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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

OF

TWIN CREEKS RANCH HOMEOWNERS ASSOCIATION

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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
(Re-recorded to Add Article 1)**

THIS DECLARATION is made on the 22nd day of June 2000, by Kodiak L.L.C. ("Developer").

- A. Developer owns certain real property in Okanogan County, Washington, on which it is developing the residential community of "Twin Creeks Ranch." The property is legally described on **Exhibit "A"** to this Declaration.
- B. Developer has created a general plan of development for the benefit of all of the property within Twin Creeks Ranch. To this end, Developer has subjected the property to the Declaration of Restrictions of Twin Creeks Ranch, recorded with the Okanogan Auditor under file number 3008963. **Developer desires to terminate the Declarations recorded under Auditor's file numbers 854545 and 3008963 and replace them with this Declaration.**
- C. Developer will incorporate, as a nonprofit corporation, the Twin Creeks Ranch Association, to provide a mechanism for meeting the purposes of this Declaration.

DECLARATION

Developer hereby declares that the property described in **Exhibit "A"** is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration.

Further, Developer delegates and assigns to the Twin Creeks Ranch Association the power of owning, maintaining, and administering the Private Roads, administering the covenants and restrictions, and collecting and disbursing the assessments and charges created in this Declaration.

ARTICLE I

Property

Section 1.1 Generally. This Declaration applies only to the property described in **Exhibit "A"**. Developer reserves the right to add additional property to the terms, conditions and covenants of this Declaration; provided that the property is adjacent to the property described in **Exhibit "A"** and provided further that Developer owns such property or the owner consents in writing to submitting the property to this Declaration.

Section 1.2 Additional Covenants and Easements. Until the termination of the Development Period, Developer may unilaterally subject any portion of the Property submitted to this Declaration to additional or amended covenants and easements; provided that such additional or amended covenants and easements do not materially and adversely affect the substantive rights of an Owner or the title to any Lot. Such additional or amended covenants and easements shall be set forth in a Supplemental Declaration and shall require the written consent of the Owners of such property if not Developer and shall be effective upon recording a Supplemental Declaration with the Okanogan County Auditor.

ARTICLE II

Common Areas

Section 2.1. Developer to Convey. Common Areas shall initially consist of the private roads and utilities within the Property. Additional Common Areas may be created by the Developer.

Section 2.2. Improvements. The Developer has constructed or will construct the private roads as shown on the survey recorded with the Okanogan County Auditor (**Exhibit "B"**). Additional Common Area improvements may be constructed and installed by the Developer. All improvements by Developer or Association shall be installed, used and maintained in compliance with all applicable laws and regulations, as now existing or as may hereinafter be enacted.

Section 2.3. Delegation of Use. Any Owner may delegate his/her right of enjoyment to the Common Areas to members of his/her

family, tenants, or guests, subject to the limitations set forth in this Declaration.

ARTICLE III

Association

Section 3.1. Form of Association. The Association shall be or is organized as a nonprofit corporation under the laws of the State of Washington, ch. 24.03 RCW, and shall be know as Twin Creeks Ranch Association.

Section 3.2. Membership. Every Owner of a Lot (including Developer) shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership.

Section 3.3. Voting Rights. All Members shall have one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be divisible and exercised as the Owners determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3.4. Board of Directors.

- (a) The Association shall be managed by a Board of Directors, elected or appointed in accordance with the Articles of Incorporation and Bylaws of the Association. Notwithstanding the foregoing, the Developer shall have the right to appoint all Members of the Board of Directors during the Development Period as discussed in **Section 3.5** below. During the Development Period, Board Members need not be Owners or Members, except as noted in **Section 3.5**.
- (b) The Board shall have the authority to review and act upon proposals and plans submitted and to perform other duties set forth in this Declaration.
- (c) Neither the Board nor any of its Members shall be liable to the Association or to any Owner for any damage, loss or prejudice resulting from any action taken in good faith on a matter submitted to the Board for approval or for the failure to approve any matter submitted to the Board. The Board or its Members may consult with the Association or any Owner with respect to any plans, drawings or specifications, or any other proposal submitted to the Board.

Section 3.5. Developer's Special Rights During Development Period. During Development Period, the Developer shall have the

right to appoint all Members of the Board of Directors. Not later than 36 months after the recording of this Declaration, Developer shall appoint at least one Member of the Board of Directors from the Owners of property within Twin Creeks Ranch, other than Developer. Upon termination of the Development Period, the Developer shall provide written notice to all Owners advising that the Development Period has expired and establishing a time and place for a Members' meeting to elect a replacement Board of Directors. For purposes of this Declaration, the "Development Period" shall mean the time from recording of this Declaration until the earliest of the following events: (a) the date on which the Developer has transferred title on the last Lot to an Owner other than the Developer; or (b) June 1, 2006; or (c) the date on which the Developer relinquishes its Developers rights in writing.

Section 3.6. Delegation to Manager. The Board of Directors may delegate any of its managerial duties, powers or functions to any person, firm, or corporation, provided that any management agreement for the project shall be terminable by the Association for cause upon thirty (30) days written notice, and without cause upon ninety (90) days written notice. The term of any such agreement may not exceed one (1) year and shall be renewable by agreement of the parties for successive one (1) year periods. The Members of the Board of Directors shall not be liable for any omission or improper exercise by the manager of any duty, power, or function so delegated by written instrument executed by a majority of the Board of Directors.

ARTICLE IV

Easements

Section 4.1. Owners' Easements of Enjoyment. Each Owner shall have a right and a non exclusive easement of enjoyment in and to the Common Areas and for ingress, egress, and utilities over, under, and through the Common Areas and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- (a) The right of the Association to adopt reasonable rules governing the use of Common Areas and the personal conduct of persons authorized to use said areas, and to establish appropriate penalties for the violation of those rules.
- (b) The right of the Association to dedicate or transfer by deed or easement all or any part of the Common Areas to any public agency, authority, or utility. No such dedication or transfer shall be effective without the approval of two-thirds (2/3) of the Members.
- (c) The right of the Association to suspend the voting rights of an Owner for the period during which any assessment

against the Owner's Lot remains unpaid more than sixty (60) days. Any Owner may delegate his/her right for enjoyment to the Common Areas to the Members of his/her family, tenants, or guests, subject to the limitations set forth above.

Section 4.2. Easement for Association. The Association and its agents shall have easement for access to each Lot during reasonable hours as may be necessary for the following purposes:

- (a) The maintenance, repair, replacement, or improvement of any Common Area accessible from that Lot.
- (b) Emergency repairs necessary to prevent damage to the Common Areas or to another Lot, or the improvements thereon.

Except in an emergency where advance notice is not possible, these easements shall be exercised only after reasonable notice to the Owner.

Section 4.3. Easement for Developer. The Developer shall have easement across all Common areas for ingress, egress, storage and placement of equipment and materials and any other actions necessary for or related to the development or maintenance of Twin Creeks Ranch.

ARTICLE V

Assessments

Section 5.1. Covenants and creation of lien for Maintenance Assessments.

- (a) Each Owner of a Lot by acceptance of a deed or real estate contract therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to agree to pay to the Association (1) annual assessments or charges to fund common expenses for the general benefit of all Lots; (2) special assessments for capitol improvements; and (3) specific assessments to provide specific benefits or services to specific Lots.
- (b) The annual, special and specific assessments, together with interest, costs and reasonable attorney's fees shall be a charge and continuing lien upon the Lot against which each such assessment is made. The Association may foreclose such lien in the same manner as a Mortgage or Deed of Trust on real property.
- (c) Each assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of the Lot at the time the assessment fell due. The personal obligation shall not pass to the Owner's successors-in-interest unless

expressly assumed by them. The new Owner shall be personally liable for assessments which become due on and after the date of sale or transfer.

Section 5.2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Property; the improvement, insurance, maintenance and repair of the Common Areas; and the services and facilities related to the use and enjoyment of said areas; and, fulfilling the Association's responsibilities under this Declaration.

Section 5.3. Board to Adopt Budget. The Board of Directors shall adopt the annual budget, including annual and special assessments, at least forty-five (45) days prior to the start of the established year. In the event the Board fails to fix an annual budget for any fiscal year, then the budget established for the prior year shall automatically be continued until such time as the Board acts. The annual budget shall be sufficient to meet the obligations imposed by the Declaration and any supplementary declarations, and shall be sufficient to establish an adequate reserve fund for the maintenance, repair, and replacement of the Common Areas which require such actions on a periodic basis.

Section 5.4. Special Assessments for Capitol Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, unexpected repair or replacement of a described capitol improvement, including the necessary fixtures and personal property related thereto.

Section 5.5 Specific Assessments. The Board may specifically assess against particular Lots expenses incurred by the Association to provide specific benefits, items, or services made necessary by the conduct of the Owner, or its licensees, invitees, or guests, including but not limited to damage to Common Areas. Specific Assessments may be levied by the Board after notice to the Owner and an opportunity for a hearing.

Section 5.6 Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots assessed.

Section 5.7 Ratification of Budget. Within thirty (30) days after the adoption by the Board of Directors of any proposed regular or special budget of the Association pursuant to this Article, the Board shall set a date for a meeting of the Owners to consider ratification of the budget. Written notice of any such regular or special meeting shall be sent to all Members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting and shall include a statement of the purpose for which the meeting is to be held. Unless at that meeting the Owners of a majority of the votes in the Association are allocated reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not

given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposal by the Board.

Section 5.8. Commencement of Annual Assessments. The annual assessments shall commence as to each Lot within the Property on the first (1st) day of the month following the first sale of the Lot. The first annual assessment on any Lot shall be adjusted according to the number of months remaining in the calendar year.

Section 5.9. Certificate. The Association shall upon demand furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. The Association may make a reasonable charge for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment stated to have been paid.

Section 5.10. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall be delinquent. A late charge equal to five percent (5%) of the amount overdue shall be charged for any payment made more than ten (10) days past the due date. In addition, if the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum, and if not paid within sixty (60) days the Association may file a lien against the Lot. The Association may bring an action at law against the Owner obligated to pay the assessment, or, when deemed necessary, may foreclose on the lien after sixty (60) days but prior to ten (10) years from the date of the assessment, and in either event, interest, costs, and reasonable attorney's fees shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for annual or special assessments by nonuse of the Common Areas or by abandonment of his or her Lot.

Section 5.11. Subordination of Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, where the mortgagee of a Mortgage of record or other purchaser of a Lot obtains possession of the Lot as a result of foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, such possessor, his or her successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to such possession. Such unpaid share of the common expenses or assessments shall be deemed to be common expenses collectible from all of the Owners, including such possessor, his or her successors or assigns.

Section 5.12. Exempt Property. The following Property shall be exempt from the payment of annual and special assessments:
(a) All portions of the Property dedicated to and accepted by a local public authority; (b) The Common Areas; (c) All Lots held for sale by the Developer and not intended for his private use; (d) Any Lot foreclosed upon by the Developer or returned to the Developer for any reason and then held by the Developer for resale.

ARTICLE VI

Maintenance

Section 6.1. Association Obligation. The Association shall be obligated to maintain, repair and replace the Common Areas in as good or better condition as when it was first installed by the Developer. All expenses incurred in performing this work shall be paid for by the Association and become part of the assessments described above. However, any work required as a result of the negligent or intentional act or omission of any Owner or his or her guests, family or tenants shall be paid for exclusively by such Owner and shall become part of the specific assessments levied against the Lot owned by such Owner.

Section 6.2. Owners Obligation. Each Owner shall have the obligation to maintain his or her lot and any building improvements located on the Lot to standards appropriate to the community.

Section 6.3. Private Roads. Notwithstanding anything contained in this Declaration to the contrary, the Association shall maintain the private road(s) in perpetuity within its present boundary. The full and entire surface of the roadway shall be maintained so as to allow free and reasonable passage of such vehicular traffic as may be reasonable and necessary in order that all parties may enjoy full and free use of their respective Lots.

ARTICLE VII

Permitted and Prohibited Uses

Section 7.1. General. All Lots shall be used for private one-family residences with appurtenant garages. Until a permanent home is constructed, the use of a temporary dwelling unit, including tents, trailers, campers and motor homes, is permitted, provided that such temporary dwelling unit complies with all applicable laws for such structure.

Section 7.2. Dwelling Quality. No homes shall be permitted on any Lot without the prior approval of Okanogan County, or such other governmental entity with jurisdiction. All homes shall contain a minimum of 320 square feet of useable living space, exclusive of decks and porches.

Section 7.3. Animals. Dogs shall be restrained to the Owner's Lot and shall not be allowed to run at large. Leashed animals

are permitted within rights-of-way when accompanied by their Owners. Cattle guards may be installed.

Section 7.4. Garbage and Refuse Disposal. No garbage, rubbish or cuttings shall be deposited on or left on a Lot. Should any Owner fail to remove any trash, rubbish, garbage, yard rakings or other such materials from any Lot or road which were deposited by him within two (2) days following the date on which notice is mailed to him or her by the Association, the Association may have such materials removed and charge the expense of such removal to the Owner in addition to the assessments made upon him or her under the provisions of **Article V.**

Section 7.5. Nuisances. No noxious or undesirable thing or noxious or undesirable use shall be permitted or maintained on any Lot. If the Board of Directors of the Association shall determine that a use is noxious or undesirable, such determination shall be conclusive.

Section 7.6. Natural Drainage. The natural drainage of any Lot shall not be changed.

Section 7.7. Motor Vehicles. No Owner shall permit any vehicle which is in an extreme state of disrepair to remain parked upon any Lot or on any road for a period in excess of forty-eight (48) hours.

ARTICLE VIII

Condemnation

Section 8.1. Partial Condemnation. In the event of a partial condemnation of the Common Area, the proceeds shall be used to restore the remaining Common Areas, and any balance remaining shall be distributed to the Association.

Section 8.2. Total Condemnation. In the event that the entire Common Area is taken or condemned or sold or otherwise disposed of in lieu or in avoidance thereof, the condemnation award shall be distributed to the Association.

Section 8.3. Mortgagee Protection. No proceeds received by the Association, as the result of any condemnation, shall be distributed to a Lot Owner or to any other party in derogation of the rights of the First Mortgagee of any Lot.

ARTICLE IX

General Provisions

Section 9.1. Binding Effect. All present and future Owners or occupants of Lots shall be subject to and shall comply with the provisions of this Declaration, and the Bylaws and rules and regulations of the Association, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, and the Bylaws and rules and regulations of the Association, as they may be amended from time to time, are accepted and ratified by such Owner or occupant, and all such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated at length in each and every deed and conveyance or lease.

Section 9.2. Enforcement. The Association and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.

Section 9.3. Failure to Enforce. No delay or omission on the part of the Developer or the Owners in exercising any rights, power, or remedy provided in this Declaration shall be construed as a waiver of or acquiescence in any breach of the covenants, conditions, reservations, or restrictions set forth in the Declaration. No action shall be brought or maintained by anyone whatsoever against the Developer for or on account of its failure to bring any action for any breach of these covenants, conditions, reservations, or restrictions, or for imposing restrictions which may be unenforceable.

Section 9.4. Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 9.5. Amendment by Declarant. Notwithstanding anything in this Declaration to the contrary, Declarant may without consent of any Owner, at any time prior to the time it has sold and closed seventy-five percent (75%) of the Lots, amend this Declaration by an instrument signed by Declarant; provided, no amendment shall materially impair the substantial rights of a Lot Owner as established herein unless the impacted Lot Owner(s) consents in writing. Thereafter, this Declaration can be amended only as provided for below.

Section 9.6. Amendment by Lot Owners. After Declarant has sold and closed seventy-five percent (75%) of the Lots, this Declaration can be amended only by an affirmative vote of the Owners of seventy-five (75%) of the Lots at a meeting called for such purposes; provided, no amendment shall be passed which materially impairs the substantial rights of a Lot Owner as established herein unless the impacted Lot Owner(s) consents in writing. Any such amendment must be in writing, signed by the President and Secretary of the Association attesting to the notice and subsequent meeting, and those votes cast must meet the requirements of this Declaration and Bylaws, together with approving Lot Owners, and then be recorded with the Okanogan County Auditor. The amendment shall not be effective until recording.

Section 9.7. Notice. Any notice required hereunder shall be deemed effective when personally delivered or three (3) days after mailing by certified and regular mail to the Owner of public record at the time of such mailing to such Owner's address as appears on the Okanogan County Assessor's tax records and to the street address of the Lot(s) herein. Notices to lenders shall be sent to the last address the lender has given to the Association. The Association is not required to provide notice of any matter to any lender who has not notified the Association in writing of such lender's desire to receive notice, an/or has not given the Association written notice of the lender's address for receipt of notices. The Association shall not undergo investigation outside of its own records into the name or location of any lender or lien holder.

Section 9.8. Enforcement by Self-Help. Declarant, the Association, or the duly appointed agent of either may enter upon any Lot, which entry shall not be deemed a trespass, and take whatever steps are necessary to correct a violation of the provisions of this Declaration; provided, this provision shall not be construed as permission to breach the peace.

Section 9.9. Condition Precedent to Action. Prior to taking action under **Section 9.2 or 9.8** above, written notice shall be given to the offending Lot Owner. Such notice shall specify the nature of the offense and shall also specify the action necessary to cure. Such notice shall also provide a reasonable opportunity to cure which, except in the case of an emergency, shall not be less than thirty (30) days.

Section 9.10. Expenses of Action. The expenses of any corrective action or enforcement of this Declaration, if not paid by the offending Owner within thirty (30) days after written notice and billing, may be filed as a lien upon such Lot, enforceable as other liens herein.

Section 9.11. Costs and Attorneys. In the event of legal action, the prevailing party shall be entitled to recover actual costs and reasonable attorney's fees. For the purposes of this Declaration, "legal action" shall include arbitration, lawsuit, trial, appeals, and any action, negotiations, demands, counseling or otherwise where the prevailing party has hired an attorney. It is the intent of this provision to reimburse the prevailing party for all reasonable attorney fees and actual costs incurred in defending or enforcing the provisions of this Declaration, or the Owner's right hereunder.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed this 22nd day of June, 2000.

DEVELOPER

Lynn R. Barnett, Managing Partner, Kodiak L.L.C.

EXHIBIT A

"Legal Description for Twin Creeks Ranch"

The South half of the Southeast quarter of Section 19;

The Northwest quarter;

The North half of the Southwest quarter;

The Southwest quarter of the Southwest quarter of Section 20;

The West half;

The West half of the East half of Section 29;

EXCEPT the Northwest quarter of the Northwest quarter thereof;

All of Section 30;

EXCEPT Government Lot 1;

All of Section 31, except the Northeast of the Northeast quarter;

The Southwest quarter of Section 32;

All in Township 35 North, Range 29 East, W.M.

The East half;

The Southeast quarter of the Southwest quarter of section 25;

All in Township 35 North, Range 28 East, W.M.

ALL in Okanogan County, Washington