

RECORDING REQUESTED BY:
WHEN RECORDED RETURN TO:
Ronald Garfield, Esq.
Garfield & Hecht, P.C.
601 East Hyman Avenue
Aspen, CO 81611

SECOND AMENDMENT TO
SECOND RESTATED AND AMENDED DECLARATION
OF PROTECTIVE COVENANTS FOR WILDCAT RANCH

This Second Amendment to Second Restated and Amended Declaration of Protective Covenants for Wildcat Ranch ("Second Amendment") is executed and made effective this 1st day of January, 2006 (the "Effective Date") by Wildcat Ranch Association, a Colorado nonprofit corporation (the "Association").

RECITALS

A. Reference is made to the Second Restated and Amended Declaration of Protective Covenants for Wildcat Ranch recorded February 15, 1995 in Book 774 at Page 205 (Reception No. 379035) and Amendment thereto recorded October 13, 1999 (Reception No. 436583) of the Pitkin County Real Estate Records (collectively, the "Declaration").

B. Defined terms from the Declaration, such as Owner, Homestead, Eligible Mortgage Holder and Assessments, shall have the same meaning when used herein.

C. The purpose of this Second Amendment is to incorporate into the Declaration the amendments to CCIOA (as defined under Section 15.22 of the Declaration) recently adopted by the Colorado legislature (the "Recent Amendments"). While Wildcat Ranch is a preexisting common interest community and is only subject to the mandatory provisions of CCIOA, many of the mandatory provisions of CCIOA that apply to Wildcat Ranch have been revised under the Recent Amendments.

D. In accordance with the Recent Amendments which provide that not more than the affirmative vote of sixty-seven percent (67%) of the Owners shall be required in order to amend the Declaration, such requisite 67% of Owners have approved this Second Amendment as evidenced by consents on file with the Association. Additionally, there is no requirement to obtain the consent of any Eligible Mortgage Holders. The Owners hereby acknowledge that this Second Amendment does not adversely affect the marketability of title or materially diminish the value of any Homestead.

WITNESSETH

1. Article 3, Association Membership of the Declaration is amended by the addition of the following new Section 3.14:

"3.14 Books and Records.

(a) The Association shall keep as permanent records each of the following:

(i) minutes of all meetings of Owners and the Board;

- (ii) a record of all actions taken by the Owners or Board by written ballot or written consent in lieu of a meeting;
 - (iii) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association; and
 - (iv) a record of all waivers of notices of meetings of Owners and of the Board or any committee of the Board.
- (b) The Association shall keep a copy of each of the following records at its principal office:
- (i) the Articles and any amendments thereto;
 - (ii) the Declaration and any amendments thereto;
 - (iii) the Bylaws and any amendments thereto;
 - (iv) any resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations, and obligations of Owners;
 - (v) the minutes of all Owners' meetings, and records of all action taken by Owners without a meeting, for the past 3 years;
 - (vi) all written communications within the past 3 years to Owners generally as Owners;
 - (vii) a list of names and business or home addresses of its current Directors and Officers;
 - (viii) the Association's most recent annual report, if any; and
 - (ix) all financial audits or reviews of the Association during the immediately preceding 3 years.
- (c) The Association or its agent shall maintain a record of Homestead Owners in a form that permits preparation of a list of the names and addresses of all Homestead Owners, showing the number of votes each Homestead Owner is entitled to vote.
- (d) The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (e) All financial and other records shall be made reasonably available for examination and copying by any Homestead Owner and such Owner's authorized agents. The Association may charge a fee, not to exceed the Association's actual cost per page, for copies of Association records. As used herein, "reasonably available" means available during normal business hours, upon notice of five (5) business days, to the extent that: (i) the request is made in good faith and for a proper purpose; (ii) the request describes with reasonable particularity the records sought and the purpose of the request; and (iii) the records are relevant to the purpose of the request.

- (f) Once every 2 years the books and records of the Association shall be subject to review using Statements on Standards for Accounting and Review Services (defined below) or, upon the request of one-third of the Owners and provided that the Association has annual revenues or expenditures of at least \$250,000.00, a full audit performed in accordance with generally accepted accounting principals. The person selected by the Board to perform such review need not be a certified public accountant, except in the case of an audit. The results of such review or audit shall be made available to the Owners, upon request, not later than 30 days after its completion. ‘Statements on Standards for Accounting and Review Services’ refers to statements issued by the American Institute of Certified Public Accountants (AICPA) that relate to requirements for reviews that are not performed in accordance with generally accepted auditing standards.”

2. Article 3, Association Membership of the Declaration is amended by the addition of the following new Section 3.15:

“3.15 Disclosures to Owners.

- (a) Not less than once per calendar year, the Association shall provide to all Owners a written notice setting forth (i) the name, address and telephone number of the Association; (ii) the name, address and telephone number of the property manager or, if there is no property manager, the Association’s designated agent; (iii) the name of the common interest community; and (iv) the recording date and reception number of this Declaration. In the event any of the foregoing information changes after the Association has delivered to the Owners the notice described above, then within 90 days thereafter the Association shall provide to the Owners an amended notice containing updated information regarding each of the items listed in (i) through (iv) above.
- (b) Within ninety (90) days after the end of each fiscal year, the Association shall make available the following information for review by the Owners:
 - (i) the date on which the Association’s fiscal year begins;
 - (ii) the budget for the current fiscal year;
 - (iii) a list, by Homestead type, of all of the Association’s current Assessments, including both regular and special Assessments;
 - (iv) its annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
 - (v) the results of any financial audit or review for the fiscal year immediately preceding the current annual disclosure;
 - (vi) a list of all insurance policies carried by the Association, which

list shall include carrier name, policy limits, policy deductibles, any additional insureds and the expiration dates for such policies;

- (vii) all the Association's Bylaws, Articles and Association Rules;
 - (viii) the minutes of the Board and Owner meetings for the previous fiscal year; and
 - (ix) the Association's "Responsible Governance Policies" required to be adopted by the Act.
- (c) The disclosures required under this Section 3.15 shall be made at no cost to the Owners and shall be accomplished by one of the following means: (i) posting on an internet web page with accompanying notice of the web address via first-class mail or e-mail; (ii) maintenance of a literature table or binder at the Association's principal place of business; or (iii) mail or personal delivery."
3. Article 3, Association Membership of the Declaration is amended by the addition of the following new Section 3.16:
- "3.16 Owner and Board Education. At least once per calendar year, the Association shall provide at no cost, or cause to be provided at no cost, education to Owners as to the general operations of the Association and the rights and responsibilities of Owners, the Association and the Board under applicable law. Additionally, the Board may authorize, and account for as a common expense, reimbursement of Board members for their actual and necessary expenses incurred in attending educational meetings and seminars (specific to Colorado) on responsible governance of Owners' associations."
4. Section 3.6, Voting, of the Declaration is amended by the addition of the following language at the end of Section 3.6: "When any vote is taken by the Owners for the election of a Director, such election shall be held by secret ballot. In addition, upon the request of one or more Owners, a vote on any other matter affecting the common interest community on which all Owners are entitled to vote shall be conducted via secret ballot. The results of any vote taken by the Owners shall be counted by a neutral third person or any Owner who (i) is not a candidate for the Board, if such vote is for the election of Directors; (ii) attended the meeting at which the vote in question was taken; and (iii) was selected at random from a pool of two or more such Owners. In announcing the results of any such vote taken by the Owners by secret ballot, no identifying information shall be disclosed by the Association that would reveal how any particular Owner voted."
5. Article 5, Assessments, of the Declaration is amended by the addition of the following new Section 5.13:
- "5.13 Assessments Collected With Mortgage Payment. The Association may enter into an escrow agreement with the holder of a Homestead Owner's mortgage so that Assessments may be combined with the Homestead Owner's mortgage payments and paid at the same time and in the same manner; except that any such escrow agreement shall comply with any applicable rules of the federal housing administration, department of housing and urban development, veterans' administration, or other government agency."

6. Section 7.26, Trees and Landscaping, shall be amended in part by the addition of the following language after the phrase “Final P.U.D. Plan as applicable” at the end of Section 7.26: “Notwithstanding the foregoing, any provision of this Declaration or other document governing the Association and/or Owners that prohibits or limits xeriscape (as defined below), prohibits or limits the installation or use of drought-tolerant vegetative landscapes, or requires cultivated vegetation to consist exclusively or primarily of turf grass shall be unenforceable. As used herein, the term “Xeriscape” means the application of the principles of landscape planning and design, soil analysis and improvement, appropriate plant selection, limitation of turf area, use of mulches, irrigation efficiency, and appropriate maintenance that results in water use efficiency and water-saving practices.”

7. Section 7.32, Signs, shall be amended in part by the addition of the following language at the end of Section 7.32: “Notwithstanding the foregoing, the Association shall not prohibit any Owner from displaying an American flag, military service flag or political signage on that Owner’s Homestead, in a window of the Owner’s residence, or on a balcony or patio of such Homestead. The display of an American flag, military flag or political signage shall be restricted as follows:
 - (a) An Owner may place an American flag on that Owner’s Homestead, in a window of the Owner’s residence, or on a balcony or patio of the Owner’s Homestead; provided, however, no flag poles or supports shall be affixed to the exterior portions of the Homestead except in such areas as the Association may designate. No person shall display any American flag from any window, balcony or patio that is larger than 48” in length without the prior consent of the Association. No flag shall be displayed or hung from any balcony, window or on any Homestead in such a manner as to encroach into the sightline of any other Homestead in Wildcat Ranch. The Association may adopt any other reasonable rules regarding the placement and manner of display of the American flag.
 - (b) An Owner may place a military service flag bearing a star denoting the service of such Owner, or members of such Owner’s immediate family, in the active or reserve military service of the United States during a time of war or armed conflict on the inside of any window or door of the Owner’s Homestead. No such flag shall exceed 9 inches by 16 inches in size.
 - (c) Political signs promoting or opposing a candidate for office or a ballot issue may be displayed on an Owner’s Homestead or in a window of the Owner’s residence, not earlier than 45 days prior to the applicable election day and shall be removed within 7 days after such election. Not more than 1 sign per candidate, office or issue may be so displayed in a window and no such sign shall exceed 36 inches by 48 inches in size.”

8. Article 7, General Restrictions, shall be amended in part by the addition of the following new Section 7.35:

“7.35 Emergency Vehicles. Notwithstanding any other provision of this Declaration to the contrary, the Association shall not prohibit the parking of a motor vehicle by a Homestead Owner on a street, driveway, or guest parking area in the common interest community if the vehicle is required to be available at designated periods at the Owner’s residence as a condition of the Owner’s employment and all of the following criteria are met: (i) the vehicle has a gross vehicle weight rating of ten thousand pounds or less; (ii) the Owner is a bona fide member of a volunteer fire department or is employed by an emergency service provider; (iii) the vehicle bears an official emblem or other visible designation of the emergency service provider; and (iv) parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other Homestead Owners to use streets and driveways within the common interest community.”

9. Article 7, General Restrictions, shall be amended in part by the addition of the following new Section 7.36:

“7.36 Fire Prevention.

- (a) Notwithstanding any other provision of this Declaration to the contrary, the Association shall not prohibit the removal by a Homestead Owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the Homestead by the Colorado State Forest Service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the Homestead is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the Association before the commencement of work. The Association may require changes to the plan if the Association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable Association standards regarding slash removal, stump height, revegetation, and contractor regulations.
- (b) The Association shall not prohibit the replacement by a Homestead Owner of cedar shakes or other flammable roofing materials with nonflammable roofing materials for fire prevention or fire suppression purposes. The Association may specify reasonable standards for the color, appearance and general type of nonflammable roofing materials that are used to replace flammable roofing materials, but may not require the use of nonflammable materials that exceed the replacement cost of the flammable materials for which they are being substituted.”
10. Section 12.2, Amendments, of the Declaration is amended in part by replacing the “eighty percent (80%)” referenced in line 19 with the percentage of “sixty-seven percent (67%).”
11. Section 15.7, Rights of Eligible Mortgage Holders, of the Declaration shall be amended in part by the addition of a new subsection (g), which shall provide as follows: “If the Declaration requires Eligible Mortgage Holders to approve or consent to amendments, the Association shall send a dated, written notice and a copy of any proposed amendment by certified mail to each Eligible Mortgage Holder at its most recent address as shown on the recorded deed of trust or recorded assignment thereof. In addition, the Association shall cause the dated notice, together with information on how to obtain a copy of the proposed amendment, to be printed in full at least twice, on separate occasions at least one week apart, in a newspaper of general circulation in the county in which the common interest community is located. An Eligible Mortgage Holder that does not deliver to the Association a negative response within sixty (60) days after the date of the notice shall be deemed to have approved the proposed amendment.”
12. The following new Article 16 is hereby added to the Declaration:
- “16.1 Procedures for Dispute Resolution. Any and all disputes between an Owner and the Association (each may be referred to as an “Applicable Party”) that do not involve an imminent threat to the peace, health, or safety of the community (collectively, “Disputes”) shall be resolved in accordance with the procedures set forth in this Article XVI. By accepting a deed to a Homestead, each Owner agrees that the procedures for resolving Disputes set forth in this Article XVI shall be the exclusive procedures.

16.2 Procedure for Dispute Resolution. In the event that either the Association or an Owner (each, a “Complaining Party”) elects to pursue a Dispute as provided in Section 16.1 above, then the following procedure shall be followed by such party.

- (a) The Complaining Party shall first give written notice of the Dispute to the Applicable Party describing in reasonable detail the factual circumstances giving rise to the Dispute (the “Dispute Notice”). Within sixty (60) days after receiving a Dispute Notice, the Applicable Party and the Complaining Party shall meet to inspect, evaluate, investigate and discuss the facts and circumstances giving rise to the Dispute and shall attempt in good faith to resolve the Dispute.
- (b) If the Applicable Party and the Complaining Party are not able to resolve the Dispute following the applicable negotiation process described in Section 16.2(a) above, the Dispute shall be submitted to non-binding mediation. Such mediation shall be conducted by the Judicial Arbitrator Group (“JAG”) in Denver, Colorado, pursuant to mediation standards established by JAG. Such mediation shall be governed by the laws of the State of Colorado. The parties shall select a mediator and shall conduct and complete the mediation within 45 days after the date JAG is first contacted by either party. Notwithstanding anything to the contrary set forth herein, the mediator shall not have the authority to impose a settlement on the parties. If a mediation agreement is reached, it may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.
- (c) In the event the Complaining Party and Applicable Party are not able to resolve the Dispute after the mediation proceedings described above, the parties shall have the right to pursue any and all remedies in law and/or equity.”

