

392444
Page 1 of 41
Judy Benine, Clerk & Recorder
Huerfano County, CO RP \$0.00
10-25-2011 02:27 PM Recordings Fee \$211.00

**SECOND AMENDED AND RESTATED
DECLARATION AND RESTRICTIVE COVENANTS
OF
HOLE-IN-THE-WALL RANCH
A Colorado Common Interest Community**

TABLE OF CONTENTS

	<u>Page</u>
Article 1. DEFINITIONS	2
1.1. Allocated Interests	2
1.2. Architectural Control Committee or ACC	2
1.3. Association Articles	2
1.4. Assessments	2
1.5. Association	2
1.6. Average Natural Grade Height	2
1.7. Board	2
1.8. Business Day	2
1.9. BWL Lots	2
1.10. BWL Common Assessments	2
1.11. BWL Common Expenses	2
1.12. BWL Special Assessments	2
1.13. Bylaws	3
1.14. Common Assessment	3
1.15. Common Elements	3
1.16. Common Expenses	3
1.17. Common Expense Liability	3
1.18. Common Special Assessments	3
1.19. Declarant	3
1.20. Declaration	3
1.21. Design Rules	3
1.22. Dwelling	3
1.23. Enforcement Special Assessment	3
1.24. General Common Assessments	3
1.25. General Common Elements	3
1.26. General Common Expenses	3
1.27. Limited Common Elements	4
1.28. Lot	4
1.29. Majority	4
1.30. Manager	4
1.31. Map	4
1.32. Mortgage	4
1.33. Mortgagee	4
1.34. Owner	4
1.35. Plans	4
1.36. Plat	4
1.37. Property	4
1.38. Rules	4
1.39. Special Assessment	4
1.40. Sensitive Building Zone(s)	4
1.41. Unit	4

Article 2. OWNERSHIP OF LOTS	5
2.1. Division into Lots.....	5
2.2. The Plat	5
2.3. Description of Units Identified as Lots	5
2.4. Inseparability.....	5
2.5. No Partition	6
2.6. Replat	6
2.7. No Subdivision of Lots by Owners	6
2.8. Separate Titles and Taxation	6
2.9. Membership in the Association	6
Article 3. EASEMENTS AND LICENSES	6
3.1. Access Easements	6
3.2. Utility Easements	7
3.3. Emergency Easement.....	7
3.4. Easements for Encroachments	7
3.5. Association Rights	7
3.6. Drainage Easement	7
Article 4. OBLIGATIONS OF OWNERS	7
4.1. Compliance with Rules.....	7
4.2. Compliance with Laws	7
4.3. Compliance by Others	7
4.4. Lot Maintenance.	8
4.5. Maintenance of Limited Common Elements	8
4.6. Damage to Common Elements and Other Lots.....	8
4.7. Utilities	8
4.8. Refuse Storage and Collection.....	8
4.9. Water and Waste Water.....	8
4.10. Driveways and Culverts	9
4.11. Weed Control Program	9
4.12. Insurance.....	9
4.13. Indemnification.....	9
Article 5. USE AND OCCUPANCY RESTRICTIONS	9
5.1. Use	9
5.2. Minerals	9
5.3. Dwellings and Accessory Buildings	10
5.4. Nuisance.....	11
5.5. Snowmobiles, ATVs, Etc.....	11
5.6. Fire Regulations.....	11
5.7. Outdoor Storage	11
5.8. Recreational Vehicles, Campers, and Other Temporary Buildings	11
5.9. Mobile and Prefabricated Homes	11
5.10. Animals.....	11
5.11. Hunting	12
5.12. Rentals	12

5.13.	Excavation	12
5.14.	Drainage	12
Article 6. THE ASSOCIATION		12
6.1.	General Purposes	12
6.2.	Membership	14
6.3.	Voting	14
6.4.	Meetings of Owners	14
6.5.	Board	14
6.6.	Rules	14
6.7.	Records	14
6.8.	Enforcement	14
6.9.	Disputes Among Owners	15
6.10.	Association as Attorney in Fact for Owners	15
6.11.	Indemnification	16
Article 7. ASSESSMENTS		16
7.1.	Obligation to Pay Assessments	16
7.2.	Common Expenses	16
7.3.	Annual Common Expenses Budget	16
7.4.	Annual Common Assessments	17
7.5.	Notice and Payment of Annual Common Assessments	17
7.6.	Special Assessments	17
7.7.	Excess Reserve Funds	18
Article 8. LIEN FOR NONPAYMENT OF ASSESSMENTS		18
8.1.	Establishment of Lien	18
8.2.	Priority of Lien	18
8.3.	Notice of Lien	19
8.4.	Homestead Exemption	19
8.5.	Release of Lien	19
8.6.	Personal Obligation of Owner	19
8.7.	Estoppel Certificate	19
8.8.	Liability for Common Expenses Upon Transfer of Lot is Joint and Several	20
Article 9. ARCHITECTURAL CONTROL COMMITTEE		20
9.1.	Architectural Control Committee or ACC	20
9.2.	Design and Building Requirements	21
9.3.	Procedure for Approval of Plans	21
9.4.	Variances	22
9.5.	Limitation of Liability	23
Article 10. ARCHITECTURAL GUIDELINES		23
10.1.	Architectural Design	23
10.2.	Roof Design	23

10.3.	Structures Outside the Sensitive Building Zones.....	24
10.4.	Height of Structures Within the Sensitive Building Zones.....	24
10.5.	Special Height Restrictions for Lots 10, 11, 12A, and 13A.....	24
10.6.	Exterior Lights.....	25
10.7.	Retaining Walls.....	25
10.8.	Fences and Walls.....	25
10.9.	Lawns.....	25
10.10.	Landscaping and Ground Revegetation.....	26
10.11.	Signs.....	26
10.12.	Windmills, Solar Facilities, and Satellite Dishes.....	26
10.13.	Decks and Patios.....	26
10.14.	Artificial Vegetation.....	26
10.15.	Structures at Intersections.....	26
10.16.	Permanent Barbecues.....	26
10.17.	Monumental Sculpture.....	26
Article 11.	INSURANCE.....	26
11.1.	Association's Obligations.....	26
11.2.	Form.....	27
11.3.	Notice of Unavailability or Cancellation.....	28
11.4.	Repair or Replacement.....	28
11.5.	Waiver of Subrogation.....	28
Article 12.	CASUALTY DAMAGE OR DESTRUCTION.....	29
12.1.	Association as Attorney in Fact.....	29
12.2.	General Authority of the Association.....	29
12.3.	Damage to or Destruction of Common Elements.....	29
12.4.	Funds for Reconstruction or Repair of Common Elements.....	29
12.5.	Disbursement of Funds for Repair or Reconstruction of Common Elements.....	29
Article 13.	AMENDMENT AND TERMINATION.....	30
13.1.	Amendment of this Declaration.....	30
13.2.	Termination.....	30
Article 14.	PROTECTION OF MORTGAGEES.....	30
14.1.	Mortgage Permitted.....	30
14.2.	Subordination.....	30
14.3.	Effect of Breach.....	30
14.4.	Amendment.....	30
14.5.	Foreclosure.....	31
14.6.	Non-Curable Breach and Curable Breach.....	31
14.7.	Loan to Facilitate.....	31
14.8.	Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Financing.....	31
14.9.	Notices and Approvals.....	34

Article 15. MISCELLANEOUS.....	34
15.1. Duration of Declaration	34
15.2. Supplemental to Law	34
15.3. Notices, Etc.....	34
15.4. Registration of Addresses by Owners	34
15.5. Successors and Assigns	34
15.6. Severability	34
15.7. Captions	34
15.8. No Waiver.....	34
15.9. Rule Against Perpetuities.....	34
15.10. Violation as Nuisance	34
15.11. Owner's Obligations Continue.....	35
15.12. Interpretation.....	35

**SECOND AMENDED AND RESTATED
DECLARATION AND RESTRICTIVE COVENANTS
FOR
HOLE-IN-THE-WALL RANCH**

This Second Amended and Restated Declaration and Restrictive Covenants for Hole-in-the-Wall Ranch (this **Declaration**) is executed to be effective as of October 22, 2011 (the **Effective Date**), by Hole-in-the-Wall Ranch Property Owners' Association, Inc., a Colorado nonprofit corporation (the **Association**).

BACKGROUND

- A. Hole-in-the-Wall Ranch is a Colorado Common Interest Community located in Huerfano County, Colorado, created as a "planned community" under the provisions of the Colorado Common Interest Ownership Act, §§ 38-33.3-101 et seq., C.R.S. (as amended from time to time, the **Act**), according to the Common Interest Community Map for Hole-in-the-Wall Ranch recorded at Number 339, Folder 7, Pocket 2, and amended by Amended Common Interest Community Map for Hole in the Wall Ranch recorded at Number 345, Pocket 7, Folder 3, as amended by a rearrangement of the boundary line between Lots 12 and 13 (creating Lots 12A and 13A) according to filed Survey No. 175665, Pocket 30, Folder 1, recorded August 24, 2005, as Reception No. 369094, and as approved by the Board at its regular meeting on February 29, 2009, all in the records of the Clerk and Recorder of Huerfano County, Colorado, and any subsequent amendments thereto (as amended from time to time, the **Plat**).
- B. This Declaration supersedes and replaces in its entirety the Restated Declaration and Restrictive Covenants for Hole-in-the-Wall Ranch recorded at Reception No. 350016, in the records of the Clerk and Recorder of Huerfano County, Colorado (the **Prior Declaration**) as of the Effective Date.
- C. The Prior Declaration superseded and replaced in its entirety the Declaration and Restrictive Covenants for Hole-in-the-Wall Ranch recorded at Reception No. 317423, Book 399, Page 296, in the records of the Clerk and Recorder of Huerfano County, Colorado (the **Original Declaration**).
- D. This Declaration was approved by Owners holding sixty-seven percent (67%) or more of the votes in the Association, voting in person or by proxy at a duly called Annual Meeting of the Association held on October 22, 2011.

NOW THEREFORE, the Association (Declarant) declares that the Property is and will be conveyed, encumbered, leased, used, and occupied subject to the terms of this Declaration in furtherance of a plan of Colorado Common Interest Community as described in the Act for the subdivision, improvement, protection, maintenance, and sale of the Lots shown on the Plat. This Declaration is, and the Original Declaration and the Prior Declaration were, executed and recorded for the purpose of enhancing, maintaining, and protecting the value of the Property. The provisions of this Declaration are covenants running with the land, are binding upon all Owners, and are enforceable by the Association as specified herein. Each Owner of a Lot, by

acceptance of title thereto, is deemed to accept, and be bound by, the provisions of this Declaration as it may be amended from time to time.

ARTICLE 1.

DEFINITIONS

The following terms have the respective meanings set forth below for the purposes of this Declaration unless the context requires otherwise.

- 1.1. Allocated Interests. **Allocated Interests** means the percentage of the General Common Expenses of the Association allocated to each Lot. Subject to change only as specified in Section 2.6, the Allocated Interest for each Lot is one-twentieth (1/20).
- 1.2. Architectural Control Committee or ACC. **Architectural Control Committee or ACC** means the committee appointed by the Board to review and approve plans for the construction, modification, repair, or replacement of improvements in the Property as specified in Article 9.
- 1.3. Association Articles. **Association Articles** means the Articles of Incorporation of the Association, as the same may be amended from time to time.
- 1.4. Assessments. **Assessments** means BWL Common Assessments, General Common Assessments, and Special Assessments.
- 1.5. Association. **Association** means Hole-in-the-Wall Ranch Property Owners' Association, a Colorado nonprofit corporation, its successors and assigns.
- 1.6. Average Natural Grade Height. **Average Natural Grade Height** has the meaning given it in Subsection 9.3(a)(ii).
- 1.7. Board. **Board** means the governing body of the Association as established under the Bylaws.
- 1.8. Business Day. **Business days** are all weekdays other than New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after Thanksgiving, Christmas Eve, and Christmas Day.
- 1.9. BWL Lots. **BWL Lots** means those Lots that share a common boundary line with Big Wall Lane, being Lots 1, 10, 11, 12A, 13A, 14, 15, 16, 17, 18, 19, and 20.
- 1.10. BWL Common Assessments. **BWL Common Assessments** means the assessments levied against the BWL Owners for the payment of BWL Common Expenses.
- 1.11. BWL Common Expenses. **BWL Common Expenses** means those portions of the Common Expenses that benefit only BWL Lots.
- 1.12. BWL Special Assessments. **BWL Special Assessments** has the meaning given it in Section 7.6(b).

- 1.13. Bylaws. **Bylaws** means the Bylaws of the Association adopted by the Association for the regulation and management of the Association, as the same may be amended from time to time.
- 1.14. Common Assessment. **Common Assessment** for each Lot means the General Common Assessment and, if applicable, the BWL Common Assessment levied against the Lot.
- 1.15. Common Elements. **Common Elements** means all portions of the Property not within a Lot, including all General Common Elements and Limited Common Elements.
- 1.16. Common Expenses. **Common Expenses** means expenditures made or liabilities incurred by or on behalf of the Association, together with allocations to reserves.
- 1.17. Common Expense Liability. **Common Expense Liability** means the liability for Common Expenses allocated to each Owner under § 38-33.3-207(l)(c) of the Act.
- 1.18. Common Special Assessments. **Common Special Assessment** has the meaning given it in Section 7.6(a).
- 1.19. Declarant. The **Original Declarant** was Hole-in-the Ranch, Inc., a Colorado corporation. Original Declarant no longer owns any portion of the Property and no longer has any special rights under the Prior Declaration; therefore, **Declarant** means the Association for the purposes of the Act.
- 1.20. Declaration. **Declaration** means this Declaration, together with any supplements or amendments hereto, and also including the Plat and any amendments thereto.
- 1.21. Design Rules. **Design Rules** means those rules and regulations, if any, from time to time adopted and modified by the Board to govern the construction of all improvements within the Property and to preserve and promote the interests of the Owners.
- 1.22. Dwelling. **Dwelling** means any residential structure constructed on a Lot.
- 1.23. Enforcement Special Assessment. **Enforcement Special Assessment** has the meaning given it in Section 7.6(c).
- 1.24. General Common Assessments. **General Common Assessments** means the assessments levied against all Owners for payment of the General Common Expenses.
- 1.25. General Common Elements. **General Common Elements** means all parts of the Property not identified as Lots on the Plat, except for portions that are identified as reserved for the exclusive use of Owner(s) of a particular Lot or Lots to the exclusion of all others (Limited Common Elements).
- 1.26. General Common Expenses. **General Common Expenses** means those Common Expenses that benefit all Lots. It does not include BWL Common Expenses.

- 1.27. Limited Common Elements. **Limited Common Elements** means a portion of the Common Elements allocated by this Declaration and §§ 33-33.3-202 (1)(b) or (1)(d) of the Act for the exclusive use of one or more, but fewer than all, of the Lots. Limited Common Elements include, by way of example and not limitation, that portion of any utility line, drainage facility, access drive, or walkway serving only one or more Lots but less than all lots.
- 1.28. Lot. **Lot** means a Lot shown on the Plat and may be used interchangeably with Unit, as defined below.
- 1.29. Majority. **Majority** means more than 50%.
- 1.30. Manager. **Manager** means the person, if any, from time to time appointed by the Board to perform the management and operational functions of the Association.
- 1.31. Map. **Map** is sometimes used interchangeably with Plat.
- 1.32. Mortgage. **Mortgage** means any mortgage, deed of trust, or other security instrument secured by a lien on any Lot or on any real property owned by the Association.
- 1.33. Mortgagee. **Mortgagee** means any person named as the beneficiary under any Mortgage and any successor in interest to such person under the Mortgage.
- 1.34. Owner. **Owner** means any person(s), corporation(s), partnership(s), or other entity(ies) owning fee simple title to any Lot.
- 1.35. Plans. **Plans** means a complete set of plans and specifications for the construction, modification, or replacement of any structure on a Lot.
- 1.36. Plat. **Plat** has the meaning given it in Recital A.
- 1.37. Property. The **Property** means all real property covered by this Declaration and the Plat.
- 1.38. Rules. **Rules** has the meaning given to it in Section 6.6 below.
- 1.39. Special Assessment. **Special Assessment** means any sums assessed by the Association against an Owner for costs other than payment of Common Expenses as specified in Section 7.6.
- 1.40. Sensitive Building Zone(s). **Sensitive Building Zone(s)** means the area(s) extending 200 feet along both sides of Big Wall Lane and 600 feet from School Creek Road.
- 1.41. Unit. **Unit** means a Lot as shown on the Plat. The terms "Unit" and "Lot" may be used interchangeably in any conveyance or encumbrance of any Lot.

ARTICLE 2.

OWNERSHIP OF LOTS

- 2.1. Division into Lots. The recordation of the Original Declaration and the Plat divided the Property into a "Planned Community" under §§ 38-33.3-101, et seq., of the Act and created 20 separate Lots as shown on the Plat. Each Lot consists of a separate fee simple estate.
- 2.2. The Plat. The Plat, which was recorded under § 38-33.3-209 of the Act, depicts: (a) the legal description of the Property and a survey thereof; (b) the name and general location of the Property; (c) the measurements, locations, and general descriptions with reference to the exterior boundaries of each Lot; (d) locations and legal descriptions of all General Common Elements and Limited Common Elements (if any) including all easements and rights of way; (e) identification of the initial Lots committed to separate ownership; and (f) any other Map inclusions required by §§ 38-33.3-209 et seq., and 38-33.3-205(1)(e) of the Act. The Plat satisfies, and any amendments or supplements thereto must satisfy, all applicable requirements of the Act. In interpreting any and all provisions of this Declaration or the Bylaws, the actual location of a Lot will be deemed conclusively to be the property intended to be conveyed, reserved, or encumbered, notwithstanding any minor deviations from the location of the Lot indicated on the Plat.
- 2.3. Description of Units Identified as Lots.
- (a) Legal Description. Each separate physical portion of the Property intended for separate ownership is a "Unit", and each is identified on the Plat as a specific "Lot." Every contract of sale, deed, lease, mortgage, or other conveyance or encumbrance, should legally describe a "Unit" by its identifying Lot number (as shown on the Plat), followed by the words, "Hole-in-the-Wall Ranch, a Colorado Common Interest Community, Huerfano County, Colorado," followed by: "in accordance with and subject to the Plat and Declaration of Hole-in-the-Wall Ranch," along with actual recordation information for each document.
 - (b) Transfer of Common Elements. Each such legal description will be good and sufficient for all purposes to sell, convey, transfer, or encumber not only the respective Lot, but also the appurtenant non-exclusive easement rights in and to the General Common Elements and any exclusive easement right or use of particular Limited Common Elements. Each such description will be construed to include a non-exclusive easement for ingress and egress over the General Common Elements, non-exclusive use of General Common Elements, and any other easements, obligations, limitations, rights, encumbrances, covenants, conditions, and restrictions created in this Declaration.
- 2.4. Inseparability. An Owner's easements and other use rights in the General Common Elements and any Limited Common Elements, obligations for Common Expense Liabilities, and votes in the Association may not be separated from the Lot to which they are appurtenant.

- 2.5. No Partition. The Common Elements will remain entitled in the Association and no Owner or any other person may bring any action for partition or division of the Common Elements. Similarly, no action may be brought for partition of a Lot between or among the Owners thereof. Each Owner expressly waives any and all rights of partition the Owner may have by virtue of its ownership of a Lot.
- 2.6. Replat. No Lot(s) may be replatted without the prior consent of the Board, in its sole discretion. If two or more Lots are replatted into a single Lot, the replatted Lot will remain entitled to one vote for each Lot incorporated into the replatted Lot and will remain responsible for the collective Allocated Interests originally assigned to each of the combined Lots; i.e., if two Lots are replatted into a single Lot, the replatted Lot will be entitled to two votes and the Allocated Interests for the replatted Lot will be responsible for one-tenth (1/10) of the Common Assessments levied from time to time.
- 2.7. No Subdivision of Lots by Owners. No Owner may subdivide any Lot into two or more Lots. No portion of any Lot may be conveyed, bequeathed, divided, or transferred by any Lot Owner except in connection with a replat thereof approved by the Board.
- 2.8. Separate Titles and Taxation. Each Lot and its interest in the Common Elements is a separate parcel of real estate and will be separately assessed and taxed. Original Declarant gave written notice to the Assessor of Huerfano County, Colorado of the creation of the Property as a Colorado Common Interest Community, as required by law. The lien for delinquent taxes, assessments, or other governmental charges levied against any Lot will be confined to that Lot and will not in any way affect the title to any other Lot. Any separate taxes on the Common Elements be paid by the Association as part of the Common Expenses.
- 2.9. Membership in the Association. The Owner(s) of each Lot is (are) member(s) of the Association. Subject to change only as specified in Section 2.6, each Lot is entitled to only one vote even if there are multiple Owners of the Lot.

ARTICLE 3.

EASEMENTS AND LICENSES

- 3.1. Access Easements. Each Owner is hereby granted (i) a nonexclusive easement over, under, and across the General Common Elements as necessary for vehicular, pedestrian, and equestrian ingress and egress to and from their respective Lots and School Creek Road and to and from other Lots and (ii) an exclusive easement (in common with the Owner(s) of other Lots to which a Limited Common Element is appurtenant) over, under, and across each Limited Common Element appurtenant to the Owner's Lot for the purposes for which the Limited Common Element was granted. These easements are covenants running with the land and are appurtenant to, and may not be separated from, each Lot. Notwithstanding any other provision of this Declaration, these easements may not be amended or revoked so as to unreasonably interfere with their proper and intended purposes. These easements are only for the benefit of Owners and their respective contractors, guests, invitees, tenants, Mortgagees, successors, and heirs.

- 3.2. Utility Easements. The Board may, upon written request, grant utility easements over, across, and under necessary portions of the Common Elements for utility easements to serve Lot(s) so long as the easements do not interfere with the use, occupancy, or enjoyment by any Owner of its Lot and any Common Elements appurtenant thereto.
- 3.3. Emergency Easement. An easement is hereby granted to all police, sheriff, fire protection, ambulance, and other emergency agencies or persons to enter upon the Common Elements in emergency situations in the performance of their duties.
- 3.4. Easements for Encroachments. Pursuant to the provisions of § 38-33.3-214 of the Act, if any part of the Common Elements now or hereafter encroaches on a Lot, then an easement is hereby granted for such encroachment and for the maintenance of the same. In no event will an easement for encroachment exist if the encroachment occurred due to willful and knowing conduct on the part of an Owner, the Association, or a tenant.
- 3.5. Association Rights. The Board may grant easements over, across, and under the Common Elements, and may impose restrictions and regulations on the use of the Common Elements, as it determines to be necessary in connection with the maintenance, repair, replacement, and operation of the Common Elements. The Association may, and is hereby granted an easement to, enter upon any Lot as necessary in connection with maintenance, repair, replacement, and operation of the Common Elements, including the erection of snow fences or other snow control structures on any Lot within 50 feet of any road or driveway that is part of a Common Element as determined by the Board to be necessary to protect reasonable access to all Lots during winter.
- 3.6. Drainage Easement. An easement is hereby granted to the Association to enter upon, across, over, in, and under the Common Elements and any Lot for the purpose of improving, changing, correcting, or otherwise modifying the drainage of surface waters to minimize erosion of the Common Areas. The Association shall repair any damage to any Lot caused by the exercise of its rights under Sections 3.5 and 3.6.

ARTICLE 4.

OBLIGATIONS OF OWNERS

Each Owner must, at the Owner's cost:

- 4.1. Compliance with Rules. Comply with the provisions of this Declaration, the Association Articles, the Bylaws, any Design Rules, and any other Rules adopted by the Board under this Declaration, all as amended or modified from time to time.
- 4.2. Compliance with Laws. Comply with all applicable state, federal, county, and local laws, statutes, ordinances, building codes, rules, and regulations applicable to the Owner's use and occupancy of its Lot and all improvements constructed thereon.
- 4.3. Compliance by Others. Cause its family members, contractors, agents, employees, guests, invitees, and tenants to comply with Owner's obligations under this Declaration.

4.4. Lot Maintenance.

- (a) Keep and maintain all Dwellings and other improvements, including landscaping, driveways and drainage culverts, utility lines serving its Lot, wells, cisterns, septic systems, solar systems, wind generators, etc., located on its Lot in good, safe condition and repair at all times, including necessary replacements.
- (b) Promptly remove any improvements on its Lot damaged by fire or other casualty that will not be promptly repaired and restored and restore the surface of the Lot to a presentable and safe condition.
- (c) Not dump, and prevent its contractor(s) from dumping, any debris, construction refuse, trash, excess materials, waste, or cement on its Lot or any other portion of the Property anywhere other than in a construction dumpster located on its Lot and cause its contractor(s) to keep its Lot free from same on a daily basis during construction, repairs, and restorations. Each Owner must obtain and maintain on its Lot a construction dumpster while any construction or significant remodeling activities are being conducted on its Lot.

4.5. Maintenance of Limited Common Elements. In conjunction with all other Owners entitled to the benefit thereof, maintain in good, safe condition and repair at all times, and replace as necessary, any Limited Common Element appurtenant to the Owner's Lot. The Owner(s) of each Lot are responsible for a pro rata share of the maintenance and replacement costs based on the number of Lots entitled to the benefit of the Limited Common Element; i.e., if three Lots are entitled to the benefit of the Limited Common Element, then the Owner(s) of each Lot will bear one-third (1/3) of the costs.

4.6. Damage to Common Elements and Other Lots. Promptly repair and restore to the Board's reasonable satisfaction all damage to the Common Elements and any other Owner's Lot caused by the Owner, its contractors, agents, employees, guests, invitees, tenants, and Mortgagees, including damage caused in connection with the construction, repair, and replacement of improvements on its Lot and use of the Common Elements.

4.7. Utilities. Obtain and pay for all utilities used and consumed on its Lot. Bury, or cause to be buried, all utility lines on each Lot underground.

4.8. Refuse Storage and Collection. Store its refuse and garbage in closed containers on its Lot and contract with a waste management contractor for the removal thereof on at least a weekly basis. All outdoor garbage containers must be bear proof containers and must be screened from view from roads and adjacent Lots in a manner approved by the ACC.

4.9. Water and Waste Water. Prior to obtaining a building permit for the first Dwelling on its Lot:

- (a) Obtain all necessary permits for, and drill and equip, a water well sufficient to serve the Dwelling(s) on its Lot or otherwise satisfy applicable rules and regulations and building codes of Huerfano County.
- (b) Construct on its Lot a sewage treatment facility or septic disposal system with a capacity sufficient to serve the Dwelling(s) on the Lot.

- 4.10. Driveways and Culverts. Prior to, or simultaneously with, construction of any Dwelling on its Lot:
- (a) Build a driveway to the proposed location of the Dwelling from the main entry to the Lot off School Creek Road or Big Wall Lane, as applicable.
 - (b) If necessary for drainage purposes, then install a driveway culvert at the intersection of the driveway with School Creek Road or Big Wall Lane, as applicable.
 - (c) If the Lot is fenced along the road where the driveway is installed, then install gate(s) or a cattle guard at the end of the driveway closest to School Creek Road or Big Wall Lane, as applicable. Any gate(s) must be at least 25 feet from the property line of the Lot contiguous with School Creek Road or Big Wall Lane, as applicable.
- 4.11. Weed Control Program. Either participate in the Weed Control Program for the Property from time to time approved by the Board or, on an annual basis, take appropriate actions to control noxious weeds on the Owner's Lot.
- 4.12. Insurance. Obtain and maintain at all times at least the following insurance policies with companies licensed to issue insurance in Colorado:
- (a) Property Insurance. Broad form property insurance covering the full insurable value of all insurable improvements and personal property from time to time located on the Owner's Lot.
 - (b) Liability Insurance. Commercial general liability insurance with limits of at least \$1,000,000 per occurrence and in the aggregate.

Each Owner must provide evidence of its insurance to the Association upon request.

- 4.13. Indemnification. Indemnify, defend, and hold harmless the Association, its officers and directors, the ACC and its members, and all other Owners from all claims of any person(s) for personal injury or death or property damages occurring on the Owner's Lot, or occurring within any Common Element, caused by the Owner, its contractors, agents, employees, guests, invitees, tenants, and Mortgagees.

ARTICLE 5.

USE AND OCCUPANCY RESTRICTIONS

- 5.1. Use. Each Lot and any improvements thereon may be used only for single family residential and related agricultural purposes.
- 5.2. Minerals. No portion of the Property may be used for the purpose of mining, quarrying, drilling, boring, or exploring for oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth.

- 5.3. Dwellings and Accessory Buildings. No Owner may construct more than five buildings on any Lot. Permitted buildings are limited to the following:
- (a) Principal Dwelling and Garage. One single family residential Dwelling with at least 1,500 square feet, but not more than 4,500 square feet, of interior, heated floor area, with either an attached or detached garage that will accommodate at least two, but not more than four, passenger vehicles. Any detached garage counts as one accessory building. A principal Dwelling with an attached garage counts as one building, but a heated garage does not count against the minimum and maximum numbers in the first sentence of this Section 5.3(a). The principal Dwelling must be one of the first three buildings built on the Lot.
 - (b) Accessory Buildings. Permitted accessory buildings are limited to the following:
 - (i) One detached guest quarters with at least 800 square feet (subject to the last sentence of this Section 5.3(b)(i)), but not more than 2,000 square feet, of interior, heated floor area. Any guest quarters with 1,000 square feet or more of interior, heated floor area must include an attached garage with space for at least one, but not more than two, passenger vehicle(s). Guest quarters may be used only as (A) temporary dwelling quarters while a principal Dwelling is being designed or constructed, (B) as a home office/studio, or (C) as a guest residence. If the guest quarters is the first residential building on the Lot, then it must have at least 1,000 square feet of interior, heated floor area.
 - (ii) Barns, greenhouses, sheds, and kennels or other animal facilities.
 - (iii) Movable tool sheds or tool buildings not to exceed 160 square gross square feet. No movable building may be located in a Sensitive Building Zone or within 200 feet of any Lot line.
 - (iv) The total square footage of all accessory buildings may not exceed an aggregate of 4,500 square feet for all roofed areas. No individual accessory building may exceed 2,500 square feet of roofed area.
 - (v) Swimming pools and tennis courts may be built only with the prior approval of the ACC, which approval may include landscaping required by the ACC. Fencing/screening for tennis courts may not exceed nine feet high and must be constructed of vinyl coated or painted wire fencing and poles (green or black coatings only).
 - (vi) Play equipment is not a building for purposes of this Declaration unless it includes a roofed area of more than 150 square feet. Play equipment may not exceed the height limitations for buildings or be placed in any Sensitive Building Zone or within 200 feet of any Lot line.
 - (vii) All accessory buildings must be architecturally compatible and harmonious with the principal Dwelling on the Lot.
 - (c) Setback. No building of any kind may be erected within 25 feet of any Lot line.

- 5.4. Nuisance. No activities may be conducted on any Lot that constitute a nuisance under applicable laws of Huerfano County or the State of Colorado or as determined by the Board.
- 5.5. Snowmobiles, ATVs, Etc. No Owner may use, or allow its guests or tenants to use, snowmobiles, dune buggies, motorcycles, motorbikes, or All Terrain Vehicles within the Property except (i) on the Owner's Lot, (ii) on Big Wall Lane, or (iii) on another Lot, but only with the prior consent of the Owner(s) thereof.
- 5.6. Fire Regulations. Owners must comply with all applicable fire regulations of Huerfano County and the State of Colorado, and any Rules, with respect to open fires.
- 5.7. Outdoor Storage. The following may be located, stored, or kept on any Lot only in an enclosed building or buried underground or if screened from view from adjacent Lots and roads in a manner approved by the Board:
- (a) Water and other tanks (excluding propane tanks) and sewage disposal or treatment systems or devices. Above grade propane tanks that are not enclosed with a fence or other visual screen must be painted so as to blend in with the surrounding area.
 - (b) Lumber (other than split and stacked firewood) and other building materials.
 - (c) Operative or inoperative recreational vehicles, campers, boats, snowmobiles, motorcycles, motor bikes, tractors, and other vehicles and trailers; but:
 - (i) recreational vehicles and campers (whether the same or different recreational vehicles and campers) may be parked outdoors on a Lot for no more than a cumulative total of 60 days in each calendar year; and
 - (ii) passenger vehicles may be parked in driveways, designated parking areas, and in front of Dwellings and garages.
 - (d) Compressors and fans for air conditioning systems, but window or roof mounted air conditioners are not permitted.
- 5.8. Recreational Vehicles, Campers, and Other Temporary Buildings. Recreational vehicles, campers, and other temporary buildings on any Lot may not be used for dwelling purposes; but, tents, tepees, recreational vehicles, and campers may be used for temporary camping purposes up to a maximum of 60 days in each calendar year.
- 5.9. Mobile Homes. No mobile homes are permitted within the Property for any purpose, even if proposed to be attached to a permanent, non-mobile foundation.
- 5.10. Animals. Dogs, cats, birds, and other domestic pets (and horses and other farm animals, only with the prior approval of such animals by the Board and subject to any Rules related thereto adopted from time to time by the Board) are allowed if they are not kept, bred, or maintained for any commercial purpose.

- 5.11. Hunting. Hunting is not permitted on the Property, except that Owners and their guests and invitees may hunt on their Lots and on Lot(s) owned by others, but only with the prior consent of the Owner(s) thereof. Each hunter must have a valid hunting license and comply with all other applicable rules and regulations of the Colorado Department of Wild Life relating to hunting.
- 5.12. Rentals. A principal Dwelling (excluding any guest quarters) may be rented to third parties for periods of 30 days or more only for single family residential purposes. No other building on any Lot may be rented for any time period; but, guest quarters may be occupied by salaried caretaker(s). Each lease (including a lease for occupancy of guest quarters by caretaker(s)) must be in writing and require that the tenant acknowledge receipt of a copy of this Declaration and that the tenant is responsible for compliance with all applicable provisions of this Declaration while occupying the Dwelling. The tenant's failure to comply with the applicable provisions of this Declaration must constitute a default under the lease giving the Owner(s) the right to terminate the lease.
- 5.13. Excavation. No excavation may be made except in connection with construction of improvements approved by the ACC as required under this Declaration. For purposes of this Section, "excavation" means any disturbance of the surface of the Lot (except to the extent reasonably necessary for landscaping or for repair of existing underground utilities) that results in removal of earth, rock, or other substances to a depth of more than 18 inches below the natural surface of the Lot.
- 5.14. Drainage. No building or other structure may be constructed on any drainage easement as shown on the Plat unless written permission to construct the building is first obtained in writing from the holder of the easement and the ACC. Storm water from buildings and pavement on each Lot must be directed by pipe or swale to the nearest natural waterway on the Lot in a manner that is not detrimental to the neighboring property. Storm water originating from the natural watersheds of adjacent property must be accommodated and transmitted through the Lot to an existing natural watershed.

ARTICLE 6.

THE ASSOCIATION

- 6.1. General Purposes. The Association, through the Board and from time to time by the Manager, if any, shall perform Association functions, including holding and managing property as provided in this Declaration so as to further the interests of Owners. The Association has all powers necessary or desirable to effectuate those purposes, as more specifically enumerated herein, in the Association Articles, and in the provisions of § 39-33.3-302(1) of the Act. It also has the power to do the following:
- (a) Adopt and amend Bylaws, Design Rules, and Rules.
 - (b) Adopt and amend budgets for revenues, expenditures, and reserves and collect Assessments from Owners.
 - (c) Hire and terminate Managers and other employees, agents, independent contractors, attorneys, accountants, and other consultants.

- (d) Institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Association, this Declaration, or the Property.
- (e) Make contracts and incur liabilities.
- (f) Regulate the use, maintenance, repair, replacement, and modification of Common Elements and adopt and modify Rules related thereto.
- (g) Cause additional improvements to be made as part of the Common Elements.
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that Common Elements may be conveyed or subjected to a security interest only pursuant to § 38-33.3-312 of the Act.
- (i) Grant easements, leases, licenses, and concessions on, over, and under the Common Elements, subject to the rights of Owners under this Declaration.
- (j) Impose and receive any payments, fees, or charges for the use, rental, or operation of the General Common Elements as assessments described in §§ 38-33.3-202(1)(b) and (1)(d) of the Act.
- (k) Impose charges for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the Owners' duties and the Association's rights under this Declaration, regardless whether suit is initiated, and, after notice and an opportunity to be heard, levy reasonable fines for violations of this Declaration, the Bylaws, the Design Rules, and the Rules, if any.
- (l) Impose reasonable charges for the preparation of statements of unpaid assessments or other estoppel certificates requested by any Owner.
- (m) Provide for the indemnification of its officers, the Board, and the ACC and its members and maintain directors and officers liability insurance and other liability insurance as deemed necessary or desirable by the Board.
- (n) Exercise any other powers conferred by this Declaration, the Bylaws, the Association Articles, or the Act.
- (o) Exercise all other powers that may be exercised in this State by legal entities of the same type as the Association.
- (p) Maintain in good condition and repair, or replace as necessary, any drainage structure or facilities, roads, easements, rights of way, fences, and other properties and Common Elements of the Association, including necessary snowplowing of Big Wall Lane.
- (q) Upon approval by the Board, accept title to any real or personal property, leasehold, or other property interests within the Property conveyed to it.
- (r) Exercise any other powers necessary or desirable for the governance and operation of the Association as determined by the Board.

- 6.2. Membership. Pursuant to the provisions of § 38-33.3-301 of the Act, every record Owner of a Lot is entitled and required to be a member of the Association. If title to a Lot is held by more than one person, then the membership related to, and the vote for, the Lot will be shared by all those persons in the same proportionate interests and by the same type of tenancy in which the title to the Lot is held. Each membership is appurtenant to the Lot upon which it is based and will be transferred automatically, and may not be transferred other than, by conveyance of that Lot. No person or entity other than an Owner may be a member of the Association.
- 6.3. Voting. Subject to change only as specified in Section 2.6, each Lot is entitled to one vote in all matters related to this Declaration and the Association.
- 6.4. Meetings of Owners. The provisions of the Bylaws govern meetings of the Owners.
- 6.5. Board. Pursuant to § 38-33.3-303 of the Act, the affairs of the Association will be governed by the Board under the Bylaws and this Declaration.
- 6.6. Rules. The Board may from time to time adopt and modify policies, procedures, and rules and regulations (collectively, as amended from time to time, **Rules**) governing the use of the Lots and the Common Elements to, among other things, promote safety and improve the quality of the living environment within the Property.
- 6.7. Records. The Association shall keep, or cause to be kept, detailed and accurate books and records. Any Owner may inspect and copy the Association's books and records, at no cost to the Association, upon reasonable prior notice to the Association.
- 6.8. Enforcement. The Association, through its Board, has the primary right to enforce the provisions of this Declaration. The Association must take appropriate enforcement actions upon written direction from Owners holding at least a majority of the votes in the Association. The enforcement remedies that may be taken by the Board against any Owner who defaults in the performance of obligations under this Declaration or the Act (each a **Defaulting Owner**) and does not cure the default within 30 days after notice from the Board to the Defaulting Owner specifying the default include, without limitation, the following:
- (a) Suspension of Voting Rights. Suspend the voting rights of Defaulting Owner(s) until the default is cured.
 - (b) Curative Rights. Cure, or cause to be cured, the default.
 - (c) Legal Proceedings. Take legal proceedings against Defaulting Owner(s), including injunctive relief, to enforce compliance and obtain damages for the noncompliance.
 - (d) Fines. Levy a fine, not to exceed \$50 per day against each Defaulting Owner for each day each default remains uncured, up to an aggregate maximum of \$1,500 per Lot, with both the fine and the maximum limit being subject to adjustment from time to time by the Board.
 - (e) Other Remedies. Enforce any other remedies available to the Board under applicable laws.

- (f) Enforcement Special Assessments. Charge the costs incurred in connection with the cure of the default (including reasonable legal costs and expenses and any other enforcement costs), any damages for the noncompliance to the Defaulting Owner(s), and a fifteen percent (15%) administrative charge (collectively, the **Enforcement Costs**) as an Enforcement Special Assessment under Section 7.6(c).

6.9. Disputes Among Owners.

- (a) Complaint. If any Owner has a complaint against any other Owner(s) related to the obligations of the Owner(s) under this Declaration, then, prior to taking any other action of any kind against any other Owner(s), the complaining Owner must submit the dispute to the Board for resolution by the Board by giving notice to the Board and the Owner(s) against whom the complaint is made specifying in detail the nature of the complaint.
- (b) Response. Within 15 days after receipt of the notice of the complaint, each Owner against whom the complaint is made must submit a detailed response to the Board and the complaining Owner(s) about the complaint.
- (c) Hearing. The Board may hold a hearing with the involved Owners at which each involved Owner will be allowed to make a brief presentation to the Board concerning the dispute.
- (d) Decision. Within 30 days after the latter of its receipt of the last response or any such hearing, the Board shall give notice to all involved Owners specifying its determination as to the validity of complaint and any cure the Owner(s) against whom the complaint was made will be required to complete. The decision of the Board may be appealed to be determined at a special meeting of the Owners called for such purpose.
- (e) Cure. Any required cure must be completed within 30 days after the date of the Board's or Owners' decision, unless the cure cannot be reasonably completed within the 30-day period, in which case the Owner(s) must commence the cure promptly and complete the cure diligently.

- 6.10. Association as Attorney in Fact for Owners. The Association is hereby irrevocably appointed attorney in fact for the Owners, and each of them, to: (i) manage, control, and deal with the Property, and the beneficial use and interest of each Owner in the Common Elements, so as to permit the Association to fulfill its duties and obligations under this Declaration and exercise its rights under this Declaration; (ii) represent the Property and the interest of any Owner or Owners in any litigation, in the name of any or all Owners as a representative party; (iii) deal with the Property upon its destruction or obsolescence as hereinafter provided; and (iv) grant easements through any portion of the Common Elements. The acceptance by an Owner of title to a Lot will be deemed to constitute an appointment of the Association as attorney in fact as provided above and hereinafter.

- 6.11. Indemnification. The Association shall indemnify, defend, and hold harmless every past and present officer and director of the Association and the ACC and its past and present members against any and all expenses, including legal fees and costs, reasonably incurred by or imposed upon them in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he or she may be a party by reason of being or having been an officer or director or a member of the ACC. None of them will be liable for any mistake of judgment, negligent or otherwise, except for their own individual gross negligence, willful misfeasance, malfeasance, misconduct, or bad faith. None of them will have any personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that they may also be Owners and be liable for Assessments), and the Association shall indemnify, defend, and hold harmless each such of them from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein is not exclusive of any other rights to which any of them, past or present, may be entitled.

ARTICLE 7.

ASSESSMENTS

- 7.1. Obligation to Pay Assessments. Each Owner of a Lot by acceptance of title to the Lot, whether or not it is so expressed in the document by which the Owner acquired title to the Lot, is deemed to covenant and agree with all other Owners and with the Association to pay Assessments to the Association as specified in this Declaration.
- 7.2. Common Expenses. Common Expenses include: expenses of administration and management; premiums for all insurance the Association is required or permitted to maintain pursuant hereto; common utility services; repairs, renovations, and maintenance to the General Common Elements, including maintenance and plowing of roads and other easements and rights of way; security services; wages for Association employees; legal and accounting fees; expenses of performance of the functions of the ACC; any deficits remaining from a previous period; the creating of reasonable contingency and reserve funds for both General Common Expenses and for BWL Common Expenses as determined by the Board; reasonable funds for betterments; and any other expense and liabilities that are incurred by the Association for the benefit of the Owners under or by reason of this Declaration.
- 7.3. Annual Common Expenses Budget. No later than 30 days prior to each annual meeting of the Owners, the Board shall deliver a proposed Common Expenses budget for the following calendar year to all Owners. The proposed budget must show General Common Expenses and BWL Common Expenses separately. The notice may include a resolution adopting the budget and a ballot to be submitted by mail or e-mail to the Association for voting purposes at the meeting. Unless at that meeting Owners holding at least a majority of all votes for all Lots (with respect to approval of the General Common Expenses) or of the votes for all BWL Lots (with respect to the BWL Common Expenses) reject the budget, by mailed or e-mailed ballot or by vote in person or by proxy at the meeting, the budget is deemed adopted, whether or not a quorum is present. If a proposed budget is rejected in full; or if only the General Common Expenses or the BWL Common Expenses are rejected, but not both; then the budget last adopted or deemed adopted by the Owners (or the applicable portion thereof) will

continue in effect until the applicable Owners adopt a subsequent budget (or the applicable portion thereof) proposed by the Board; however, Owners holding at least a majority of the votes may approve one or more amendment(s) to the proposed budget.

7.4. Annual Common Assessments.

- (a) General Common Assessment. The General Common Assessment for each calendar year is equal to the amount of General Common Expenses shown in the adopted budget for that calendar year. The Owner(s) of each Lot are personally liable for the Allocated Interest for their Lot.
- (b) BWL Common Assessment. The BWL Common Assessment for each calendar year is equal to the amount of BWL Common Expenses shown in the adopted budget for that year. The Owner(s) of each BWL Lot is (are) personally liable for the BWL Common Assessment allocated to their BWL Lot. The BWL Common Assessment allocated to each BWL Lot is one-twelfth (1/12) of the BWL Common Assessment unless one or more BWL Lots have been replatted into a single Lot under Section 2.6, in which event, the replatted BWL Lot's pro rata share of the BWL Common Assessment will be the number of votes allocated to the replatted Lot divided by 12.

7.5. Notice and Payment of Annual Common Assessments. Within 30 days after the adoption of the Common Expenses budget for the following calendar year, the Association shall deliver a copy of the adopted budget to all Owners, together with a notice specifying the amount of the General Common Assessment and, if applicable, the BWL Common Assessment levied against each Lot. Each Common Assessment will be due and payable no later than the forty-fifth (45th) day after the date the Association sends its notice to the Owners. Each annual Common Assessment will bear interest at a rate established annually by the Board, not to exceed the lesser of twenty-one percent (21%) per annum or the highest rate permitted by applicable laws from the date it becomes due and payable, if not then paid. In addition to interest on any late payment, a late charge of one hundred dollars (\$100), or such higher amount as may be approved by the Board from time to time, will be payable for each past due Common Assessment. Failure of the Association to give timely notice of any Common Assessment, as provided herein will not affect the liability of the Owner(s) of any Lot for such Common Assessment, but the date when payment becomes due in such case will be deferred to a date 45 days after the notice is sent.

7.6. Special Assessments. Special Assessments include the following:

- (a) Common Special Assessments. In addition to the annual Common Assessments, the Association, through its Board, may levy at any time a **Common Special Assessment** payable over such period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of construction or reconstruction, repair or replacement of any capital improvements located or to be located upon the General Common Elements of the Ranch that benefit all Lots. Any Common Special Assessment will be levied against all Lots in the same manner as General Common Assessments and may only be levied after approval by Owners holding at least a majority of the votes of the Association at a meeting called for such purpose.

- (b) BWL Special Assessment. In addition to the annual Common Assessments and any Common Special Assessment, the Association, through its Board, may levy at any time a **BWL Special Assessment** payable over such period as the Board may determine, for the purpose of defraying, in whole or in part, the cost of construction or reconstruction, repair or replacement of any capital improvements located or to be located upon the General Common Elements of the Ranch that benefit only BWL Lots. Any BWL Special Assessment will be levied against all BWL Lots in the same manner as BWL Common Assessments and may only be levied after approval by BWL Owners holding at least a majority of the votes allocated to the BWL Lots at a meeting called for such purpose.
- (c) Enforcement Special Assessments. If an Owner becomes a Defaulting Owner and the Board elects to exercise its rights under Section 6.8 to cure the default, the Board may levy an **Enforcement Special Assessment** against Owner's Lot in the amount of the Enforcement Costs.
- (d) Payment of Special Assessments. The Board has the power and authority to determine how, where, and when all Special Assessments will be payable. Each Special Assessment will bear interest at a rate established annually by the Board, not to exceed the lesser of twenty one percent (21%) per annum or the highest rate permitted by applicable laws from the date it becomes due and payable, if not then paid. In addition to interest on any late payment, a late charge of one hundred dollars (\$100), or such higher amount as may be approved by the Board from time to time, will be payable for each past due Special Assessment.

7.7. Excess Reserve Funds. The Board may, but is not required to, distribute to the Owner(s) of each Lot after the end of each calendar year a pro rata share of any funds held in any reserve account in excess of amounts estimated by the Board to be necessary to fully fund the reserve account for future needs.

ARTICLE 8.

LIEN FOR NONPAYMENT OF ASSESSMENTS

- 8.1. Establishment of Lien. Pursuant to § 38-33.3-316 of the Act, the Association has a statutory lien against a Lot for any Assessment levied against a Lot and unpaid past its due date or fines imposed against its Owner(s) from the date the Assessment or fine becomes due. In addition, fees, charges, late charges, legal fees, collection costs, fines, and interest charged under this Declaration or as allowed by the provisions of the Act are enforceable as an Assessment. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the date the first installment becomes due and is not paid.
- 8.2. Priority of Lien. The lien for unpaid Assessments or fines is prior to all other liens and encumbrances on a Lot except:
 - (a) Liens and encumbrances recorded before recordation of this Declaration.
 - (b) A security interest on the Lot that was recorded before the date on which the Assessment or fine sought to be enforced became delinquent.

- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot.

This Section 8.2 does not affect the priority of mechanics' or material men's liens or the priority of liens for other Assessments made by the Association. A lien under this Section is not subject to the provisions of C.R.S. § 15-11-201.

- 8.3. Notice of Lien. The Association may prepare a written notice setting forth: (i) the amount of any unpaid Assessment or fine, including accrued interest, fees, and late charges, and (ii) the name(s) of the nonpaying Owner(s) and the legal description of their Lot. The notice must be signed and acknowledged on behalf of the Association and may be recorded in the office of the Clerk and Recorder of Huerfano County, Colorado. Pursuant to C.R.S. § 38-33.3-316, recording of this Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for Assessment or fine is required. The lien may be enforced by foreclosure of the Lot owned by the defaulting Owner(s) by the Association in like manner as a mortgage on real estate. The Association is entitled to costs and reasonable legal fees incurred in a judgment or decree in any action or suit brought by the Association. The Association is entitled to all other remedies allowed by law or at equity. The Owner(s) is (are) required to pay to the Association any Assessment(s) for their Lot as the same become(s) due during the period of foreclosure and the Association is entitled to the appointment of a receiver to collect the same.
- 8.4. Homestead Exemption. Each Owner hereby agrees that the Association's lien on its Lot for Assessments is superior to the homestead exemption provided by §§ 38-41-201, et seq. of the Act. Each Owner hereby agrees that the acceptance of a deed or other instrument of conveyance to any Lot within the Property will signify the Owner's waiver of any homestead right as against the Association only.
- 8.5. Release of Lien. A lien for nonpayment of any Assessment will be released upon full payment of all sums secured thereby by recording in the appropriate County records a Release of Lien executed by a member of the Board; except that a director cannot release a lien on a Lot owned by that director.
- 8.6. Personal Obligation of Owner. Each Assessment levied against each Lot is the personal and individual debt of the Owner(s) of the Lot at the time the Assessment is made, on a joint and several basis. Suit to recover a money judgment for unpaid Assessments, and costs of suit and legal fees, are maintainable without foreclosing or waiving the lien securing same. No Owner may exempt itself from liability for its share of the Common Assessments or any Special Assessment by waiver of the use or enjoyment of any of the Common Elements or by abandonment of its Lot.
- 8.7. Estoppel Certificate. Within 14 business days after its actual receipt of a written request therefor, the Association shall deliver to a requesting Owner or requesting Mortgagee an estoppel certificate specifying (i) the amount of any unpaid Assessments currently levied against the Lot(s) that is (are) the subject of the request and (ii) any defaults under this Declaration by the Owner(s) of the Lot(s) known to the Association. Each person requesting an estoppel certificate must include with its request a \$50.00 fee payable to the Association. This \$50.00 fee is subject to increase by the Board at the beginning of each decade. If the fee is paid and the Association does not timely furnish the requested estoppel certificate, then the Association may not assert a priority lien upon

the subject Lot(s) for any unpaid Assessment(s) due as of the date of the request. Each estoppel certificate will be conclusive in favor of persons who rely thereon in good faith.

- 8.8. Liability for Common Expenses Upon Transfer of Lot is Joint and Several. The grantee of a Lot, except a first Mortgagee who acquires a Lot by foreclosure or by a deed in lieu of foreclosure, will be jointly and severally liable with the grantor for all unpaid Assessment(s) levied against the Lot up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Upon written request, any prospective grantee will be entitled to an estoppel certificate as set forth in Section 8.7.

ARTICLE 9.

ARCHITECTURAL CONTROL COMMITTEE

9.1. Architectural Control Committee or ACC.

- (a) Members; Meetings. The ACC will consist of not less than three nor more than five Owners appointed (and removed) from time to time by the Board at meeting(s) called for that purpose. The ACC shall hold periodic meetings as required. A quorum for purposes of any meeting is a majority of the ACC members. The approval of a majority of members present is necessary for any decision of the ACC. The ACC may elect a chairman and recording secretary and adopt any procedural rules and regulations it may, in its discretion, deem appropriate.
- (b) Review of Plans. The ACC must review and approve the proposed Plans for any Dwelling, guest quarters, studio, separate garage, barn, shed, or other structure to be constructed, modified, or replaced within the Property, and for any landscaping to be installed on any Lot in connection with the construction of any Dwelling thereon, before any work may be commenced on the structure.
- (c) Consultants. The ACC may retain an architect, engineer, or other consultant as it deems necessary to assist it in reviewing any proposed Plans submitted to it. The Owner(s) submitting the Plans will be responsible for the costs incurred by the ACC, up to a maximum of the amount of the deposit referenced in Section 9.1(d).
- (d) Plans Review Deposit. As a condition to submitting any Plans for a Dwelling to the ACC for its review, the Owner(s) of the Lot must deposit the sum of \$1,000 with the ACC. For other construction requiring approval by the ACC, the ACC may require a deposit equal to the lesser of \$1,000 or ten percent (10%) of the estimated project costs. This amount is subject to increase by the Board no more often than once in each 5 calendar year period. Each deposit will be returned by the ACC only after completion of construction in compliance with the approved Plans and after recovery by the Association of the costs of repairs of damage to property or roads caused by construction activities and the costs of any consultant(s) retained by the ACC under Section 9.1(c). An Owner's repair obligations under Section 4.6 are not limited to the amounts of the deposits required in this Section 9.1(d).

- (e) Decisions Final. Any decision of the ACC is final, subject only to appeal as specified in Section 9.3(d).
- 9.2. Design and Building Requirements. The Property consists of 20 Lots and the Common Elements. It is the intent of this Declaration to foster a community that is harmonious with the surrounding topography and vegetation and that maximizes the view from each Lot. Accordingly, the Board may promulgate Design Rules, and the ACC shall act, to govern the construction and maintenance of all improvements upon the Property in order to preserve and promote the best interests of the Owners. All improvements must conform to State and Local building codes.
- 9.3. Procedure for Approval of Plans.
- (a) Submission to ACC. Prior to construction, alteration, modification, or replacement of any structure on any Lot, the Owner(s) of the Lot must submit to the ACC four complete sets of Plans for the structure, including the following:
- (i) Grading and Landscaping Plan. Detailed grading, erosion protection, and landscaping (for Dwellings only) plan that addresses all erosion potentials from all permitted structures and driveway runoff, including water retention and ditch stabilization construction as necessary. This plan must show the size(s) and location(s) of retaining walls on the cut slopes and show how the same will be terraced and landscaped.
- (ii) Site Plan. A detailed site plan (which may be combined with a floor plan) clearly indicating both natural and finish grades for at least 50 feet surrounding each proposed structure and finish grades and roof height(s) for any existing structure(s). Contours must be shown at intervals not greater than two feet. All driveways, paths, walls and other altered exterior areas must be shown. The site plan must specify the average, undisturbed, natural grade for the foot print of the proposed structure (the **Average Natural Grade Height**). The minimum scale must be 1" to 10'.
- (iii) Floor Plans. Floor plans of all levels with finish floor elevations relative to natural grade indicated must clearly identify all rooms/spaces as to use; materials of construction must be indicated and doors, windows, steps, plumbing fixtures, and the like accurately shown. The minimum scale must be at least 1/8" to 1"; 1/4" to 1" is preferred.
- (iv) Dwelling Plans. Construction plans showing the entire Lot, building site, the Dwelling, any other existing structures, orientation, driveways, gates, utility trenches, excavation fences, water consumption meter, septic tank and leach field or sewage treatment facility, all walls, all easements, including water and utility lines, landscaping, elevations and a sample of roofing materials and roof color.
- (v) Foundation Plans. The foundation plans for any structure built on a 30% or greater grade must be prepared, signed, and stamped by a structural engineer licensed in the State of Colorado.

- (vi) Other Information. Each set of Plans must show all materials to be used, the color scheme, the exterior lighting scheme, the name of the architect, and any other information the ACC may reasonably request.
- (vii) ACC Waivers. The ACC may, in its sole discretion, waive some of the above submission requirements for small structures, like sheds, that will have minimal visual impact on the view from adjacent Lots and roads.
- (b) Review by ACC. If the ACC receives an application it determines is not complete, then it must give the submitting Owner(s) prompt notice specifying the items needed to complete the application. The ACC has 30 days after the date it actually receives a complete application to approve or deny the application. If the ACC does not act within the 30-day period, then it is deemed to approve the application. If the ACC denies an application, then it must specify the reasons for the denial and suggest changes that may be incorporated into the Plans to resolve its objections.
- (c) Time Limit to Commence Construction. If the ACC approves any Plans and the Owner(s) does (do) not commence construction within one year after the date of the ACC's approval, then the Owner(s) must resubmit the Plans for reapproval by the ACC before commencing construction. The ACC may approve extensions of this one year period upon request.
- (d) Appeal of ACC Denial. If the ACC denies approval of any Plans, the Owner(s) who submitted the Plans may appeal the denial to the Board by giving notice of appeal to the Board. The Board must give notice of its decision to the Owner(s) specifying the reason for its decision within 30-days after it receives the notice of appeal. The decision of the Board is final and is not appealable.
- (e) Notice to Owners. The ACC will notify all Owners of adjacent Lots when it receives Plans for a Dwelling proposed to be constructed on any Lot.

9.4. Variances.

- (a) Request by Owner(s). Any Owner may request a variance from any Design Rules or any requirement of Article 10 by giving notice to the ACC specifying in detail the variance requested and the reasons for the variance.
- (b) Grant of Variance(s) by ACC. The ACC, in its sole discretion, may grant reasonable variances from any Design Rules or the requirements of Article 10 in order to prevent undue hardship or to overcome practical difficulties; but each variance must (i) conform with the intent and purposes of this Declaration, (ii) minimize developmental impact according to the spirit of this Declaration, (iii) not be materially detrimental or injurious to any other Owner, and (iv) be in writing. The ACC must approve or deny any variance request within 45 days after it receives the variance request. The decision of the ACC on any variance request is final unless it is appealed to the Board upon request of the affected Owner(s). Any decision of the Board on a variance is final and is not appealable.

- 9.5. Limitation of Liability. Neither the Association, any director, any officer, the ACC, nor any ACC member is responsible or liable to any Owner for damages of any kind as a result of the approval or denial of any Plans, including any defects in any Plans submitted, revised, or approved in accordance with this Article 9, or for any structural or other defects in any work done in accordance with any approved Plans. Approval by the ACC does not constitute a warranty or guarantee of the adequacy of the Plans, the safety of any improvements constructed in accordance with the Plans, or conformance of any Plans with building codes or other governmental laws or regulations.

ARTICLE 10.

ARCHITECTURAL GUIDELINES

- 10.1. Architectural Design. All structures must be designed so as to blend with and not dominate the natural beauty of the Property, with an architectural style that is sufficiently creative and innovative so as to enhance and protect the value, desirability, and attractiveness of the Property as a whole and enhance the quality of life within the Property. Any style of architecture is acceptable that utilizes natural building materials, like stone, wood, logs, brick, or stucco finishes that imitate the natural tones of the existing landscape. Simulated natural materials like lightweight decorative veneer stone, simulated log pine sidings, and textured fiberglass shingles will be approved only after careful consideration of the actual product submitted to the ACC. Light colors and garish colors are not permitted on any exterior portion of a structure, except that white or lighter tones of color complimentary to the exterior wall colors may be used under porches and on decks. Walls must be generally monotone in color with accents of natural, or approved simulated, building materials. No wall murals or exterior reflective glazing are permitted.
- 10.2. Roof Design. In recognition that roofs are often the most visible element of any structure, each roof must be designed, constructed, and maintained with special attention to its appearance as viewed from all points beyond the Lot. Features of roofs that will receive special consideration are shape, dimensions, surface texture, color, reflectivity, and orientation. Roof designs must conform to the following criteria:
- (a) Low Slope Roofs. Low slope (essentially flat roofs that are concealed behind parapets above the roof surface) are allowed. Low slope roofs must be concealed on all four sides except that appropriate drainage scuppers or canals may penetrate the parapet wall. All parapet walls must be constructed in the same plane and finished in the same manner as the exterior walls of the structure.
 - (b) Sloped Roofs. Exposed roof eave lines may be pitched within a range from 4:12 as the lowest to 12:12 as the steepest allowable. Roof designs that create an entirely roof dominated building design, like an "A" frame, are prohibited.
 - (c) Roofing Materials. Permitted roofing materials are metal, slate, and tile. Heavy duty, high quality, wind resistant (minimum 70 mph wind rating) composition shingles and simulated tile, slate, and shakes will be approved only after careful consideration of the actual product submitted to the ACC. Wood shingles of any kind are not permitted.

- (d) Roof Colors/Finishes. No shiny or reflective roof finishes are permitted. Permitted roof colors are muted browns, dark maroons, dark reds, dark tans, dark greens, matte black, dark grays, and charcoal.
- (e) Roof Fixtures. Vents, gutters, chimneys, and all other roof top vents and equipment must be painted with a non-reflective coating in a color that blends with the color of the roof, or in neutral earth tones that approximate the same color as the predominate color of the walls on the structure where the equipment is located.

10.3. Structures Outside the Sensitive Building Zones. Structures outside the Sensitive Building Zones must satisfy the following requirements:

- (a) Height.
 - (i) No roof line or parapet line at any point on any structure may exceed 27 feet in height above the Average Natural Grade Height as shown on the site plan provided to the ACC. Fireplace chimneys, vents, and other features that are required to be higher than the roofline to conform to the Uniform Building Code are not calculated into this height restriction; however, the height of these features must be limited to the minimum height allowed by the Uniform Building Code.
 - (ii) If the proposed height is higher than 20 feet above the Average Natural Grade Height, then the ACC may require that the Owner(s) erect white "story" poles showing the height at the four corners of the proposed structure footprint to better enable the ACC to determine how the proposed structure will appear from different vantage points. The ACC may require that the proposed height of the structure be lowered (to a minimum of 20 feet above the Average Natural Grade Height) or suggest an alternative site for the structure if it determines that the proposed height is obstructive to views from other Lot(s).
- (b) Offsets. Any building wall that is more than 20 feet high or more than 30 feet long must be interrupted by at least one window, porch, or deck, or at least one offset of at least three feet that reduces the overall impact of the wall; but these requirements do not apply to the back wall of a garage if the back wall does not face School Creek Road.

10.4. Height of Structures Within the Sensitive Building Zones. All the requirements of Section 10.3 apply, except that the maximum structure height is 20 feet above the Average Natural Grade Height.

10.5. Special Height Restrictions for Lots 10, 11, 12A, and 13A. In addition to the requirements of Section 10.3 or Section 10.4, as applicable, no structures may be constructed on Lots 10, 11, 12A, and 13A that exceed, and no landscaping may be planted that at maturity could exceed, the highest ridge line on the Lot, but the ACC may approve an appropriately designed gate structure and landscaping that is sufficiently removed from the crest of the highest ridge line.

- 10.6. Exterior Lights. No exterior light fixtures may be installed upon any Lot without prior approval by the ACC. All lighting must be subdued and not directed towards any adjacent Lot. Lighting for tennis courts and swimming pools must be turned off no later than 10 p.m., local time. If the Board determines that any exterior light violates these requirements, the Board may require removal of same at the expense of the Owner(s) of the Lot.
- 10.7. Retaining Walls. Owners must build retaining walls on their Lot as necessary to prevent erosion or for re-vegetation. All retaining walls must be constructed of materials approved by the ACC that are compatible with those allowed for construction of exterior walls of the principal Dwelling.
- 10.8. Fences and Walls. The location and design of and materials for any fence or wall to be constructed on any Lot must be approved by the ACC.
- (a) Perimeter/Internal Fences. Perimeter fences that meet State requirements for animal enclosure, or upgrades approved by the ACC, may be installed around the entire perimeter of a Lot. New, internal cross-fences (other than snow fences) are prohibited in areas where hay is being grown.
 - (b) Animal Enclosures. If an Owner intends to keep horses or other farm animals on its Lot and the Lot is not enclosed with a perimeter fence, then the Owner must fence off an enclosure for the animals as approved by the ACC.
 - (c) Height of Fences, Walls, and Hedges. Height of fences, walls, and hedges is limited to 6'0" average over a 30 foot length above the natural undisturbed grade measured vertically from any point along the length of the structure. This average will allow a structure to step gently with the slope of the land as necessary. The ACC may approve higher fences for gardens. Walls and fences attached to and associated with the design of a gate and gate support structures may exceed the height limitations for walls for a length not more than 20 feet on both sides of the gate structure. Solid fences, walls, or hedges are allowed for use in providing privacy, visual interest, and protection between the primary Dwelling and the guest quarters or other architecturally allied accessory structure like a garage.
 - (d) Replacement of Existing Fences. When an existing fence is replaced by a new fence, the existing fence must be removed promptly.
 - (e) Wildlife Friendly Fences. The Board recommends, but does not require, that Owners give consideration to constructing all new fences as wildlife friendly fences. See the following Website for information about wildlife friendly fences: <http://wildlife.state.co.us/NR/rdonlyres/20D5C775-55DD-4C6D-A5CF-C9B83FCEA69E/0/DOWFencingWithWildlifeInMind.pdf>
- 10.9. Lawns. No blue grass or other non-native grasses may be planted or maintained on any Lot except in a lawn planted adjacent to the principal Dwelling on the Lot. Owners may use any type of grass they desire for their lawn.

- 10.10. Landscaping and Ground Revegetation. Except for lawns as specified in Section 10.9, Owner(s) may only plant, and all areas on a Lot that are disturbed by construction activities and on which no structure or other improvement is located must be reseeded by the Owner(s) with, native grass(es) and flower(s).
- 10.11. Signs. No sign may be erected on any Lot that is visible from public or private roads or adjoining Lots except the following:
- (a) Address Sign. A tasteful sign showing the name(s) of the Owner(s) and address of the Lot at the entrance gate for the Lot.
 - (b) For Sale or Lease Signs. One temporary sign not larger than 2 feet by 4 feet advertising the Lot as being for sale or lease.
- No vehicle may be parked within the Property so as to become or support a sign.
- 10.12. Windmills, Solar Facilities, and Satellite Dishes. Antique windmills, low noise wind generator towers, solar panels, and other renewable energy facilities are allowed with siting, screening, height, and materials approved by the ACC as provided in C.R.S. § 38-30-168. Subject to applicable laws, satellite dishes are allowed with siting, height, and materials approved by the ACC.
- 10.13. Decks and Patios. No metal or fiberglass awnings or covers over deck or patio enclosures are permitted, except metal covers that blend with a metal roof on the main structure.
- 10.14. Artificial Vegetation. No artificial vegetation is permitted anywhere on any Lot except in an enclosed structure.
- 10.15. Structures at Intersections. No fence, wall, landscaping, or structure may be placed or planted on corner Lots that obstructs sight lines at intersections or 90 degree turns in any adjacent road.
- 10.16. Permanent Barbecues. Permanent barbecues are not permitted in front yards unless incorporated into a patio/deck in the front yard.
- 10.17. Monumental Sculpture. Monumental sculpture is permitted on any Lot only if a scaled depiction thereof is submitted to and approved by the ACC. The ACC has the absolute discretion to prohibit any monumental sculpture if the ACC determines that the sculpture would detract from, rather than enhance, the residential nature of the Property as a whole, or would otherwise adversely affect a neighboring Owner's view.

ARTICLE 11.

INSURANCE

- 11.1. Association's Obligations. The Association shall obtain and maintain at all times, to the extent obtainable at a reasonable price, policies of insurance written with financially responsible and able companies licensed to do business in Colorado covering the risks set forth below. The provisions of this Article may not be construed to limit the power or authority of the Association to obtain and maintain insurance coverages in addition to the

insurance coverages required hereunder, in amounts and in forms as the Board may deem appropriate from time to time. The types of coverages to be obtained, and risks to be covered, include the following:

- (a) Property Insurance. Property insurance on any insurable Common Elements, for causes of loss – special form; except that the total amount of insurance must not be less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. This insurance must include fire and extended coverage, vandalism and malicious mischief, war risk insurance, if available and if deemed appropriate by the Board, and other risks and hazards against which the Board deems it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect deductible provisions as in the Board's opinion are consistent with good business practices. All policies must contain a standard noncontributory mortgage clause in favor of each first Mortgagee, which provides that the loss, if any, thereunder, will be payable to the Association for the use and benefit of such first Mortgagees as their interests may appear.
- (b) Commercial General Liability Insurance. The Association shall obtain commercial general liability insurance in an amount deemed sufficient by the Board, insuring the Board, the Association, the Manager (if any), and their respective directors, officers, employees, agents, all persons acting as agents, and the ACC and its members. The Owners must be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements. The insurance must cover claims of one or more insureds, including liability for personal injuries and death, property damage, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Property.
- (c) Other. The Association may obtain insurance against any other risks the Board deems appropriate with respect to the Property, including Workers' Compensation Insurance, Employers Liability Insurance, Directors and Officers liability insurance, and Fidelity Insurance and any other insurance or bonding the Board determines is necessary to protect the Association and the Owners.

11.2. Form. All policies of insurance, to the extent obtainable, must contain waivers of subrogation and waivers of any defenses based on invalidity arising from any acts of an Owner and provide that the policies may not be cancelled or modified without at least 30 days' prior written notice to the Association and any holder of a first Mortgage on any Lot. If requested, duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, must be delivered to all first Mortgagees at least ten days prior to expiration of the current policies. All casualty insurance may be carried in blanket form naming the Association as the insured, as attorney in fact for all of the Owners, as their interests may appear, which policy or policies must identify the beneficial interests of each Owner (Owner's name and Lot designation) and first Mortgagee. Liability insurance policies carried by the Association must provide that:

- (a) Each Owner is an additional insured under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.
 - (b) The insurer waives its rights to subrogation under the policy against all Owners and all members of their households.
 - (c) No act or omission by any Owner, unless acting within the scope of authority as an officer or director of the Association, will void the policy or be a condition to recovery under the policy.
 - (d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risks covered by the policy, the Association's policy will provide the primary insurance.
- 11.3. Notice of Unavailability or Cancellation. If the insurance described herein is not reasonably available, or if any insurance policy is canceled or not renewed without a replacement policy having been obtained, the Association promptly shall cause notice of that fact to be delivered to all Owners.
- 11.4. Repair or Replacement. Any insurable portion of the Common Elements for which insurance is required that is damaged or destroyed must be repaired or replaced promptly by the Association unless:
- (a) Termination of Declaration. This Declaration is terminated.
 - (b) Illegality. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety.
 - (c) Vote of Owners. Owners holding at least eighty percent (80%) of the votes, including every Owner of a Lot assigned a Limited Common Element that will not be rebuilt, vote not to rebuild.
- The cost of the repair or replacement in excess of insurance proceeds and reserves is a Common Expense.
- 11.5. Waiver of Subrogation. The Association and each Owner waive and release each other, the Association's officers and directors, and all Mortgagees from all Claims for Losses of or to the Common Elements or any improvements or personal property on any Lot provided the Losses are covered by the releasing party's property insurance (or would have been covered by the releasing party's property insurance had it carried the property insurance required under this Declaration). The party incurring the Loss is responsible for any deductible under its property insurance. **Claim** means the assertion of a legal right, including a demand, legal action, suit, or proceeding, whether filed or threatened, alleging responsibility for a Loss. **Loss** means any actual or alleged liability, cost, or expense (including legal costs and expenses), loss, damages, judgment, or penalty of any nature or description suffered by a person or property, including (i) harm to, impairment, loss, or diminution in the value of tangible or intangible property or its use, and loss of business or revenues, or (ii) physical harm to or death of a natural person.

ARTICLE 12.

CASUALTY DAMAGE OR DESTRUCTION

- 12.1. Association as Attorney in Fact. Each Owner irrevocably constitutes and appoints the Association its true and lawful attorney in fact in its name, place, and stead for the purpose of dealing with any improvements constituting Common Elements upon damage or destruction of said improvements as hereafter provided. Acceptance by any Owner of a deed to a Lot will be deemed to constitute appointment of the Association as attorney in fact for that purpose.
- 12.2. General Authority of the Association. As attorney in fact, the Association has full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner as necessary or appropriate to exercise the powers granted in this Article. Repair and reconstruction of the improvements as used in this Article means restoring the improvements to substantially the same condition in which they existed prior to damage. The proceeds of any insurance collected will be available to the Association for the purpose of repair or reconstruction unless Owners holding at least sixty-seven percent (67%) of the votes in the Association and at least sixty-seven percent (67%) of the first Mortgagees (based on one vote per First Mortgagee) holding Mortgages on Lots agree not to rebuild the Common Elements in accordance with the provisions of this Article.
- 12.3. Damage to or Destruction of Common Elements. As soon as practicable after an event causing damage to, or destruction of, any insurable part of the Common Elements, the Association shall obtain complete reliable estimates of the costs of repair or reconstruction of that part of the Common Elements damaged or destroyed. As soon as practicable after receiving these estimates the Association shall diligently pursue to completion the repair or reconstruction of the part of the Common Elements damaged or destroyed. The Association may take all necessary or appropriate actions to effect repair or reconstruction, as attorney in fact, for the Owners, and no consent or other action by any Owner is necessary in connection therewith.
- 12.4. Funds for Reconstruction or Repair of Common Elements. The proceeds of any insurance collected will be available to the Association for the purpose of repair or reconstruction of the Common Elements subject to the provisions of this Article. If the proceeds of the insurance are insufficient to pay the estimated or actual costs of repair or reconstruction, the Association may levy in advance a Special Assessment sufficient to provide funds to pay the estimated or actual costs of repair or reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.
- 12.5. Disbursement of Funds for Repair or Reconstruction of Common Elements. The insurance proceeds held by the Association and the amounts received from the Assessments provided for in Sections 7.6(a) and (b) constitute a fund for the payment of costs of repair and reconstruction of the Common Elements after casualty. It will be deemed that the first money disbursed in payment for costs of repair or reconstruction will be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, as determined by the Board, the balance will be either (i) retained as a reserve for future repairs and replacements to the Common Elements or

(ii) distributed to the Owners in proportion to each Owner's undivided interest in the applicable Common Elements.

ARTICLE 13.

AMENDMENT AND TERMINATION

- 13.1. Amendment of this Declaration. Except as provided for by the provisions of §§ 38-33.3-101, et seq., of the Act, and in this Declaration, this Declaration, including the Maps, may be amended only by vote or agreement of Owners holding at least sixty-seven percent (67%) of the votes in the Association. Except as permitted by Colorado statute and as reserved and set forth herein, no amendment may increase the number of Lots or change the boundaries of any Lots or the Allocated Interests of a Lot or the uses to which any Lot is restricted, in the absence of unanimous, consent of all Owners. Any amendment to this Declaration or additional provisions added to this Declaration must be effected by the recording of a written instrument or instruments executed on behalf of the Association following a vote of the required number of Owners approving same.
- 13.2. Termination. Subject to Section 14.8, except in the case of a taking of all the Lots by eminent domain, this Declaration and the Common Interest Community created hereby may be terminated only by agreement of Owners holding at least sixty-seven percent (67%) of the votes in the Association. Any agreement of Owners to terminate must be evidenced by their execution of a termination agreement in the same manner as a deed, by the requisite number of Owners. The termination agreement must specify a date after which the termination agreement will be void unless it is recorded before that date. A termination agreement must be recorded in the office of the Clerk and Recorder of Huerfano County, Colorado, and will be effective only upon recordation. The terms of the termination agreement must comply with the provisions of § 38-33.3-218 of the Act with respect to termination and disposition of assets and proceeds of sale.

ARTICLE 14.

PROTECTION OF MORTGAGEES

- 14.1. Mortgage Permitted. Any Owner may encumber his Lot with a Mortgage.
- 14.2. Subordination. Except as provided in Article 8, and the provisions of § 38-33.3-316 of the Act, any lien created or claimed by the Association under the provisions of this Declaration is subject and subordinate to the rights of any Mortgagee holding a first Mortgage on any Lot made in good faith and for value, and no such lien will in any way defeat, invalidate, or impair the obligation or priority of such first Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien.
- 14.3. Effect of Breach. No breach of any provision of this Declaration will invalidate the lien of any first Mortgage made in good faith and for value, but all of the terms of this Declaration will be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.
- 14.4. Amendment. This Declaration may be amended only as specified in Article 13.

- 14.5. Foreclosure. The transfer of title to a Lot as the result of the exercise of a power of sale or a judicial foreclosure involving default under a first Mortgage will extinguish the lien for unpaid Assessments due and payable prior to the transfer of title to the Lot. No transfer of title to a Lot as the result of a judicial foreclosure or exercise of a power of a sale will relieve the new Owner, whether it be the beneficiary of the foreclosing Mortgage or another person, from the liability for any Assessments thereafter becoming due or from the lien thereof.
- 14.6. Non-Curable Breach and Curable Breach. Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu thereof, will not be obligated to cure any breach of this Declaration, the ramifications of which are not practical or feasible for the Mortgagee to cure. Any Mortgagee will, however, have the right to pay taxes or other charges that are in default and that may or have become charges against any Common Elements and will be entitled to pay overdue premiums on property insurance policies held by the Association, or secure new property insurance coverage for any Common Elements in case of a lapse of coverage.
- 14.7. Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or deed in lieu of foreclosure will be deemed to be a Mortgage made in good faith and for value and entitled to all of the rights and protection of this Article.
- 14.8. Federal Home Loan Mortgage Corporation and Federal National Mortgage Association Financing. Notwithstanding any and all provisions hereof to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (**FHLMC**) and the Federal National Mortgage Association (**FNMA**) to participate in the financing of the sale of Lots and the construction of Dwellings upon Lots, if the following provisions conflict with any other provisions of this Declaration, then these provisions will control:
- (a) A first Mortgagee at its request is entitled to written notification from the Association of any default by an Owner of a Lot encumbered by the Mortgage in the performance of the Owner's obligations under this Declaration, the Bylaws, and the Rules not cured within 60 days.
 - (b) The prior written approval of at least sixty-seven percent (67%) of the holders of first Mortgages (based on one vote per First Mortgagee) and the approval of at least sixty-seven percent (67%) of the votes of the Owners is required for the following:
 - (i) The termination of this Declaration, except for termination provided by law in the case of substantial destruction, condemnation, or eminent domain.
 - (ii) Any amendment to this Declaration, the Articles, or the Bylaws governing the following subjects:
 - (1) The percentage beneficial interests of the Owners in the Common Elements.
 - (2) Voting rights.

- (3) The fundamental purpose for which this Common Interest Community was created (like a change from residential use to commercial use).
 - (4) The reserve for maintenance, repair and replacement of General Common Elements.
 - (5) Property maintenance and repair obligations.
 - (6) Casualty and liability insurance or any other insurance or fidelity bond.
 - (7) Reconstruction in the event of damage or destruction.
 - (8) Rights to use the Common Elements.
 - (9) Imposition of any restrictions on an Owner's right to sell or transfer its Lot.
 - (10) Any provisions that expressly benefit mortgage holders, insurers or guarantors.
- (iii) The partition of any Owner's beneficial share in the Common Elements from the Owner's interest in its Lot.
 - (iv) A change of the pro rata interest or obligations of any Lot for purposes of:
 - (1) Levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards.
 - (2) Determining the pro rata share of beneficial ownership of each Lot in the Common Elements.
 - (v) Any action or omission of an act by the Association seeking to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements will not be deemed a transfer within the meaning of this subsection.
 - (vi) The uses of hazard insurance proceeds for losses to the Common Elements for other than repair, replacement, or reconstruction of the improvements thereon, except as may be provided by law.
 - (vii) The effectuation of any decision by the Association to terminate professional management and assume self management of the project.
- (c) Any holder of a first Mortgage on a Lot may examine the books and records of the Association by giving notice at least five business days prior to the examination.

- (d) If there is substantial damage to, or destruction of, any Lot or any part of the Common Elements, then the institutional holder of any first mortgage on the Lot will be entitled to timely notice of any such damage or destruction and no provisions of any documents establishing the Common Interest Community created by this Declaration will entitle the Owner of a Lot or other party to priority over such institutional Mortgage with respect to the distribution of any insurance proceeds.
- (e) If any Lot or portion of the Common Elements is made the subject of any condemnation or eminent domain proceeding or is otherwise acquired by a condemning authority, the institutional holder of any first Mortgage on a Lot will be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of this Declaration will entitle the Owner of the Lot, or other party, to priority over such institutional holder with respect to the distribution of the proceeds of any condemnation award of settlement.
- (f) The failure of any Owner to comply with the provisions of this Declaration, the Association Articles, and the Bylaws will give rise to a cause of action in favor of the holder of a first Mortgage on the Lot for the recovery of damages, or for injunctive relief, or both.
- (g) An adequate reserve fund for replacement of improvements in the Common Elements will be established and will be funded by the Common Assessments.
- (h) All taxes, assessments, and charges that may become liens prior to a first Mortgage under Colorado law, if any will relate only to the individual Lot encumbered and not to the Property as a whole.
- (i) The Association shall give FHLMC and FNMA notice in writing of any loss to or taking of, any portion of the Common Elements, if such loss or taking exceeds \$10,000.00 or if known damage to a Lot encumbered by a Mortgage purchased in whole or in part by FHLMC or FNMA exceeds \$10,000.00.
- (j) Any agreement for professional management of the Ranch or any other contract providing for services by the Original Declarant, will be terminable by either party without cause, or payment of a termination fee on 30 days' written notice and shall not exceed a contract term of one year, renewable by agreement of the parties for successive one year periods.
- (k) The provisions of this Article 14 control if there is any conflict between the provisions of this Article 14 and any other provisions of this Declaration.
- (l) In any circumstance where the approval of the holder of a Mortgage is sought hereunder, if the Mortgagee does not submit a response to any written request for approval within 30 days after it receives proper notice of the request, then approval will be deemed granted by the Mortgagee.

- 14.9. Notices and Approvals. The Association is not required to give notices to, or obtain approvals from, any Mortgagee unless the Association has actually received notice of the existence of the Mortgage, which notice must specify the name and address for notice purposes of the Mortgage. Any change of address notice by a Mortgagee will be effective 10 days after it is actually received by the Association.

ARTICLE 15.

MISCELLANEOUS

- 15.1. Duration of Declaration. All of the provisions contained in this Declaration will continue and remain in full force and effect until this Declaration is amended or terminated as specified in Articles 13 and 14.
- 15.2. Supplemental to Law. The provisions of this Declaration are in addition, and supplemental, to the Act, as it may be amended, and to all other provisions of law.
- 15.3. Notices, Etc. All notices, requests, consents, approvals, responses, and variances required or permitted under this Declaration must be in writing, and must be delivered as specified in the Bylaws.
- 15.4. Registration of Addresses by Owners. Each Owner must register its mailing address with the Association. Each Owner may register its e-mail address with the Association.
- 15.5. Successors and Assigns. This Declaration is binding upon and inures to the benefit of the Declarant, the Association, and each Owner, and the heirs, personal representatives, successors, and assigns of each of them.
- 15.6. Severability. Invalidity or unenforceability of any provision of this Declaration in whole or in part will not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.
- 15.7. Captions. The captions and headings in this Declaration are for convenience only and may not be considered in construing any provision of this Declaration.
- 15.8. No Waiver. Failure to enforce any provision of this Declaration does not operate as a waiver of that provision or of any other provision of this Declaration.
- 15.9. Rule Against Perpetuities. If any of the options, privileges, covenants, or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision will continue only until twenty one (21) years after the death of the last survivor of the living descendants of the former President of the United States, William Clinton, and the former Governor of Colorado, Roy Romer.
- 15.10. Violation as Nuisance. Every act or omission in violation of the provisions of this Declaration will constitute a nuisance and, in, addition to all other remedies herein set forth, may be abated or enjoined by the Association.

15.11. Owner's Obligations Continue. All obligations of each Owner under and by virtue of the provisions contained in this Declaration will continue, notwithstanding that it may have leased or rented an interest in its Lot as permitted herein, but the Owner of a Lot has no obligation for expenses or other obligations accruing after it conveys its Lot.

15.12. Interpretation. The words "include" and "including" do not exclude items not listed. Unless the context requires, singular includes the plural and plural the singular, and masculine, feminine, and neuter genders are interchangeable.

In witness hereof the Association hereby executes this Second Amended and Restated Declaration and Restrictive Covenants of Hole-In-The-Wall Ranch to be effective as of the Effective Date.

HOLE-IN-THE-WALL RANCH PROPERTY OWNERS' ASSOCIATION, INC., a Colorado nonprofit corporation

By: 
Ron Nielsen, President

State of Colorado)
) ss
County of Huerfano)

The foregoing instrument was acknowledged before me on October 25, 2011, by Ron Nielsen, President of Hole-in-the-Wall Ranch Property Owners' Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.
My commission expires: 8/25/2015


Notary Public, State of Colorado

