

# AMENDED

## DECLARATION OF PROTECTIVE COVENANTS OF DOUBLE TREE RANCH

This Declaration and Agreement is made and executed this 30<sup>th</sup> day of July, 2004, by Krizak Family Partnership, Daniel J. Krizak, Lois M. Krizak, Dennis P. Jacobs and Mary Pickering Jacobs hereinafter collectively termed "Declarant".

### Article 1 Statement of Purpose of Declaration

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

Double Tree Ranch, according to the official Plat recorded September 11, 2000 at Reception No. 504971.

Article 1.2 Declaration of Covenants. Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall effect the Property. This Declaration of Protective covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property, their heirs, successors and assigns and shall inure to and be for the benefit of each owner of a Tract within the Property.

Article 1.3 Small and Limited Expense Planned Community. Pursuant to C.R.S. §38-33.3-116(3), Declarant further declares the Property to be subject only to C.R.S. §38-33.3-105 through 107 of the Colorado Common Interest Ownership Act as the annual average common expense liability of each Tract, exclusive of optional user fees and any insurance paid by the Association will not exceed four hundred dollars, as adjusted by C.R.S. §38-33.3-116(3).

Article 1.4 Statement of Purpose. This Declaration of Protective Covenants is imposed for the benefit of all owners and future owners of Tracts within the Property and to provide for the preservation of values of the Property and to preserve the covenants, easements, restrictions, assessments and liens hereinafter set forth, all of which are for the benefit of the Property.

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Article 2  
Definitions

The following terms and words shall have the following definitions:

Article 2.1 "Assessments" shall mean regular annual assessments, special assessments or default assessments levied pursuant to the Association documents to provide the funds required to meet the obligations of the Double Tree Ranch Association.

Article 2.2 "Association" shall mean the Double Tree Ranch Homeowners Association, a Colorado nonprofit corporation, or any successor thereof charged with the duties and obligations set forth herein.

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

Article 2.4 "Board of Directors" or "Board" shall mean a Board of not more than four (4) directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association. The Board of Directors is also defined as an Executive Board by the Colorado Common Interest Ownership Act.

Article 2.5 "Building Site" or Building Envelope" shall mean the site, envelope or areas within a Tract where the buildings and other improvements shall be located within a Tract as defined by the required setbacks from the Tract boundaries and any natural or artificial features of the lot, such as roads, and streambanks.

Article 2.6 "Colorado Common Interest Ownership Act" shall mean the "Colorado Common Interest Ownership Act of the State of Colorado and being Section 38-33.3-101, et seq., Colorado Revised Statutes."

Article 2.7 "Declarant" shall mean Krizak Family Partnership, Daniel M. Krizak, Lois M. Krizak, Dennis P. Jacobs and Mary Pickering Jacobs, their successors and assigns.

Article 2.8 "Declaration" or "Declaration of Protective Covenants" shall mean this Declaration of Protective Covenants of Double Tree Ranch and as the same may be hereafter amended, modified or extended.

Article 2.9 "Family Residence" shall mean the primary residence on any Tract designed for occupancy by the owner of the Tract.

Article 2.10 "Garage" shall mean an attached or detached accessory Building or an accessory portion of a single family residence designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Article 2.11 "Tract" shall mean a numbered Tract as set forth on the plat of Double Tree Ranch .

Article 2.12 "Maintenance Fund" shall mean the fund created by Assessments and fees levied pursuant to this Declaration to provide the Association with funds it requires to carry out its duties hereunder.

Article 2.13 "Member" shall mean any person holding membership in the Association.

Article 2.14 "Mortgage" shall mean any mortgage, deed of trust or other document pledging a Tract or any interest therein as security for the payment of any indebtedness. "First Mortgage" shall mean any mortgage which is not subject to or junior to any lien or encumbrance, except liens for taxes and other liens which are given priority by statute.



Article 2.15 "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Tract; provided, however, that prior to the first conveyance of any Tract for value after this Declaration, the owner shall mean the Declarant unless the Declarant has designated its successor in ownership of fee simple title to exercise the rights, duties and obligations of ownership.

Article 2.16 "Plat" shall mean the Plat of Double Tree Ranch as filed in the records of Gunnison County, Colorado, which is subject to these Protective Covenants, and as the same may be amended, enlarged or revised from time to time and affecting the Property.

Article 2.17 "Property" shall mean and include all of the property subject to this Declaration.

### Article 3 Use of Double Tree Ranch

Article 3.1 Building Site Use. Each Tract shall be used for the construction, erection and maintenance of all buildings as provided in article 4 of this Declaration of Protective Covenants.

Article 3.2 Water and Irrigation. All well and well rights, irrigation ditches and the water decreed thereto shall be appurtenant to and conveyed with a Tract. Owners of Tracts 1, 2 and 3 shall be responsible for maintenance of HINKLE IRRIGATING DITCH, Ditch no. 35 and head gate. Owners of Tracts 4 and 5 shall be responsible for maintenance of HINKLE-HAMILTON DITCH, Ditch No. 48 and head gate.

Article 3.3 Wildlife. Wildlife in its natural state within Double Tree Ranch will be encouraged. The recreational usage of Double Tree Ranch will be accomplished in a manner to encourage and protect all wildlife. Hunting and fishing (Article 7.8) shall be allowed in accordance with all applicable laws, rules and regulations, this Declaration and the rules and regulations of Double Tree Ranch. Hunting with bow and shotgun only shall be allowed on private Tract(s) by Tract Owners and guests.

Article 3.4 All-terrain Vehicles, Dirt Bikes, Snowmobiles. DELETED

### Article 4 Use of Tracts

Article 4.1 Residential Use. All Tracts shall be used exclusively for single family residential, grazing, hay production, wildlife enjoyment and other private outdoor activities only.

Article 4.2 Building Site. DELETED

Article 4.3 No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Tract; provided, however, that the Owner of a Tract may be permitted to conduct an in-home executive office or an in-home occupation, artistic or literary activity on a Tract that does not create a visual, sound or traffic nuisance. Certain in-home activities may require a Land use Change Permit from Gunnison County.

### Article 5 Design Requirements

Article 5.1 Design Requirements. All construction, erection and any exterior addition, change or alteration of any Single Family Residence, Garage, barn or outbuilding situate within the Double Tree Ranch, the plans and specifications of such construction, erection and any subsequent addition, change or alteration shall



conform with the Gunnison County Land Use Resolution and County Building codes. All construction must be site built. Manufactured housing and metal buildings are expressly prohibited. All such plans and specifications shall comply with the design requirements of this Article 5.

Article 5.2 Building Site. DELETED

Article 5.3 Uniform Building Code. All Buildings and Improvements shall meet all of the requirements, including fire protection standards, of the Uniform Building Code and any other building code or fire code of Gunnison County, Colorado then in effect. The types of exterior colors, and surface materials used for all Improvements shall be in accordance with the Gunnison County Land Use Resolution.

Article 5.4 Building Density. DELETED

Article 5.5 Trash Container. Any trash container located on a Tract must be maintained and must not be visible from any road or neighboring property.

Article 5.6 Roofs. All roofs on any building on a Tract must be rusting non-reflective metal .

Article 5.7 Exterior Building Style. Exteriors shall be constructed of log, log veneer, timber or reclaimed barn wood and chimneys will be natural or earth tones in color to blend with the natural surroundings.

Article 5.8 Landscaping, Weed Management and Control. The Tract and all excavation and landscaping thereon shall emphasize use of existing and supplementary native vegetation, and shall be maintained to control noxious weeds. Any land disturbed during any construction, excavation, or building must be reclaimed and replanted with native vegetation or non-indigenous plants of a non-invasive variety.

Article 5.9 Fencing. Excepting the existing perimeter wire fences separating Double Tree Ranch from neighboring ranches and National Forest, all interior fencing shall be constructed of wood or wood-like product matching the rail fence on Double Tree Ranch fronting County Road 730.

Article 6  
**Animals**

Tract Owners shall confine all animals to their individual tract(s). All livestock must be contained within a fence and that fence cannot extend into the Ohio Creek easement.

Article 7  
**Double Tree Ranch Homeowners Association**

Article 7.1 Government of Association. The Association created by the terms of this Declaration shall assume all of its duties, rights and obligations imposed by this Declaration, also the Articles of Incorporation and bylaws of the Association to be, thereupon, incorporated as a Colorado non profit corporation.

Article 7.2 Members. Each Owner shall be a Member of the Association. No Owner, whether one or more persons or entities, shall have more than one membership per Tract owned by such Owner, but all persons owning each Tract shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Tract.



Article 7.3 Termination of Membership. The right of membership in the Association and the status as a Member shall terminate upon the termination of status as an Owner of a Tract. Upon conveyance, sale or assignment of the Owner's interest, the selling Owner shall be relieved of liability for Assessments levied from and after the date of such sale or conveyance; provided, however, that no such sale or conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such sale or conveyance.

Article 7.4 Voting Rights. All Owners within the Double Tree Ranch shall be Members of the Association. Each Tract shall be entitled to one vote in the Association. The one vote for each Tract shall be exercised by the Owner and when more than one person or entity holds an interest in a Tract, the vote for the Tract shall be exercised as the Owners may determine among themselves, but the singular vote for each Tract shall be cast by one person.

Article 7.5 Compliance with Documents. Each Owner shall abide by and have the benefit from the provisions, covenants, conditions and restrictions contained in the Association Documents.

Article 7.6 Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as the "Double Tree Ranch Rules and Regulations" governing, among other things, and without limitation:

- Article 7.6.1 The use and maintenance of all private roads within Double Tree Ranch.
- Article 7.6.2 The maintenance and keeping of animals within Double Tree Ranch.
- Article 7.6.3 The use of any common elements or limited common elements within Double Tree Ranch.

Article 7.7 Roads. The Association, for and on behalf of the Owners of the Tracts within Double Tree Ranch, shall be responsible for the proper maintenance of all access roads within Double Tree Ranch to the driveway of each Tract, including the snow removal, resurfacing, grading and drainage thereof and including any construction after the initial construction. The Owners of Tract 2 and Tract 3 will share driveway maintenance. Snow removal from any private driveway shall be the sole responsibility of that Owner. Any Owner, including its employees and agents, that conduct snow removal on an access road within Double Tree Ranch shall complete such snow removal without damage to the roads, and shall be responsible to the Association for any and all damage to the roads from its snow removal.

Article 7.8 Fishing. All fishing within Double Tree Ranch on Ohio Creek shall be "catch and release" only. The taking of fish from private ponds by Tract Owners and guests is permitted.

Article 7.9 Hay Harvest. Each Tract owner shall be responsible for harvesting his own hay. By mutual agreement, the Tract Owners may elect to join together to have the hay harvested. In this case, all costs involved in the hay harvest will be proportionately distributed among Tract Owners entering into the agreement. Hay must be harvested annually.

## Article 8 Maintenance Assessments

Article 8.1 Creation of Lien. Each Owner of any Tract, by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the association: (1) all Annual Assessments or charges; (2) any Special Assessments or charges; and (3) any Default Assessments or charges; all of which shall be fixed, established and collected as determined by the Association. The Annual, Special and Default Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Tract against which each such Assessment is made until paid. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Tract at the time when the Assessment became due.



Article 8.2 Purpose of Assessments. The assessments levied by the Association shall be limited to and used exclusively for the following:

Article 8.2.1 The snow removal, maintenance, repairs and improvement of access road to the Ohio Creek bridge including that maintenance required by Section 7.7.

Article 8.2.2 The stocking of fish in Ohio Creek and stream bank and creek structure maintenance.

Article 8.2.3 The irrigation of hay meadows within Double Tree Ranch.

Article 8.2.4 The maintenance of the front entrance arch, sign, in ground irrigation system and the mowing and upkeep of the entrance landscaping.

Article 8.2.5 Any maintenance, repair or improvements required to be made by any Owner to any Improvements on any Tract which the Owner fails to do.

Article 8.2.6 Any costs and expenses pertaining to the operation of the Association in the performance of its duties.

Article 8.2.7 Any other purpose approved by a majority vote of all Members of the Association.

Article 8.3 Annual Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and not less than thirty days prior to the commencement of each fiscal year, the Board shall adopt a final budget and shall determine, levy and assess the Association's Annual Assessments for the following year.

Article 8.4 Special Assessments. In addition to the Annual Assessments set forth in Section 8.3, above, the Board of directors may levy, in any fiscal year, one or more Special Assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement within or upon any access roads or to make up any shortfall in the current year's budget. Notice of the amount and due dates for such Special Assessments shall be sent to each Owner at least thirty days prior to the due date.

Article 8.5 Assessment for each Tract. All Annual and Special Assessments shall be apportioned and allocated equally among the Tracts.

Article 8.6 Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner, shall be a Default Assessment and shall become a lien against such Owner's Tract and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Default Assessment shall be sent to the owner subject to such Assessment at least thirty days prior to the due date.

Article 8.7 Nonpayment of Assessments. Any Assessment, whether Regular, special, or Default Assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any assessment becomes delinquent, the Association, in its sole discretion, may take any or all the following actions:

Article 8.7.1 Assess a late charge of not more than 10% of the amount due and owing per each delinquency.

Article 8.7.2 Assess an interest rate charge from the date of delinquency at a rate four points above the base rate or prime rate charged by the Association's bank, or such other rate as shall be established by the Board of Directors.



Article 8.7.3 Suspend the voting rights of the Owner during any period of delinquency.

Article 8.7.4 Bring an action against any Owner personally obligated to pay the delinquent Assessment.

Article 8.7.5 File a Statement of Lien with respect to the Tract and foreclose such lien in the manner hereafter set forth. The Association may file a Statement of Lien by recording with the Clerk and recorder of Gunnison County, Colorado, a written statement with respect to the Tract, setting forth the name of the Owner, the legal description of the Tract, the name of the Association and the amount of the delinquent Assessments then owing, which Statement of Lien shall be signed and acknowledged by the President, Vice President or Secretary of the Association and which shall be sent by certified mail, postage prepaid, to the Owner of the Tract at the latest address the Association may have in its records as to the Owner. thirty days following the mailing of such notice, the association may proceed to foreclose the Statement of Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. Such Statement of Lien shall secure all Assessments accruing or assessed subsequent to the date of recording of such Statement of Lien until the same have been satisfied and released, together with the Association's attorneys' fees and cost incurred in the preparation and recording of such Statement of Lien and any release thereof. In any action for the payment or foreclosure of such Assessment, the Association shall be entitled to recover as part of the action, the interest, costs and reasonable attorneys' fees with respect to the action.

Article 8.7.6 The Statement of Lien shall be superior to all other liens and encumbrances on such Tract, except only any tax and assessment liens levied by any government entity and the lien of any First Mortgage.

Article 8.8 Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Tract to pay all Assessments and the Association's lien on a Tract for such Assessments, all successors to the ownership of a Tract shall be jointly and severally liable with the prior Owner for any and all unpaid Assessments, interests, costs, expenses and attorneys' fees against such Tract.

## Article 9 Enforcement of Covenants

Article 9.1 Violations Deemed a Nuisance. Every violation of this Declaration of Protective Covenants, the Articles and Bylaws of the Association or any rules and regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Article 9.2 Failure to Comply. The failure to comply with this Declaration or any Rules and Regulations adopted by the Board of Directors shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them under the following terms and conditions:

Article 9.2.1 Written notice of any violation or failure to comply with this declaration or any rules and Regulations adopted by the Board of Directors shall first be given to any Member or person as to such violation or failure to comply.

Article 9.2.2 Such Member or person shall be given 10 days from the date of such notice to correct such violation or failure to comply.

Article 9.2.3 In the event that any member or person believes that he or she is not in violation or failure to comply, he or she may request an opportunity for a hearing by the Board of Directors prior to the Association taking further action or commencing any legal proceedings against such Member or person.

Article 9.2.4 Any action by the Association as against any such member or person shall be by resolution of the Board of Directors following notice as above provided and granting to such Member or



person an opportunity to be heard before the Board of Directors.

Article 9.3 Who May Enforce. Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

Article 9.3.1 By the Association in name of the Association and on behalf of the Owners.

Article 9.3.2 By the Owner of any Tract.

Article 9.4 No Waiver. The failure of the Board, the Association, an Owner or Gunnison County, Colorado to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

#### Article 10 Duration of Covenants

Article 10.1 Term. The term of this Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado until January 1, 2044. Thereafter, this Declaration of Protective Covenants shall be automatically renewed for successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Article 10.2 Amendment. This Declaration of Protective Covenants, or any provision thereof, may only be terminated, extended, modified or amended as to the Property subject to the Protective Covenants, or any portion thereof, upon the written consent by the Owners of 80% or more of the Tracts within the Property. Any such amendment shall be by an instrument duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Tracts within the Property.

Article 10.3 Amendment by Declarant. Notwithstanding the provisions of Section 10.2, the Declarant reserves the sole right and power to modify and amend this Declaration of Protective Covenants and all plats subject to this Declaration of Protective Covenants, by executing and recording such amendment in the records of Gunnison County, Colorado. Such right or power of the Declarant is limited to (1) the correction of any typographical or language errors in this Declaration of Protective Covenants and/or the plats, (2) any corrections required to comply with the applicable laws, rules and regulations of any governmental entity having jurisdiction over the Property, and (3) any changes or corrections required to reasonably satisfy the requirements of any commercial lender to provide financing for the purchase and/or construction of a residence upon any Tract, which are not contrary to the terms of the agreement. Provided, however, the Declarant may not amend or revise the location and dimensions of any Tract which has been conveyed by Declarant to another Owner, without the consent of such Owner.

#### Article 11 Principles of Interpretation

Article 11.1 Severability. This Declaration of Protective Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration of Protective covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections may remain in full force and effect.

Article 11.2 Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.





Article 11.3 Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration of Protective Covenants.

Article 11.4 Written Notice. all notices required under this Declaration of Protective Covenants shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt required, to the latest address of such Owner on file in the record of the Association at the time of such mailing.

Article 11.5 Limitation of Liability. Neither the Association nor any officer or director shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under this Declaration of Protective Covenants if the action or failure to act was made in good faith. The Association shall indemnify all officers and directors with respect to any action taken in their official capacity as provided in the Articles of incorporation and Bylaws of the Association.


Article 11.6 Attorneys' Fees. If any legal action is commenced or maintained in court, whether in law or in equity, as to the interpretation, enforcement, or construction or the determination of the rights and duties of the parties to this Declaration of Protective Covenants or any provision of the Association documents provided herein, the prevailing party in any such action shall be awarded its reasonable attorneys' fees together with all reasonable costs and expenses incurred in such action.


Article 11.7 Applicable Law. The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association Documents shall be the District Court of Gunnison County, Colorado, unless otherwise chosen by the Association and shall be interpreted, construed, and governed by the laws of the State of Colorado.

Article 11.8 Interest. Unless otherwise provided in this Declaration of Protective Covenants, any sums, amounts or monies due and owing to the Association under the Association documents shall bear interest at 18% per year from the date due until paid.

**REVISED JULY 22, 2008**

Swan Production Company, LP


By:   
Ken R. Swan, Tract 1

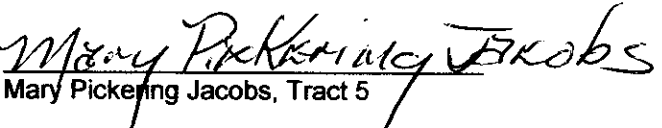
  
David R. Bethune, Tract 2

Walter Charitable Remainder Unitrust

By:   
Karl Walter, Tract 3

Ohio Creek Property, LLC

By:   
Daniel J. Krizak, Tract 4

  
Mary Pickering Jacobs, Tract 5