

DISTRICT COURT, COSTILLA COUNTY, COLORADO P.O. Box 301 340 Main Street San Luis, CO 81152	FILED Document CO Costilla County District Court 12th JD Filing Date: Oct 28 2011 4:54PM MDT Filing ID: 40622577 Review Clerk: Margarita Duran <b>▲ COURT USE ONLY ▲</b>
<b>Plaintiffs:</b> PETE E. ESPINOZA, JR.; et al., v.  <b>Defendants:</b> CVR PROPERTIES, LTD, a Texas foreign limited partnership, et al.	Case Number: 2011cv17  Crtrm:
Attorneys for Plaintiff: Lawrence W. Treece, #5384 Richard B. Benenson, #32566 Karl L. Schock, #38239 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, 22 <sup>nd</sup> Floor Denver, Colorado 80202-4437 Telephone: 303.223.1100 Facsimile: 303.223.1111 E-mail: ltreece@bhfs.com	
<b>FINAL CLASS ACTION JUDGMENT</b>	

This matter came before the Court on Plaintiffs' Unopposed Motion for Approval of Class Action Settlement Agreement, filed on October 28, 2011 ("Motion for Approval"). The Court held a hearing on the Motion for Approval on \_\_\_\_\_ ("Hearing"). The Court has read and analyzed the Motion for Approval, the Complaint and all other pleadings on file in the case, and considered the statements of counsel for all parties and the statements of the unrepresented defendants made at the hearing. Accordingly, being fully familiar with the Settlement Agreement, the applicable facts and law, and the issues involved, the Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW and enters the following CLASS CERTIFICATION ORDER and FINAL CLASS ACTION JUDGMENT.

## DEFINITIONS

As used in this FINAL CLASS ACTION JUDGMENT, the following terms have the following meanings.

- A. **ABUTTING LAND OWNERS** means Defendants **TCR, L. GLECKEL, J. GLECKEL, STORWICK, VANDERLINDEN, CLARK, E. ESPINOZA** and **L. ESPINOZA**.
- B. **ABUTTING LOTS** means the land owned by the **ABUTTING LAND OWNERS** in **MOUNTAIN LAKES RANCH SUBDIVISION** that abut the **TORCIDO CREEK ROAD**, and specifically Lots 37, 38, 39, 44, 45, 46, 48 and 49 of the **MOUNTAIN LAKE RANCH SUBDIVISION**.
- C. **AMENDED PLAT** means the "Amended Plat for Mountain Lake Ranch," recorded on September 25, 2006 at Reception No. 252328 in the Office of the Clerk & Recorder, Costilla County, Colorado.
- D. **BOARD OF COMMISSIONERS** means **ROYBAL, MARTINEZ, and BURNS**, in their official capacities as commissioners serving on the Board of County Commissioners of the **COUNTY**, and their predecessors and successors in interest.
- E. **BROWNSTEIN** means the law firm of Brownstein Hyatt Farber Schreck, LLP representing Plaintiffs.
- F. **BURNS** means Defendant Dolores Burns, in her capacity as a member of the **BOARD OF COMMISSIONERS**.
- G. **CIELO VISTA RANCH** means that tract of land currently owned by **CVR** that includes the "Salazar Estate" and the **MOUNTAIN TRACT**.
- H. **CLARK** means Defendant Dena M. Clark. **CLARK** is an individual who owns Lot 48 in the **MOUNTAIN LAKE RANCH SUBDIVISION** adjacent to the **TORCIDO CREEK ROAD**.
- I. **CLASS** means the class certified herein.
- J. **CLASS MEMBERS** means individual members of the **CLASS**.
- K. **CLR INC** means Defendant Colorado Land and Ranches, Inc. **CLR INC** is a Colorado corporation that is now dissolved, and was the Declarant under the "Amended Declaration of Covenants, Conditions and Restrictions for Mountain Lake Ranch (Costilla County, Colorado)," dated August 3, 2006. **CLR INC** was the prior owner of some or all of the lots located in the

**MOUNTAIN LAKES RANCH SUBDIVISION.** In addition, **CLR INC** may at one time have held a real property interest in Lot No. 46 of the **MOUNTAIN RANCH SUBDIVISION**, pursuant to that certain Deed of Trust recorded on January 21, 2009 at Book 412, Page 317 in the Costilla County Clerk and Recorder's Office, at Reception No. 264146.

- L. **CLR LLC** means Defendant Colorado Land and Ranches, LLC. **CLR LLC** was a Colorado limited liability company that is now dissolved. It was the developer of the **MOUNTAIN LAKE RANCH SUBDIVISION** and a prior owner of some or all of lots located in the **MOUNTAIN LAKES RANCH SUBDIVISION**.
- M. **COUNTY** means Costilla County, Colorado.
- N. **CVR** means Defendant CVR Properties, Ltd. **CVR** is a Texas foreign limited partnership that currently owns the **CIELO VISTA RANCH**, including the portion of that property formerly known as the Taylor Ranch.
- O. **DATTOLA** means Defendant Daniel W. Dattola. **DATTOLA** is an individual and was an owner of **CLR INC** and **CLR LLC**.
- P. **DEFENDANTS** means collectively all Defendants in the litigation.
- Q. **DEVELOPER** means Defendant Developer Finance Corporation. **DEVELOPER** is a Delaware corporation. It has, had or may have a real property interest in (A) Lot No. 46 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, pursuant to that certain Assignment of Deed of Trust and Note recorded on October 30, 2009 at Book 417, Page 105 in the Costilla Clerk and County Recorder's Office at Reception No. 266758; and (B) Lot No. 48 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, pursuant to that certain Assignment of Deed of Trust recorded on September 18, 2009 at Book 409, Page 992 in the Costilla County Clerk and Recorder's Office at Reception No. 262845.
- R. **E. ESPINOZA** and **L. ESPINOZA** mean Defendants Edward A. Espinoza and Linda L. Espinoza, respectively. **E. ESPINOZA** and **L. ESPINOZA** are individuals who own Lot 49 in the **MOUNTAIN LAKE RANCH SUBDIVISION** adjacent to the **TORCIDO CREEK ROAD**.
- S. **L. GLECKEL** and **J. GLECKEL** mean Defendants Louis Gleckel and Jareb Gleckel, respectively. **L. GLECKEL** and **J. GLECKEL** are individuals who own Lot 44 in the **MOUNTAIN LAKE RANCH SUBDIVISION** adjacent to the **TORCIDO CREEK ROAD**.

- T. **HILL** means Defendant Bobby Fred Hill. **HILL** is an individual and is a principal in **CVR** and **TCR**.
- U. **IDENTIFICATION PROCEEDINGS** means those proceedings currently pending in this Court as *Lobato v. Taylor*, 1981 CV 5, District Court for Costilla County to specifically determine individual rights of access to the **CIELO VISTA RANCH**, including the **MOUNTAIN TRACT**, under the **LOBATO TRILOGY**, and any appeals from judgments or orders entered in *Lobato v. Taylor*, 1981 CV 5; provided however, that any award of access rights granted in the trial court proceedings in that case shall remain effective pending the outcome of any appeal unless the order or judgment granting such rights is stayed by either the trial court or an appellate court.
- V. **INDIVIDUAL PLAINTIFFS** means Pete E. Espinoza Jr., Delano Esquibel, Joe Gallegos, Charlie J. Jaquez, Jr., Alonzo Lobato, Emilio Lobato, Jr., Raymond J. Maestas, Charlie Maestas, Norman R. Maestas, Jose Martinez, Junita Martinez, Larry Martinez, Martha Martinez, Ronnie Levi Medina, Alfred Mondragon, Dwight Mondragon, Shirley Romero Otero, Delmer J. Vialpando, Gary D. Vialpando, Eloy Gonzales, Carlos Lobato, Bobbie (sic) (hereafter "Bobby") Maestas and Donald Vigil.
- W. **KEH** means Defendant KEH Investment, Inc. **KEH** is a Florida corporation. It holds a real property interest in Lot No. 44 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, pursuant to that certain Assignment of Deed of Trust and Note recorded January 19, 2011 at Book 423, Page 842 in the Costilla County Clerk and Recorder's Office at Reception No. 270586.
- X. **LOBATO TRILOGY** means the Colorado Supreme Court's decisions in *Rael v. Taylor*, 876 P.2d 1210 (Colo. 1994), *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002) and *Lobato v. Taylor*, 70 P.3d 1152 (Colo. 2003).
- Y. **MARTINEZ** means Defendant Crestina Martinez, in her capacity as a member of the **BOARD OF COMMISSIONERS**.
- Z. **MOUNTAIN LAKE RANCH SUBDIVISION** means that subdivision located in Costilla County, Colorado, as shown on the **AMENDED PLAT**.
- AA. **MOUNTAIN LAKE HOA** means Defendant Mountain Lake Ranch Homeowner's Association, Inc., a Colorado Nonprofit Corporation. **MOUNTAIN LAKE HOA** is the property owners' association for the **MOUNTAIN LAKE RANCH SUBDIVISION**.
- BB. **MOUNTAIN TRACT** means that approximately 77,000 acre portion of the **CIELO VISTA RANCH** that was formerly known as the "Taylor Ranch."

The **MOUNTAIN TRACT** does not include that portion of the **CIELO VISTA RANCH** known as the "Salazar Estate."

- CC. **ORCHARD** means Defendant Orchard Investments, Inc. **ORCHARD** is a New Hampshire corporation. **ORCHARD** may have or may have had a real property interest in: (A) Lot No. 44 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, pursuant to that certain Assignment of Deed of Trust recorded March 4, 2010 at Book 418, Page 830 in the Costilla County Clerk and Recorder's Office at Reception No. 267701; and (B) Lot No. 46 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, pursuant to that certain Assignment of Deed of Trust and Note recorded on October 30, 2009 at Book 417, Page 105 in the Costilla County Clerk and Recorder's Office at Reception No. 266758.
- DD. **PUTATIVE CLASS** means:
- "All landowners in Costilla County, Colorado whose rights of access to the **MOUNTAIN TRACT** have already been, or in the future may be, established under the **LOBATO TRILOGY**, either by the Supreme Court decrees themselves, or in the **IDENTIFICATION PROCEEDINGS**."
- EE. **PUTATIVE CLASS REPRESENTATIVES** means **INDIVIDUAL PLAINTIFFS** in their capacities as representatives of the **PUTATIVE CLASS**.
- FF. **ROYBAL** means Defendant Eddie Roybal, in his capacity as a member of the **BOARD OF COMMISSIONERS**.
- GG. **SSFCU** means Defendant Security Service Federal Credit Union. **SSFCU** is a federal credit union organized and existing under the laws of the United States of America. At one time, **SSFCU** held a real property interest in Lot No. 49 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, pursuant to that certain Deed of Trust recorded on March 19, 2009 at Book 413, Page 266 in the Costilla County Clerk and Recorder's Office at Reception No. 264705. Subsequent to the commencement of the **LITIGATION**, that Deed of Trust was released.
- HH. **STORWICK** means Defendant Tracy R. Storwick. **STORWICK** is an individual who owns Lot 45 in the **MOUNTAIN LAKE RANCH SUBDIVISION** adjacent to the **TORCIDO CREEK ROAD**.
- II. **TCR** means Defendant Torcido Creek Ranch, LLC. **TCR** is a Colorado limited liability company that owns Lots 37, 38, 39, 40, 41, 42, 43 and 47 in the **MOUNTAIN LAKE RANCH SUBDIVISION**.

- JJ. **TORCIDO CREEK ROAD** means that currently unpaved but bladed road, located in portions of Sections 4, 5, 6, 7, 8 and 9, Township 1 North, Range 71 West, Sixth Principal Meridian, beginning at the intersection of County Roads G and 23.2 and running in a southeasterly direction for approximately 1.2 miles to the boundary of the **CIELO VISTA RANCH** at the point where Lots 37 and 39, (as shown on the **AMENDED PLAT**) abut the **CIELO VISTA RANCH** on the western boundary of the Ranch, at coordinates N37\*03.700'; W105\*20.401', with the southeasterly approximately .6 miles situated in approximately the same location as that certain easement described and depicted in the **AMENDED PLAT** as the "existing 60' easement centered on the existing road used by others, as it exists today," which is bounded on the northeast by Lots 39, 44, 45, and 46 (as shown on the **AMENDED PLAT**), on the southwest and south by Lots 49, 48, 47, 37 and 38 (as shown on the **AMENDED PLAT**), and for the first .6 miles on the northwest and west by that certain real property owned by Leonard Shane Quintana and others, located in Sections 4 & 5, Township 1 North, Range 71 West, Sixth Principal Meridian and commonly known as "The Quintana Ranch," all as shown on Exhibit 1 hereto.
- KK. **TORCIDO GATE** means that point of access to the **CIELO VISTA RANCH** located at coordinates N37\*03.700'; W105\*20.401', as described in the Complaint and as shown on Exhibit 1 hereto.
- LL. **VANDERLINDEN** means Defendant Joseph L. Vanderlinden. **VANDERLINDEN** is an individual who owns Lot 46 in the **MOUNTAIN LAKE RANCH SUBDIVISION** adjacent to the **TORCIDO CREEK ROAD**.

### **JURISDICTION**

The Court has jurisdiction over the subject matter of this action, and all **INDIVIDUAL PLAINTIFFS, PUTATIVE CLASS REPRESENTATIVES, the CLASS, and DEFENDANTS**.

### **APPROVAL OF SETTLEMENT AGREEMENT**

Pursuant to, and in accordance with, the requirements of Colo. R. Civ. P. 23(e), the Court finally approves all terms of the Settlement and Settlement Agreement as fair, just, reasonable and adequate. Specifically, but not by way of limitation, the Court finds and concludes that the Releases, the Disclaimer of Interest and the Dismissal of Claims of the **INDIVIDUAL PLAINTIFFS** and the **CLASS**, with prejudice, are fair, just, reasonable and adequate as to all parties and the members of the **CLASS**. **INDIVIDUAL PLAINTIFFS, PUTATIVE CLASS REPRESENTATIVES** and **DEFENDANTS** are ordered to perform in accordance with the terms of the **SETTLEMENT AGREEMENT** and this **JUDGMENT**.

## CERTIFICATION OF CLASS AND CLASS ACTION

### *Findings of Fact*

- A. The Motion for Approval seeks certification of a class consisting of:
- “All landowners in Costilla County, Colorado whose rights of access to the **MOUNTAIN TRACT** have already been, or in the future may be, established under the **LOBATO TRILOGY**, either by the Supreme Court decrees themselves, or in the **IDENTIFICATION PROCEEDINGS**.”
- B. The **CLASS** consists of at least 3,000 people, and, depending on the ultimate results of the **IDENTIFICATION PROCEEDINGS**, the **CLASS** could eventually number as many as 4,200 people.
- C. **PUTATIVE CLASS REPRESENTATIVES** are all landowners in Costilla County, Colorado who have had their individual rights of access to the **MOUNTAIN TRACT** established by the orders of the Supreme Court in the **LOBATO TRILOGY**, or have had their rights established in the **IDENTIFICATION PROCEEDINGS**.
- D. As alleged in the Complaint, and supported by the Motion for Approval, there are a multitude of questions of law and fact common to the members of the **CLASS**, as set forth in the Motion for Approval.
- E. **PUTATIVE CLASS REPRESENTATIVES**, individually and as a group, are fully familiar with the litigation underlying the **LOBATO TRILOGY**, and many of them were parties to or actively involved in that litigation. They are therefore fully familiar with the facts underlying this litigation.
- F. **PUTATIVE CLASS REPRESENTATIVES**, individually and as a group, are committed to the protection of the rights, to the extent such rights exist, of all Costilla County landowners under the **LOBATO TRILOGY** and the **IDENTIFICATION PROCEEDINGS**.
- G. **PUTATIVE CLASS REPRESENTATIVES** assert on their own behalves claims identical to those of the **CLASS**.
- H. There are no conflicts of interest between any of the **PUTATIVE CLASS REPRESENTATIVES** and the members of the **CLASS**.
- I. The **PUTATIVE CLASS REPRESENTATIVES** will pursue the claims of the **CLASS** with the same skill, commitment, energy and vigor as they will pursue their own claims.
- J. **PUTATIVE CLASS REPRESENTATIVES** are represented by lawyers at **BROWNSTEIN** who are experienced in class action litigation specifically, and the litigation

and trial of complex litigation in general, and who are fully competent to prosecute and try this case to judgment on behalf of the **CLASS**.

K. **PUTATIVE CLASS REPRESENTATIVES** have available the resources necessary to maintain this action on behalf of the **CLASS**.

L. The **CLASS** is a cohesive group centered around their rights of access to the Taylor Ranch. It is identical in regard to the claims for injunctive and declaratory relief asserted on its behalf to the group of **INDIVIDUAL PLAINTIFFS**. No claims for damages were asserted on behalf of the **CLASS**, and none are released, dismissed or impacted in any way by the Settlement Agreement. All of the relief sought on behalf of the **CLASS** is achieved by the Settlement. The **PUTATIVE CLASS REPRESENTATIVES** and **PUTATIVE CLASS Counsel** have vigorously and successfully represented the only interests of the **CLASS** asserted in the litigation or impacted by the Settlement, which achieves all they could ask for in terms of access to the **TORCIDO CREEK ROAD** and the **TORCIDO GATE**. **CLASS MEMBERS** have no right to opt out of the **CLASS** and no reason or credible basis to object to it. No legitimate purpose would be served, therefore, by notice to the absent **CLASS MEMBERS**, and the considerable expense of such notice is not justified.

*Conclusions of Law*

- A. The **CLASS** is appropriately defined under Colo.R.Civ.P. 23(a)(1), and is appropriate for representation on a class basis.
- B. The members of the **CLASS** are so numerous that joinder of them is impracticable, within the meaning of Colo.R.Civ.P. 23(a)(1).
- C. There are questions of law and fact common to the claims of the **CLASS**, within the meaning of Colo.R.Civ.P. 23(a)(2).
- D. The claims of the **PUTATIVE CLASS REPRESENTATIVES** are typical of the claims of the **CLASS**, within the meaning of Colo.R.Civ.P. 23(a)(3).
- E. The **PUTATIVE CLASS REPRESENTATIVES** have adequately represented the interests of the **CLASS** to this point in the litigation, within the meaning of Colo.R.Civ.P. 23(a)(4), and would continue to do so were this action to proceed.
- F. **BROWNSTEIN**, Lawrence W. Treece, Richard B. Benenson, Karl L. Schock and Jennifer Eiteljorg have provided competent, energetic, vigorous and skilful representation of the **CLASS** throughout this litigation and in the negotiation and presentation for court approval of this Settlement Agreement, and would continue to provide such representation to the **CLASS** were this action to proceed.
- G. Given the nature of the claims asserted in this litigation, the prosecution of separate actions by individual members of the **CLASS** would create a risk of inconsistent or



varying adjudications with respect to individual **CLASS MEMBERS**, which could establish incompatible standards of conduct for the **DEFENDANTS**.

- H. Given the nature of the claims asserted in this litigation, the prosecution of separate actions by individual members of the **CLASS** would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other **CLASS MEMBERS** not parties to the adjudications, or substantially impair or impede their ability to protect their interests.
- I. The **PUTATIVE CLASS REPRESENTATIVES** and **CLASS** assert claims against the **DEFENDANTS** that **DEFENDANTS** have both acted and refused to act on grounds generally applicable to the **CLASS** which, if proven, would justify both final injunctive and declaratory relief with respect to the **CLASS** as a whole.
- J. All the requirements of Colo.R.Civ.P. 23(a) are satisfied.
- K. This action is maintainable as a class action under both Colo.R.Civ.P. 23(b)(1) and Colo.R.Civ.P. 23(b)(2).
- L. No notice to absent **CLASS MEMBERS** is required under Colo.R.Civ.P. 23(c)(2).

*Class Certification Order*

Based upon the foregoing **FINDINGS OF FACT** and **CONCLUSIONS OF LAW**, the Court **ORDERS** as follows regarding the class action aspects of this case:

- 1. The **PUTATIVE CLASS REPRESENTATIVES** are approved and certified as class representatives for the **CLASS**.
- 2. **BROWNSTEIN** and Lawrence W. Treece, Richard B. Benenson, Karl L. Schock and Jennifer Eiteljorg are approved and certified as counsel for the **CLASS**.
- 3. Pursuant to Fed. R. Civ. P. 23(b)(1) and (b)(2), a class is certified consisting of:

All landowners in Costilla County, Colorado whose rights of access to the **MOUNTAIN TRACT** have already been, or in the future may be, established under the **LOBATO TRILOGY**, either by the Supreme Court decrees themselves, or in the **IDENTIFICATION PROCEEDINGS**.
- 4. No notice to the **CLASS** need or shall be given.

## JUDGMENT

FINAL JUDGMENT is entered as follows:

1. **CVR** and **HILL**, severally, shall, at their sole expense:
  - a. At their option, either: (i) replace the steel cable that has been installed across the **TORCIDO GATE** access point, if any remains, with an unlocked gate or (ii) replace that cable, if any, with an open cattle guard and place an unlocked gate at any point across the **TORCIDO CREEK ROAD** between the **TORCIDO GATE** point of access and that point located at approximately the point at which the southeast corner of Lot 48 and the north corner of Lot 38 abut the **TORCIDO CREEK ROAD** at the southwest boundary of Lot 39 on the northeast side of road.
  - b. Fill in the trench at the **TORCIDO GATE** access point and regrade the land to the grade of the **TORCIDO CREEK ROAD** at that point such as to permit the movement and transportation of livestock smoothly from the **TORCIDO CREEK ROAD** through the gate and onto the road on the eastern side of the boundary fence at that point that leads up and into the **MOUNTAIN TRACT**.
  - c. Remove any other obstacles to the free passage of livestock and motor vehicles, if any, that exist at the **TORCIDO GATE** point of access to the **MOUNTAIN TRACT**.
  
2. **MOUNTAIN LAKE HOA**, at its sole expense, shall within sixty (60) days of the date of entry of this **JUDGMENT**, remove the boulders and all other obstructions from any portion of the **TORCIDO CREEK ROAD** that runs on or adjacent to any land within the **MOUNTAIN LAKE RANCH SUBDIVISION**, including Lots 37, 38, 39, 46, 47, 48 and 49 of the **MOUNTAIN LAKE RANCH SUBDIVISION**, as shown on the **AMENDED PLAT**, and including specifically the boulders and other obstructions located at approximately the northeastern eastern boundary of Lot 49 at N37\*03.700'; W105\*20.401', approximately .6 miles from the **TORCIDO GATE**. Within sixty (60) days of the date of entry of this **JUDGMENT**, **MOUNTAIN LAKE HOA**, at its sole expense, shall also regrade and restore the **TORCIDO CREEK ROAD** at those places where the boulders and obstructions to be removed are located to its condition prior to placement of those boulders and other obstructions.
  
3. All interest **CVR**, **TCR**, **HILL**, **MOUNTAIN LAKE HOA**, **L. GLECKEL**, **J. GLECKEL**, **STORWICK**, **VANDERLINDEN**, **CLARK**, **E. ESPINOZA**, **L. ESPINOZA**, the **COUNTY** and **DEVELOPER** may have, if any, in the **TORCIDO CREEK ROAD** and the **TORCIDO GATE** is hereby subjected to a permanent, irrevocable and non-exclusive access easement ("EASEMENT") for pedestrian and vehicular access, ingress and egress to and on the **TORCIDO CREEK ROAD** and through the **TORCIDO GATE** in favor of all **INDIVIDUAL**

**PLAINTIFFS** and all **CLASS MEMBERS**, and their successors and assigns, for purposes of driving or otherwise transporting livestock for grazing onto the **MOUNTAIN TRACT**, and for the purposes of gathering firewood and gathering timber on the **MOUNTAIN TRACT** for the construction and maintenance of structures, corrals, fences, sheds, outbuildings and other such appurtenances on their properties, all in accordance with the rights of access established in the **LOBATO TRILOGY** or in the **IDENTIFICATION PROCEEDINGS**. This **EASEMENT** shall run with the interests of **CVR, TCR** and **HILL** in the **TORCIDO GATE** and in all land encompassed by **MOUNTAIN LAKE RANCH SUBDIVISION** and shall inure to the benefit of the **INDIVIDUAL PLAINTIFFS** and the **CLASS MEMBERS**, and their successors-in-interest to their real property located in Costilla County, Colorado which has been confirmed as entitled to access under the **LOBATO TRILOGY** or in the **IDENTIFICATION PROCEEDINGS**.

4. All interest **CVR, TCR, HILL, MOUNTAIN LAKE HOA, L. GLECKEL, J. GLECKEL, STORWICK, VANDERLINDEN, CLARK, E. ESPINOZA, L. ESPINOZA** and **DEVELOPER** may have, if any, in that portion of the **TORCIDO CREEK ROAD** running from the intersection of County Roads G and 23.2 to the entrance to the **MOUNTAIN LAKE RANCH SUBDIVISION** (located at approximately the northeastern corner of Lot 49 of the **MOUNTAIN LAKE RANCH SUBDIVISION** and the southeastern corner of the property commonly known as the Quintana Ranch, which is the approximate location where Line 11 and Line 12 connect as those Lines are depicted on the **AMENDED PLAT**), is hereby transferred and dedicated to the **COUNTY** for use and maintenance as a public and county road under C.R.S. §§ 43-2-201 (1)(a) and 43-2-201 (1)(c).

5. The **BOARD OF COMMISSIONERS** shall incorporate that portion of the **TORCIDO CREEK ROAD** dedicated to the **COUNTY** by paragraph 4, **but that portion only**, into the county road system of Costilla County for all purposes with no further orders of this Court. In the event that, in the future, this portion of **TORCIDO CREEK ROAD** is vacated in whole or in part as a public or county road for any reason, the effectiveness of any such vacation shall be conditioned upon the **BOARD OF COMMISSIONERS** expressly granting and recording in the real property records of the **COUNTY** a perpetual, non-exclusive easement for pedestrian and vehicular access, ingress and egress to, over and upon that portion of the **TORCIDO CREEK ROAD** in favor of the **INDIVIDUAL PLAINTIFFS** and the **CLASS MEMBERS**, and their successors and assigns, for purposes of driving or otherwise transporting livestock for grazing onto the **CIELO VISTA RANCH**, and for the purposes of gathering firewood, and gathering timber on the **CIELO VISTA RANCH** for the construction and maintenance of structures, corrals, fences, sheds, outbuildings and other such appurtenances on their properties, all in accordance with the rights of access established in *Lobato v. Taylor*, 71 P.3d 938 (Colo. 2002). Any failure by the **BOARD OF COMMISSIONERS** to record the easement required in this paragraph shall be remedied within thirty (30) days after notice thereof.

6. Declaratory Judgment is entered that **DATTOLA, CLR INC, CLR LLC, ORCHARD** and **KEH**, neither singly nor in conjunction, have any interest of any kind whatsoever in the **TORCIDO CREEK ROAD** or the **TORCIDO GATE**, including any interest which may exist

under any Deed of Trust or other security instrument that may be owned by any of them on any lot or property in the **MOUNTAIN LAKES RANCH SUBDIVISION**, the foreclosure on or of which shall in no way affect the title to the **INDIVIDUAL PLAINTIFFS'** and **CLASS MEMBERS'** rights in, or the status as a public road of, the **TORCIDO CREEK ROAD**.

7. Declaratory Judgment is entered that **DATTOLA, CLR INC, CLR LLC, ORCHARD** and **KEH**, neither singly nor in conjunction, have any interest of any kind whatsoever in the **TORCIDO CREEK ROAD** or the **TORCIDO GATE** as a Declarant, or as having succeeded to the rights of the Declarant, under that "Common Interest Ownership Agreement, Declaration, Amended Declaration of Covenants, Conditions and Restrictions for Mountain Lake Ranch (Costilla County, Colorado)," dated August 3, 2006.

8. Declaratory Judgment is entered that **SECURITY** has no interest of any kind whatsoever in the **TORCIDO CREEK ROAD** or the **TORCIDO GATE**, including any interest under that certain Deed of Trust recorded on March 19, 2009 at Book 413, Page 266 in the Costilla County Clerk and Recorder's Office at Reception No. 264705 related to Lot 49 in the **MOUNTAIN LAKES RANCH SUBDIVISION**, which Deed of Trust was released by that certain Request for Full Release of Deed of Trust and Release recorded on June 15, 2011 at Book 426, Page 106 in the Costilla County Clerk and Recorder's Office at Reception No. 271954.

9. Notwithstanding the **EASEMENT, CVR, TCR, HILL, MOUNTAIN LAKE HOA, L. GLECKEL, J. GLECKEL, STORWICK, VANDERLINDEN, CLARK, E. ESPINOZA,** and **L. ESPINOZA**, or any of them, may, at their sole option and expense, install a locked gate across the **TORCIDO CREEK ROAD** at or near the entrance to the **MOUNTAIN LAKE RANCH SUBDIVISION**, located at approximately the northeastern corner of Lot 49 of the **MOUNTAIN LAKE RANCH SUBDIVISION** and the southeastern corner of the property commonly known as the Quintana Ranch, which is the approximate location where Line 11 and Line 12 connect as those Lines are depicted on the **AMENDED PLAT**. If installed, this locked gate shall have a universal lock that may be opened by the same key as the locked gates at other points of access to the **MOUNTAIN TRACT** used by **CLASS MEMBERS**.

10. Notwithstanding the **EASEMENT, TCR**, at its sole option and expense, and in addition to the gate provided for in paragraph 9, shall have the right to install an unlocked gate across the **TORCIDO CREEK ROAD** at any point on the **TORCIDO CREEK ROAD** between the **TORCIDO GATE** point of access and that point located at approximately the point at which the southeast corner of Lot 48 and the north corner of Lot 38 abut the **TORCIDO CREEK ROAD** at the southwest boundary of Lot 39 on the northeast side of road, consistent with the requirements of option (ii) in paragraph 1.a. if that option is chosen.

11. Notwithstanding the **EASEMENT, TCR** and any **ABUTTING LAND OWNER** shall have the right to install a fence laterally along the border of their property and the **TORCIDO CREEK ROAD**, at a distance of no less than three feet from the current boundary of the bladed road, so long as such fence does not interfere with drainage along the road or obstruct the road in any way.

DEC 20 2011

Shelly Quintana  
Clerk of the Court

12. All claims asserted in the Complaint by the **INDIVIDUAL PLAINTIFFS** on their own behalf against all **DEFENDANTS** are dismissed with prejudice, each party to bear its own costs and expenses, including attorneys' fees.

13. All claims asserted in the Complaint by the **PUTATIVE CLASS REPRESENTATIVES** on behalf of the **CLASS** and **CLASS MEMBERS**, and all claims of the **CLASS MEMBERS**, against all **DEFENDANTS** are dismissed with prejudice, each party to bear its own costs and expenses, including attorneys' fees.

14. By this **FINAL CLASS ACTION JUDGMENT**, each **CLASS MEMBER** shall be deemed to have fully, finally and forever released, relinquished and discharged all **DEFENDANTS** from all claims asserted on their behalf in this litigation.

15. Declaratory judgment is entered that the **INDIVIDUAL PLAINTIFFS** have no interest of any kind whatsoever in any property located within the **MOUNTAIN LAKES RANCH SUBDIVISION**, including in any roads, except their interest in the **TORCIDO CREEK ROAD** and the **TORCIDO GATE** under this **JUDGMENT**.

16. All claims against Defendant Orchard Investments LLC are **DISMISSED**, with prejudice, each party to pay its own costs and attorneys' fees.

17. This **FINAL CLASS ACTION JUDGMENT** is final and binding on all **CLASS MEMBERS**.

18. No finding of fact or conclusion of law has been made in this action that any of the **DEFENDANTS**, alone or in conjunction, has engaged in any wrongful conduct of any kind whatsoever.

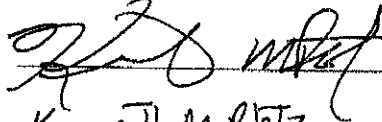
19. No finding of fact or conclusion of law has been made in this action that any **INDIVIDUAL PLAINTIFF** or any **CLASS MEMBER** has engaged in any wrongful conduct of any kind whatsoever.

20. The Court retains exclusive jurisdiction to enforce the terms of the Settlement, the Settlement Agreement and this **FINAL CLASS ACTION JUDGMENT**.

21. This **JUDGMENT** may be recorded by any of the **DEFENDANTS**, any **INDIVIDUAL PLAINTIFF**, any **PUTATIVE CLASS REPRESENTATIVE** and any **CLASS MEMBER** in the records of the Office of the Clerk and Recorder of Costilla County, Colorado.

DATED this 15<sup>th</sup> day of Dec, 2011.

BY THE COURT:

  
\_\_\_\_\_  
Kenneth M. Plotz  
\_\_\_\_\_  
DISTRICT JUDGE