING OF THE FOLLOWING PARCEL:

- THENCE S 83°07'15" W, A DISTANCE OF 56.40 FEET;
- THENCE N 06°52'45" W, A DISTANCE OF 102.23 FEET;
- THENCE N 83°07'15" E, A DISTANCE OF 56.40 FEET;
- THENCE S 06°52'45" E, A DISTANCE OF 102.23 FEET;
- TO THE POINT OF BEGINNING OF THE PARCEL, CONTAINING 0.132 ACRES MORE OR LESS

Purported Street Address Known As: _____

with all its appurtenances, and warrants the title to the same, subject to any easements, restrictions, reservations, rights of way or covenants of record, if any, recorded _____, 19____, in Book _____, Page _____ of the records of the Huerfano County Clerk and Recorder.

The Grantor hereby stipulates the land described herein shall remain recreational open space in perpetuity, and left in its natural state "as is" without alteration or modification by structures or buildings. That the Grantee and its successors or assigns shall maintain this property in such state forever. That the Grantee and its successors or assigns agrees not to transfer, sell or otherwise dispose of the property except to a successor or related homeowners association or to a master homeowners association which may incorporate Grantee or its successors and assigns within it. That the property may be subject to easements for recreational use such as the building of trails for cross country skiing, hiking, biking or other park like uses of this property. That no camping, motorized vehicles except for snow grooming and maintenance machinery be permitted on the property. That only owners, tenants, and guests of Grantee or Cuchara Mountain

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341998 11/19/1998 03:07P DECOV Judy Benine
24 of 25 R 125.00 D 0.00 Huerfano Co.

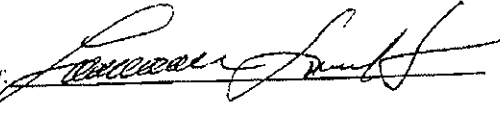
338198 10/14/1998 02:33P WD
1 of 2 R 11.00 D 0.00 N 0.00 Huerfano Co. J Benine

Resort may have access to the property for the use described herein and in accordance with the Declaration of Covenants on file for Whispering Creek Condominiums, Huerfano County, Colorado. These listed restrictions and conditions shall run with the land and be perpetual in nature. Further Huerfano County shall have the unilateral right to take by any lawful means actions to enforce these perpetual conditions which run with the land.

Signed this 13 day of Oct, 1998.

GRANTOR:

CUCHARA PARTNERS, LTD.

By: 

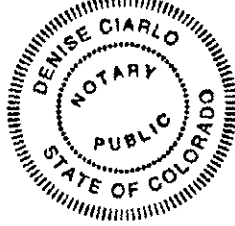
STATE OF COLORADO)
) ss.
COUNTY OF Huerfano)


The foregoing instrument was acknowledged before me this 13th day of October, 1998, by Lawrence Amata.

Witness my hand and official seal.


Notary Public

My commission expires: 3.15.99
[SEAL]




338188 10/14/1998 02:33P WD
2 of 2 R 11.00 D 0.00 N 0.00 Huerfano Co. J Benine

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341995 11/19/1999 03:07P DECCOV Judy Benine
25 of 25 R 125.00 D 0.00 Huerfano Co.



334227 06/09/1998 09:20A EASE

1 of 5 R 31.00 D 0.00 N 0.00 Huerfano Co. J Benine

LIMITED USE EASEMENT

EASEMENT, made and granted this ___ day of March, 1998, from DICK E. DAVIS ("Grantor") to and in favor of JNC PROPERTIES, LLC ("Grantee").

WHEREAS, Grantor is the holder of the mining claims on the South Baker Creek Lode 1 and 2, according to the legal descriptions thereof set forth on the attached Exhibit A (the "Property"); and

WHEREAS, Grantor has sold a certain tract of land to Grantee located in the Cuchara Valley Ski Resort, known as Tract 8, Panadero Filing No. 3, Huerfano County, Colorado, Cuchara Valley Resort ("Tract 8"); and

WHEREAS, Grantor desires to grant to Grantee the limited right to use the Property, and Grantee desires to accept the same subject to the term of this Easement, it is therefore agreed as follows:

1. Easement. Grantor does hereby bargain, sell and quitclaim unto Grantee an easement for the uses, purposes and benefits set forth in this Agreement, on and across the Property, and subject to the following terms and restrictions:

a. Grantee may use the Property for purposes only of providing a recreational opportunity to its guests and invitees to pan for gold and other minerals in the sluice stream running through the Property. Grantee will limit such use to a maximum of 12 guests and invitees on any given day of use.

b. Grantee and its guests and invitees may use the Property for such purposes only during daylight hours, and no overnight use or camping shall be permitted.

c. There shall be no right of access to the mine shafts or buildings, and no right to any mining by excavation or any means other than panning.

d. Grantee shall cause the removal of all debris and litter from the Property and shall take all actions necessary to prevent any environmental hazard on the Property. If Grantee desires to construct a restroom facility, it shall be done in strict compliance with all local, state and federal laws and regulations regarding waste disposal.



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2 of 6 R 31.00 D 0.00 N 0.00 Huerfano Co. J Benine

e. Grantee shall be responsible for providing its own access between property to which it has access and the Property and shall comply with all rules of the U.S. Forest Service and other legal authority. Grantor hereby grants all right and privilege it has to access to the Property by virtue of its mining claims to the Property.

f. Grantee shall not construct any improvement on the Property without the express approval of Grantor.

g. Grantee's use of the Property shall not interfere with Grantor's ability to conduct underground mining operations on the Property.

2. Term. The term of the Easement shall be for a period of ten years, or such shorter period if Grantee shall have disposed of Tract 8.

3. Fee. There shall be no compensation or fee payable for the Easement, which is correlative to the purchase by Grantee of Tract 8.

4. Indemnification and Insurance. Grantee hereby agrees to indemnify Grantor and its heirs, successors and assigns from and against any loss, claim or liability which Grantor may suffer or incur, including attorneys' fees and expenses, resulting from or in any way arising out of Grantee's use of the Property. In addition, Grantee agrees to carry a policy or policies of general liability and umbrella insurance covering loss to property and bodily injury with a policy limit of at least \$1,000,000 per occurrence, naming Grantor as an additional insured, and to provide Grantor copies of such policies.

5. Successors. The servitudes, easements, privileges, agreements, maintenance obligations and terms hereof shall be binding upon the parties, their respective successors in interest, assigns, heirs, legal and personal representatives and all other persons or entities having or hereafter requiring any right, title or interest in the Property, and all other persons or entities claiming by, through or under said owners, their successors in interest, assigns, heirs and legal or personal representatives. Notwithstanding the foregoing, Grantee shall have no right to assign, subcontract or delegate its rights or obligations under this Agreement without Grantor's consent, which it may withhold in its discretion. Each and every mortgage instrument, deed of trust, lien or other encumbrance affecting any portion of the Property shall at all times be subject to the terms of this Agreement, and any party foreclosing any such mortgage, deed of trust, lien or encumbrance shall foreclose subject to all of the provisions hereof.

6. Modification. This Agreement may not be modified, amended or canceled without the consent of the then record owners of the Property or their respective assigns or successors in interest. Any modification to this Agreement shall become effective only upon recordation of a written instrument, executed by the respective owners of the Property in the office of the County Clerk in Huerfano County, Colorado.

7. Law Applicable. This Agreement and the obligations of the parties hereunder shall be interpreted, construed and enforced in accordance with the laws of the State of Colorado. The headings contained herein are for convenience only and shall not be considered in construing this Agreement.

8. Savings Clause. If any provision of this Agreement or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the entities, persons or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.

9. Waiver. The failure of any owner hereunder to avail itself of any of the servitudes, easements, privileges, rights, covenants, agreements, terms or conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver of any such rights. The enforcement of any right or remedy hereunder by any owner, either prior to, simultaneously with, or subsequent to any other action taken pursuant to this Agreement, shall not be deemed an election of remedies.

10. Covenants. All of the rights and obligations created hereby shall constitute covenants running with the land, and shall be binding upon and inure to the benefit of the parties hereto, their respective permitted successors, heirs, legal representatives and assigns.

11. No Public Use. Nothing contained in this Agreement shall be deemed to be a gift or dedication of all or any portion of the Property to the general public or for any public use or purpose whatsoever, it being the express intent of the parties hereto that the Property shall remain private property.



334227 08/09/1998 09:20A EASE
3 of 6 R 31.00 D 0.00 N 0.00 Huerfano Co. J Benina

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the 19 day of March, 1998.

GRANTOR:

[Signature]
DICK E. DAVIS

GRANTEE:

JNC PROPERTIES, LLC.

By: [Signature]
Manager

THE STATE OF TEXAS

COUNTY OF TARRANT

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BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Dick E. Davis, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his individual capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 19th day of March, 1998.



[Signature]
Notary Public in and for the State of Texas

My Commission Expires: 8/21/2000

334227 06/09/1998 09:20A EASE
4 of 6 R 31.00 D 0.00 N 0.00 Huerfano Co. J Benine

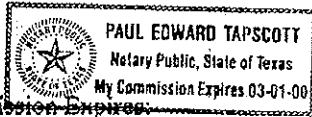
THE STATE OF TEXAS

§
§
§

COUNTY OF Dallas

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared John Lan Monney of JNC Properties, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same in her individual capacity.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14 day of April, 1998.



My Commission Expires:

Paul E Tapscott
Notary Public in and for the State of Texas



334227 06/09/1998 09:20A EASE
5 of 6 R 31.00 D 0.00 N 0.00 Huerfano Co. J Benina



334227 06/09/1998 09:20R EASE
 6 of 6 R 31.00 D 0.00 N 0.00 Huerfano Co.J Benine

EXHIBIT A

The following tracts in Huerfano County, Colorado:

South Baker Creek Lode #1

BLM Serial Number CMC-249890

Beginning at Corner No. 1, NE corner of the NW1/4 of Section 21, T31S, R69W of the 6th p.m.

Proceed due South 1795 feet to a point (corner no. 1) (stone monument);

Thence N78° West 1500 lineal feet;

Thence due South 600 feet;

Thence South 78° W 1500 feet;

Thence North 600 to point of beginning.

South Baker Creek Lode #2

BLM Serial No. CMC-249891

NW corner of the SE1/4 of Section 20, T31S, R69W, of the 6th p.m.

Proceed due North 280 feet to stone piled monument which is the SW corner of South Baker Creek Lode #1;

Proceed North 38° East 600 feet to SW corner of South Baker Creek Lode #2;

Thence North 38° East to a corner 600 feet;

Thence Northwest 1500 feet to a corner;

Thence Southwest 600 feet to a corner;

Thence Southeast 1500 feet to a corner; and

Closing Boundaries on South Baker Creek #2

WARRANTY DEED

CUCHARA PARTNERS, LTD., ("Grantor"), whose mailing address is 946 Panadero Avenue, Cuchara, Colorado 81055, for consideration of ten (\$10.00) Dollars and other good and valuable consideration, in hand paid, hereby sells and conveys to WHISPERING CREEK CONDOMINIUM OWNERS ASSOCIATION, INC., whose address is 946 Panadero Avenue, Cuchara, Colorado 81055, the following real property, to remain common area open space in perpetuity and this dedication shall run with the land, in the County of Huerfano, State of Colorado, to-wit:

A PARCEL OF LAND SITUATED IN TRACT "8" OF PANADERO DEVELOPMENT FILING NO. 3, AS FILED FOR RECORD IN THE HUEFANO COUNTY RECORDS, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE ¼ CORNER COMMON TO SECTIONS 16 AND 17, T 31 S, R 69 W, OF THE 6TH P.M.

THENCE S 85°49'06" E, ON THE EAST-WEST CENTERLINE OF SECTION 16, A DISTANCE OF 486.99 FEET;

THENCE N 19°20'20" E, A DISTANCE OF 77.70 FEET; TO A POINT IN THE NORTH-EASTERN R.O.W.LINE OF RAINBOW RIDGE ROAD AS SHOWN ON THE RECORDED PLAT OF PANADERO DEVELOPMENT FILING NO. 3; THENCE THE FOLLOWING FIVE (5) COURSES:

- 1) N 70°39'40" W, A DISTANCE OF 118.35 FEET;
- 2) ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 4°59'45" WHOSE RADIUS IS 2270.00 FEET WITH AN ARC LENGTH OF 197.93 FEET;
- 3) N 65°39'55" E, A DISTANCE OF 150.28 FEET;
- 4) ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 44°59'20" WHOSE RADIUS IS 90.00 FEET WITH AN ARC LENGTH OF 70.67 FEET;
- 5) N 20°40'35" W, A DISTANCE OF 59.40 FEET; TO THE POINT OF BEGINNING OF THE FOLLOWING PARCEL:

THENCE ON SAID NORTH-EASTERN R.O.W. LINE N 20°40'35" W, A DISTANCE OF 101.21 FEET;

THENCE ON THE ARC OF A CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 10°53'58" WHOSE RADIUS IS 230.00 FEET WITH AN ARC LENGTH OF 43.75 FEET;

THENCE N 52°21'45" E, A DISTANCE OF 110.38 FEET;

THENCE ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 16°16'45" WHOSE RADIUS IS 120.00 FEET WITH AN ARC LENGTH OF 34.10 FEET;

THENCE N 68°38'30" E, A DISTANCE OF 237.01 FEET;

THENCE ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 09°41'15" WHOSE RADIUS IS 120.00 FEET WITH AN ARC LENGTH OF 20.29 FEET;

THENCE N 78°19'45" E, A DISTANCE OF 219.56 FEET;

THENCE ON THE ARC OF A CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 04°47'30" WHOSE RADIUS IS 120.00 FEET WITH AN ARC LENGTH OF 10.04 FEET;

THENCE N 83°07'15" E, A DISTANCE OF 5.67 FEET;

THENCE S 06°52'45" E, A DISTANCE OF 104.69 FEET;

THENCE S 73°46'23" W, A DISTANCE OF 124.39 FEET;

THENCE N 83°19'01" W, A DISTANCE OF 63.07 FEET;

THENCE S 78°21'25" W, A DISTANCE OF 39.56 FEET;

THENCE S 63°55'36" W, A DISTANCE OF 60.08 FEET;

THENCE S 28°03'29" W, A DISTANCE OF 27.67 FEET;

THENCE S 58°28'02" W, A DISTANCE OF 31.30 FEET;

THENCE N 89°27'36" W, A DISTANCE OF 24.80 FEET;

THENCE N 70°54'21" W, A DISTANCE OF 54.33 FEET;

THENCE S 84°04'47" W, A DISTANCE OF 24.94 FEET;

THENCE S 66°50'40" W, A DISTANCE OF 33.92 FEET;

THENCE S 53°44'14" W, A DISTANCE OF 50.21 FEET;

THENCE S 45°36'42" W, A DISTANCE OF 32.09 FEET;

THENCE S 25°55'58" W, A DISTANCE OF 32.90 FEET;



338198 10/14/1998 02:32P WD

1 of 2 R 11.00 D 0.00 N 0.00 Huerfano Co. J Benine

THENCE S 40°28'55" W, A DISTANCE OF 37.63 FEET;
THENCE S 62°41'51" W, A DISTANCE OF 36.50 FEET;
THENCE S 73°03'48" W, A DISTANCE OF 22.63 FEET TO A POINT ON THE NORTH-
EASTERN R.O.W. LINE OF RAINBOW RIDGE ROAD SAID POINT BEING THE BEGINNING
OF THE PARCEL, CONTAINING 1.546 ACRES MORE OR LESS

Purported Street Address Known As: _____

with all its appurtenances, and warrants the title to the same, subject to any easements, restrictions, reservations, rights of way or covenants of record, if any, recorded _____, 19____, in Book _____, Page _____ of the records of the Huerfano County Clerk and Recorder.

The Grantor hereby stipulates the land described herein shall remain recreational open space in perpetuity, and left in its natural state "as is" without alteration or modification by structures or buildings. That the Grantee and its successors or assigns shall maintain this property in such state forever. That the Grantee and its successors or assigns agrees not to transfer, sell or otherwise dispose of the property except to a successor or related homeowners association or to a master homeowners association which may incorporate Grantee or its successors and assigns within it. That the property may be subject to easements for recreational use such as the building of trails for cross country skiing, hiking, biking or other park like uses of this property. That no camping, motorized vehicles except for snow grooming and maintenance machinery be permitted on the property. That only owners, tenants, and guests of Grantee or Cuchara Mountain Resort may have access to the property for the use described herein and in accordance with the Declaration of Covenants on file for Whispering Creek Condominiums, Huerfano County, Colorado. These listed restrictions and conditions shall run with the land and be perpetual in nature. Further Huerfano County shall have the unilateral right to take by any lawful means actions to enforce these perpetual conditions which run with the land

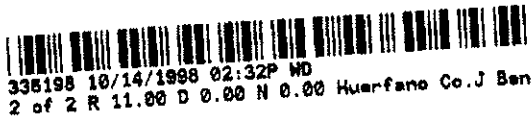
Signed this 13 day of Oct, 1998.

GRANTOR:

CUCHARA PARTNERS, LTD.

By:

Lawrence Smith



STATE OF COLORADO)
) ss
COUNTY OF Huerfano)

The foregoing instrument was acknowledged before me this 13th day of October, 1998, by Lawrence Smith.

Witness my hand and official seal.

Denise Carlo



My commission expires: 3-15-99
[SEAL]

WARRANTY DEED

CUCHARA PARTNERS, LTD., ("Grantor"), whose mailing address is 946 Panadero Avenue, Cuchara, Colorado 81055, for consideration of ten (\$10.00) Dollars and other good and valuable consideration, in hand paid, hereby sells and conveys to WHISPERING CREEK CONDOMINIUM OWNERS ASSOCIATION, INC., whose address is 946 Panadero Avenue, Cuchara, Colorado 81055, the following real property, to remain common area open space in perpetuity and this dedication shall run with the land, in the County of Huerfano, State of Colorado, to-wit:

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Purported Street Address Known As: _____

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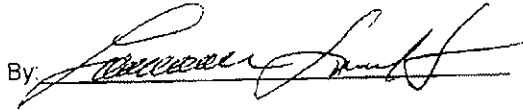
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Signed this 13 day of Oct, 1998.

GRANTOR:

CUCHARA PARTNERS, LTD.

By 

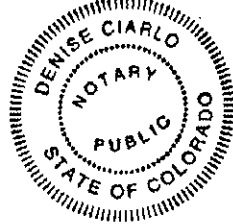
STATE OF COLORADO)
) ss.
COUNTY OF Huerfano)


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Witness my hand and official seal.


Notary Public

My commission expires: 3-15-99
[SEAL]




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2 of 2 R 11.00 D 0.00 N 0.00 Huerfano Co. J Benine