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HORSE RIVER RANCH

**DECLARATION OF PROTECTIVE
COVENANTS**



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DECLARATION OF PROTECTIVE COVENANTS FOR HORSE RIVER RANCH

This Declaration of Protective Covenants for Horse River Ranch (the "Declaration of Protective Covenants," or simply the "Declaration" or the "Covenants") is made as of the date of recordation by Summerset Land Group, Inc., a Colorado Corporation ("Declarant").

ARTICLE 1: GENERAL

1.1 **Property.** Declarant and other parties adopting these Covenants this date to encumber their respective properties are the owners of contiguous parcels comprising that certain tract of land in the County of Gunnison, Colorado, more particularly depicted on the Plat of the Property defined in Section 2.39 below and referred to herein as the "Property." Declarant intends to develop the Property as a planned ranching community of single-family residences located on land also used for ranching and agricultural purposes. Additional, contiguous property may be added to the Property as provided in this Declaration.

1.2 **Associate Member Parcel.** One additional contiguous property, referred to herein as Associate Member Parcel, is also now subject to certain rights, privileges and obligations provided in this Declaration. The Associate Member Parcel, and the Owner thereof, has been granted certain fishing rights and access rights in and to the Common Easements in and along Ohio Creek and the community ponds in the Property. The Associate Member Parcel and those limited rights, privileges and obligations in the Property are specifically set out in Exhibit B, attached hereto and incorporated herein by reference.

1.3 **Potential Member Parcel.** Any contiguous property or properties, described in Exhibit C, attached hereto and incorporated herein by reference, referred to herein as Potential Member Parcels, may hereafter be admitted to the Association as a full Member-owned Parcel defined below in Section 2.36. Any such Potential Member Parcel may be admitted to the Association as a full Member-owned Parcel by an Addendum to this Declaration, which must receive the approval and be signed by current Members of the Association representing at least sixty-six and two-thirds percent (66.67%) of the Shares. Any such approved and fully executed Addendum must then be recorded in the records of Gunnison County.

1.4 **Declaration Property.** All property identified in Exhibits A, B and C shall be referred to as the "Declaration Property."

1.5 **Association Property.** Association Property shall mean all the property, real and personal, including all easements conveyed to and owned by the Association and described in this Declaration and any stock in HRR Water Company, which may hereafter be transferred or conveyed to and owned by the Association. Any real property interests may include, without limitation, estates in fee, estates for a term of years, leasehold estates, or easements.

1.6 **Purposes of Declaration.** This Declaration is executed (a) in furtherance of a common and general plan for the Property; (b) to protect and enhance the quality, value, aesthetics, desirability, and attractiveness of the Property; (c) to provide for an Association as a vehicle to hold, maintain, care for, and manage the land over which the Association has easements under this Declaration such as streams, ponds, irrigation ditches and facilities, recreational and conservation areas and facilities, community trail system, and internal landscaped areas to benefit all Owners of Homesteads and Estates (hereinafter referred to together as "Parcels" as defined in Section 2.36 below); (d) to define the duties, powers, and rights of the Association; (e) to define the duties, powers, and rights of HRR Water Company and the Owners of Parcels within the Property with respect to the water and water rights dedicated to the Property; (f) to define certain duties, powers and rights of Owners of Parcels created within the Property; and (g) to define certain duties, powers and rights of the Declarant created within the Property.

1.7 **Declaration.** Declarant hereby declares that the Property, shall be owned, held, conveyed transferred, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes and other provisions set forth in this Declaration, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection. The provisions of this Declaration are intended to and shall run with the land upon each Parcel's sale and filing of a recorded plat on each such Parcel by Declarant and, until their expiration in accordance with the terms hereof, shall bind, be a charge upon, and/or inure to the mutual benefit of: (a) all of the Property (b) Declarant and its successors and assigns,



(c) the Association and (d) all Persons having or acquiring any right, title or interest in the Property and their heirs, personal representatives, successors and assigns.

1.8 **35+ Acre Parcels Exempt from Land Use Change Permit Requirements.** The Property defined in Exhibit A has been initially delineated, and may be retained in their initial delineation or modified by Declarant into redesigned parcels to be surveyed, subdivided and sold in acreage Parcels of at least 35.05 acres in size to establish slightly larger sized parcels than the minimum 35 acre parcel size established by Colorado State law as exempt from county subdivision regulation. Declarant's intent in initially establishing the minimum size of a Parcel to be at least 35.05 acres, 0.05 acres larger than the state required minimum size of 35 acres, is to establish a safety factor against possible future transfer and survey errors to ensure that individual Parcels will never be smaller in size than 35 acres. Homesteads containing less than 70 acres and Estates initially designed by Declarant to comprise 70.10 acres or more are set forth in the Plat. As Homesteads and Estates ("Parcels" herein) are delineated and acquired by Buyers ("Owners"), an amended Plat of Horse River Ranch depicting all Parcels thereupon owned by Owners shall be filed for Record in the office of the Clerk and Recorder of the County of Gunnison, State of Colorado.

1.9 **Applicability of Colorado Common Interest Ownership Act.** The Declaration Property constitutes a planned Common Interest Community under the Colorado Common Interest Ownership Act of the State of Colorado, being Section 38-33.3-101, et seq., Colorado Revised Statutes (the Act). It is anticipated that the annual average common expense liability of each Share (defined in Section 2.48 below), exclusive of optional user fees and any insurance premiums paid by the Association, will not exceed \$400.00 per Share; and, pursuant to Colorado Revised Statutes Section 38-33.3-116(2), will therefore be exempt from the provisions of the Act, except for Sections 38-33.3-105, 38-33.3-106 and 38-33.3-107. However, if the annual average common expense liability of each Share, exclusive of optional user fees and any insurance premiums paid by the Association, should ever exceed the statutory maximum amount for exemption from full conformance with the Act, then the Association will fully conform with the provisions of the Act. Declarant, in its sole discretion, may waive the annual assessments to Members for the common expense liabilities of Parcels anytime during Declarant's Control Period on the condition that in the event of such waiver, Declarant shall pay all common expenses occurring during the year of any such waiver.

1.10 **Dedication.** On or before the end of Declarant's Control Period, Declarant will dedicate and convey to the Association all the community roadways for the benefit of all Parcels and Owners within Horse River Ranch, all of which community roadways shall be operated, administered, and maintained by the Association. Declarant reserves the right to cause any of such community roadways to serve or be used for development of other lands. During Declarant's Control Period, Declarant is authorized, although not obligated, to act on behalf of the Association to establish additional roadway ingress and egress, utilities and maintenance easements, and, without obligation, to authorize or to cause the design and construction of additional community roadways and driveways to access all Parcels. In addition, Declarant hereby dedicates to the Association for the benefit of all the Members the Common Easements established by these Covenants as provided in Article 10 below, as such easements are depicted on the Plat.

1.11 **Gunnison County Rules & Regulations.** Denotations herein to "GUC Regs" are intended to alert all interested parties reading this Declaration to consult and abide by all applicable rules and regulations of the County of Gunnison, State of Colorado, which may pertain to the subject matter of each particular section of this Declaration where this notation is included. Declarant includes this notation for the convenience of all such interested parties, but does not warrant that the failure to include such a notation means that there are no applicable County of Gunnison rules and regulations.

[End of General Provisions]

[Beginning of Definitions]

ARTICLE 2: DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the following meanings:

2.1 **Act.** Act shall mean the Colorado Common Interest Ownership Act as provided in C.R.S. 38-33.3-101, et seq., as the same may be from time to time amended.

2.2 **Administrative Functions.** Administrative Functions shall mean all functions of the Association to carry out its purposes, rights and duties under this Declaration and shall include, without



limitation, providing management and administration of the Association; providing architectural review services under Article 5 hereof; incurring reasonable attorneys' fees and accountants' fees; obtaining errors and omissions insurance for officers, directors, and agents of the Association; obtaining fidelity bonds for any Person handling funds of the Association; paying taxes levied against the Declaration Property; incurring filing fees, recording costs, and bookkeeping fees; obtaining and maintaining offices and office furniture and equipment; and performing other reasonable and ordinary administration tasks associated with operating the Association.

2.3 **Articles of Incorporation.** Articles of Incorporation shall mean the Articles of Incorporation of Horse River Ranch Homeowners Association, Inc., a Colorado non-profit corporation, which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

2.4 **Assessment.** Assessment shall mean an assessment by the Association on its Members or some of them, including a Common Assessment, Road Fund Assessment, Special Assessment, and a Reimbursement Assessment.

2.5 **Association.** Association or Homeowners Association shall mean Horse River Ranch Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assigns.

2.6 **Board of Directors.** Board of Directors or Board shall mean the Board of Directors of the Association. The Board of Directors is also called an Executive Board by the Colorado Common Interest Ownership Act.

2.7 **Barn.** Barn shall mean an accessory building designed to enclose livestock and to store agricultural products, feed, supplies and agricultural and livestock equipment.

2.8 **Budget.** Budget shall mean a written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration and prepared pursuant to Section 15.1 of this Declaration.

2.9 **Bylaws.** Bylaws shall mean the Bylaws of the Association, which have been or will be adopted by the Board of Directors of the Association, as the same may be amended from time to time.

2.10 **Common Assessment.** Common Assessment shall mean the Assessments made by the Association against each Member ("Owner") and the Member's Homestead or Estate, in accordance with the number of Shares allocated to each Parcel per Section 13.4 below, for the purpose of covering the annual costs of operating the Association, including expenses incurred in connection with repair, maintenance and operation of Declaration Properties and any other authorized function of the Association.

2.11 **Common Easements.** Common Easements shall mean any portions of the Property designated as Common Easements on the Plat, as amended, or as otherwise defined herein.

2.12 **County.** County shall mean and refer to the County of Gunnison, State of Colorado.

2.13 **Declaration.** Declaration shall mean this instrument as it may be amended from time to time.

2.14 **Declarant.** Declarant shall mean Summerset Land Group, Inc., a Colorado corporation.

2.15 **Declarant's Control Period.** Declarant's Control Period shall mean the period of time from the date of recordation of this Declaration to the first to occur of 1) Declarant's voluntary resignation, or 2) sixty days after conveyance of seventy-five percent (75%) of the total number of Shares that may be created pursuant to this Declaration, as provided in Sections 2.48 and 13.4 below, to Members other than a Successor Declarant or 3) two years after the last conveyance of a Parcel by a Declarant in the ordinary course of business, or 4) two years after any right to add new Parcels was last exercised.

2.16 **Design Review Committee (DRC).** Design Review Committee or DRC shall mean the committee of the Association provided for in Article 5 of this Declaration.

2.17 **Estate.** Estate, upon the execution of this Declaration, shall mean any parcel of land within the Property containing 70.10 or more acres as depicted on the Plat.

2.18 **Family Residence.** Family Residence shall mean the primary residence on any Homestead or Estate designed for occupancy by the Owner of the property.

2.19 **Garage.** Garage shall mean a building or an accessory portion of a Family Residence or Guest House designed for the storage of one or more motor vehicles and any incidental use associated therewith.

2.20 **Grazing Area.** Grazing Area shall mean all portions of Parcels other than the Building Envelope(s) and any portions subject to any Common Easement.

2.21 **Guest House.** Guest House shall mean a separate secondary residence, detached from the Family Residence, designed for occupancy either by the Owner of the Parcel, a relative of the Owner, the Owner's guests or the Owner's Caretaker.



2.22 **Homestead.** Homestead shall mean any lot or parcel of land within the Property containing at least 35 acres of land, but less than 70 acres of land.

2.23 **Improvement.** Improvement shall mean all structures, and planted vegetation and man-made landscaping features of every type or kind, including, but not limited to, buildings, outbuildings, enclosures, patio covers, awnings, changes in shape or painting or changes in painting of any exterior surfaces of any visible structure, additions, walkways, signs, entrance monument/signs, outdoor sculptures or artwork, sprinkler pipes, garages, carports, roads, driveways, improved paths or trails, parking areas, loading areas, fences, screening walls, retaining walls and other walls, bridges, stairs, decks, poles, fixtures, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, removal of trees or plantings, signs, exterior tanks, solar equipment, exterior air conditioning, water softener fixtures, irrigation equipment and installed irrigation facilities, driveways, ponds, lakes, enhanced streams, waste and water control devices and facilities, irrigation ditches and related devices and facilities, recreational facilities, agricultural and ranching facilities, excavation, and all other site work including, without limitation, grading, road construction, utility improvements, and any new exterior construction or exterior improvement constructed or completed on the Property.

2.24 **Improvement to Property.** Improvement to Property shall mean any Improvement to any Parcel within the Property.

2.25 **Integrated Secondary Residence.** Integrated Secondary Residence shall mean a secondary residence subordinate in area and purpose to, and structurally integrated within, the primary ("family") residence, sharing common roof lines and utility systems with an internal access between the family residence and the secondary residence.

2.26 **Leases.** Lease shall mean and refer to any agreement for the leasing or rental of a Parcel or any part thereof.

2.27 **Livestock Improvements Area.** Livestock Improvements Area shall mean the site, envelope or area within a Parcel where the Barn, a corral and other livestock improvements may be located and approved in the discretion of the DRC. This Section shall not restrict Livestock Sheds or Shelters (herein referred to as "Livestock Shelters") permitted by this Declaration and the DRC to be located in Grazing Areas.

2.28 **Maintenance Funds.** Maintenance Funds shall mean the monies of the Association from which disbursements shall be made in the performance of the functions of the Association authorized by this Declaration.

2.29 **Member.** Member shall mean the Person or, if more than one, all Persons collectively who constitute the Owner of a Parcel, including Declarant.

2.30 **Mortgage.** Mortgage shall mean any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Parcel, encumbering the Parcel to secure the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt.

2.31 **Mortgagee.** Mortgagee shall mean a mortgagee or lender under a Mortgage or a beneficiary under a Deed of Trust.

2.32 **Mortgagor.** Mortgagor shall mean the Person who mortgages his or its property to another (i.e., the maker or grantor of a Mortgage). The term Mortgagor shall include a trustor or grantor under a Deed of Trust.

2.33 **Non-Disturbance Areas.** Non-Disturbance Areas shall mean all wetlands as defined pursuant to federal and state law located on any part of the Property, and other areas identified as Non-Disturbance Areas on any Plat.

2.34 **Notice of Completion.** Notice of Completion shall mean written notice to the DRC of the completion of any Improvement to Property pursuant to Articles 4 and 5 of this Declaration.

2.35 **Owner.** Owner shall mean the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of Record to a Parcel.

2.36 **Parcel.** Parcel shall mean one or more Homesteads or Estates within the Property.

2.37 **Person.** Person shall mean a natural person, a corporation, a partnership, or any other legal entity.

2.38 **Planned Community.** Planned Community shall have the same meaning as set forth in the Act.

2.39 **Plat.** The Plat shall mean the initial or latest amended Plat for the Property, otherwise known as Horse River Ranch, the initial Plat having been recorded on the 21st day of APRIL, 2004, at Reception Number 541061, in the records of the Clerk and Recorder for Gunnison County, Colorado.



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2.40 **Principal Builder.** "Principal Builder" shall mean a builder who has purchased a Parcel from Declarant with the intent to build a residence thereon and then to sell the Parcel and all its Improvements. An Owner shall no longer be considered to be a Principal Builder after the expiration of three years from the date of purchase of a Parcel.

2.41 **Record or Recorded.** Record or Recorded shall mean the filing for Record of any document in the office of the Clerk and Recorder of the County of Gunnison, Colorado.

2.42 **Recreational Area.** Recreational Area shall mean the areas subject to Common Easements and reserved for recreational uses, including the streams, ponds and community trails delineated on the Plat.

2.43 **Reimbursement Assessment.** Reimbursement Assessment shall mean a charge against a particular Owner and his Parcel for the purpose of reimbursing the Association for expenditures and other costs of the Association (1) for providing services or facilities to fewer than all of the Owners or (2) incurred in curing any violation of the Declaration or the Rules and Regulations by the Owner or an agent of an Owner, together with late charges and interest allowed by this Declaration.

2.44 **Residential Buildings Envelope.** Residential Buildings Envelope shall mean the site, envelope or area within a Parcel, where the Family Residence, Integrated Secondary Residence, Guest House, Garage and out buildings related to the residence(s) shall be located.

2.45 **Road Fund Assessment.** Road Fund Assessment shall mean a charge by the Association against each Owner and his Parcel, in accordance with the number of Shares allocated to each Member/Owner's Parcel per Section 13.4 for the purpose of funding repair and maintenance expenses relating to the private roadways and roadway easements and Improvements in the Property.

2.46 **Rules and Regulations.** Rules and Regulations shall mean rules and regulations adopted by the Board of Directors of the Association.

2.47 **Shares.** Shares shall mean the allocated interest under the Colorado Common Interest Ownership Act, one for each Homestead, plus the total number allocated by Declarant for each Estate created in the Property (as allocated in Section 13.4 to any Estate tracts defined in Section 2.17). A Share shall be allocated (1) one vote in the Association, and shall also be allocated (2) a fraction of the Common Expense liability of the Association, which fraction shall have a numerator of one and a denominator consisting of the total number of Shares within the Declaration Property.

2.48 **Special Assessment.** Special Assessment shall mean a charge by the Association against each Owner and his Parcel, in accordance with the number of Shares allocated to each Member/Owner's Parcel per Section 13.4, for the purpose of funding major capital repairs, maintenance, replacements, and Improvements within the Property for the benefit of the Member/Owners and the Association.

2.49 **Successor Declarant.** Successor Declarant shall mean a Person designated by Declarant in a written and recorded document as a Successor to Declarant. However, so long as Summerset Land Group, Inc. is Declarant hereunder, a Successor to Summerset Land Group, Inc. by consolidation or merger shall automatically be deemed a Successor Declarant.

2.50 **Unfinished Homestead.** Unfinished Homestead shall mean a Parcel, which does not have on it a building for which a Certificate of Occupancy has been issued by Gunnison County.

[End of Definitions]

[Protective Covenants]

ARTICLE 3: PARCELS (HOMESTEADS AND ESTATES)

3.1 **Use of Parcels.** Except as permitted or restricted by the DRC, an Owner may use a Parcel for ranching except for any portions subject to a Common Easement. A Homestead may also be used for one Family Residence, one Integrated Secondary Residence, one detached Guest House, one Garage, and one Barn to the design, size and extent those structures are allowed by this Declaration. No additional buildings shall be permitted unless authorized by this Declaration or the DRC. No time-sharing shall be allowed. A Parcel may also be used for recreational purposes, which does not interfere with other Members' peaceful enjoyment of Parcels and the Property. **GUC Regs.**

3.2 **Building Envelope.** Any Family Residence, Integrated Secondary Residence, Guest House, Garage and other residential related structures (such as, but not limited to, pet shelters, storage structures, gazebos, and structures to screen or contain such items as air conditioning units, propane tanks or water wells) allowed by this Declaration and approved by the DRC must be located within the



Building Envelope of each Parcel. The Declarant shall designate the Building Envelope(s) on or before DRC approval of the design and construction of such structures and before the filing by an Owner of a Building Permit Application to Gunnison County. The boundaries of any previously designated Building Envelope may be subsequently modified by the Association; however, any portion of the previously designated Building Envelope containing permanent structures must remain within the modified Building Envelope(s). The Association shall make alterations in the boundaries of the Building Envelope(s) if such alterations are legally required by any governmental authority having jurisdiction. **GUC Regs.**

3.3 **Building Sizes.** The following minimum and maximum building sizes are established for all buildings (In the case of a Family Residence and the Detached Guest House, the minimum building sizes do not include the square footage of the garage or basement), unless otherwise approved by the DRC or restricted by applicable governing authorities:

Type of Structure	Gross Minimum	Minimum 1 st Floor	Gross Maximum
Family Residence	2,500 sq. ft.	1,800 sq. ft.	None
Detached Guest House:			
If built before Family Residence	2,500 sq. ft.	1,800 sq. ft.	None
If built at same time or after Family Residence	1,500 sq. ft.	1,000 sq. ft.	None
Integrated Secondary Residence	None	None	None
Garage	450 sq. ft.	N/A	*1/3 rd of Residence
Barn	None	N/A	* = to Residence

* Garage: The maximum square footage of a garage must not be larger than 1/3rd of the total living square footage of the largest existing residence.

* Barn: Except by a variance approved by the DRC, the maximum gross square footage of any barn shall not exceed the actual square footage of the largest existing residence.

The maximum square footage of all buildings constructed within the Building Envelope of a Parcel shall not exceed 15,000 aggregate square footage. **GUC Regs.**

3.4 **Family Residence.** One Family Residence or Primary Residence shall be allowed on each Homestead. The Declarant may permit additional Family Residences on Estates; however, no more than one Family Residence per 35 acres may be permitted. The Family Residence on a Homestead or an Estate shall at all times be owned by the Owner of the Parcel upon which it is situated. **GUC Regs.**

3.5 **Guest House.** One Integrated Secondary Residence and one detached Guest House shall be allowed on each Homestead. The Declarant may permit additional Integrated Secondary Residences and Guest Houses on Estates; however, no more than one Integrated Secondary Residence and Guest House per 35 acres may be permitted. Any Integrated Secondary Residence and Guest House on a Parcel shall at all times be owned by the Owner of the Family Residence and of the Parcel upon which it is situated. The Guest House may be constructed on a Parcel and used by the Owners prior to construction of the Family Residence on the Parcel. **GUC Regs.**

3.6 **Garage.** Each Parcel on which a Family Residence or Guest House is constructed must have a Garage. Garages shall be attached to or be part of the Family Residence unless the DRC permits a detached garage or a garage attached to the Guest House or Barn. The construction of a garage shall not be permitted prior to the construction of a residence. Any Garage, coupled with DRC-approved storage in the barn and other storage structures, shall be sufficient in size to park and store all motor vehicles, including but not limited to cars, trucks, motorcycles, and motorbikes, recreational vehicles, all terrain vehicles, snowmobiles, boats and trailers owned or leased by Owner and located upon the Parcel. **GUC Regs.**

3.7 **Barn, Corral, Livestock Shelters.** One Barn with a DRC approved, fenced corral or corrals shall be allowed on each Homestead. The number of barns permitted to be constructed on Estates may be established by Declarant at the time of sale of an Estate to an Owner, or thereafter upon application by the Owner by the DRC. The limitations and restrictions in Section 3.3 (Building Size) may be subject to a variance approved by the DRC on any Parcel. All corrals on a Parcel shall be constructed of approved electric fencing material, wire, wood, metal pipe or other materials approved by the DRC in a design and style approved by the DRC. Any Barn and corrals must be located in the Livestock Improvements Area. Human overnight occupancy in a barn shall not be allowed prior to receipt by an



Owner of a Certificate of Occupancy from the county for either a Family Residence or a Guest House on the Parcel. Subject to the provisions elsewhere in this Declaration, upon application from an Owner, up to two Livestock Shelters (horse or cattle shelter sheds or other similar livestock shelters) may be approved by the DRC for a Parcel. The Livestock Shelters must be located in the Grazing Area but need not be within the Livestock Improvements Area. **GUC Regs.**

3.8 Hay Meadow Harvesting and Maintenance and Mowing of Ditches. The Association shall establish rules and regulations governing the harvesting and maintenance of all hay meadows, and the mowing of all irrigation ditches on parcels, including the allocation of related expenses and revenues between each Owner and the Association. To maintain the historic agricultural and ranching character of Horse River Ranch, the harvesting and maintenance of all hay meadows shall be the responsibility of the Owner of each Parcel. After each year's hay harvest, the mowing of all irrigation ditches on each Parcel on the Property shall be the responsibility of Declarant, and subsequently HRR Water Company as set out in Section 12.1 below. Declarant, or persons acting in behalf of HRR Water Company, or the Association with the authorization of the Association, shall be permitted to enter on the Parcel to mow and maintain all irrigation ditches on all Parcels under the easement granted and defined in Section 10.10 below. The Association shall levy and collect a Reimbursement Assessment against all Parcels equal to the mowing costs and expenses incurred.

Notwithstanding severe weather conditions or acts of God, which prohibit the harvesting of hay on a Parcel, failure by an Owner to harvest the hay meadows after the end of each year's irrigation of such Parcel, within fifteen days of receipt by the Owner of written notice from the Association of such failure to harvest, shall permit persons acting in behalf of and with the authorization of the Association to enter on the Parcel to harvest the hay and maintain such Owner's hay meadows under the easement granted and defined in Section 10.10 below. All hay so harvested by or on behalf of the Association on any Parcel may be sold by the Association. The Association shall then be permitted to levy and collect from the proceeds of the sale of hay, or from the Owner, a Reimbursement Assessment equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead, in haying and maintaining such Owner's hay meadows. The Association may also collect any other assessments then owed to the Association and unpaid by the Owner. All remaining proceeds shall be paid by the Association to the Owner.

3.9 Grazing Area. The Owner of a Parcel must fence the property's Grazing Area in a manner reasonably designed to prevent livestock from leaving the area. The Owner must not allow the Grazing Area to be over-grazed or to become bare or unsightly due to lack of vegetation and shall at all times strictly comply with the rules, regulations and enforcement provisions of the Association relating to Grazing Areas.

3.9.1 Enforcement of Grazing Area Maintenance. Violation by an Owner of the maintenance provisions of Section 3.9 shall permit persons acting on behalf of and authorized by the Association to enter on the Parcel and cure the violation or cause compliance with these provisions, and shall permit the Association to levy and collect a fine and a Reimbursement Assessment equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead in so doing.

3.10 Livestock Improvements Area. A Livestock Improvements Area may be established and delineated within a Parcel 1) by Declarant on the Plat, or 2) by a written application from an Owner to, and approved by, the DRC, or 3) by the Association. Unless an exception is granted by the DRC for an Estate, any Livestock Improvements Area shall contain total land area of no more than thirty-five thousand (35,000) square feet per 35 acres. Subject to the approval of the DRC, the Livestock Improvements Area may be wholly or partially included in the Building Envelope. Upon the written request of the Owner of a Parcel, the DRC shall have the right to approve a modification or change to the location of or to the exterior boundary lines of any previously delineated Livestock Improvements Area. Such modification or change must also receive the written approval of Owners of contiguous Parcels deemed by the Association to be materially affected by such modification or change to the Livestock Improvements Area.

3.11 Parcel Boundary Modification by Owners. The Owners of adjoining Parcels may make changes to their common boundaries only upon the consent of the Declarant during Declarant's Control Period, or by the Association after Declarant's Control Period, and only if such changes do not decrease the total land area of any Homestead to less than 35 acres. In considering the modification of the delineation of any boundary of a Parcel, the Declarant or the Association must take into consideration the interests of contiguous Parcels and Owners. If two or more Parcels are combined, the Association may continue to treat the newly delineated remaining Parcel as subject to the same Assessments and



Shares as originally designated by Declarant for the Parcels prior to their combination. Owners shall be solely responsible for all expenses incurred to modify the boundaries of any Parcel or to combine Parcels. Parcels may not be combined if as a result there would be less than eighteen (18) Shares in the Declaration Property.

3.12 Further Subdivision of Homesteads. The Owner of a Parcel may not further subdivide that property to create any lot or Homestead comprising less than 35 acres, or to a size less than the minimum acreage defined by Colorado law to be exempt from County subdivision regulation, whichever is greater. In addition, the Owner of a Homestead may not subdivide the Homestead in a manner that will result in the Property having more than forty (40) Shares. Owners shall be solely responsible for all expenses incurred to divide Parcels, including fees and expenses incurred by the Association.

3.13 Fencing of Parcels. That portion of the Property designated for the exclusive use and enjoyment of the Owner of any Parcel may be fenced, maintained and utilized by the Owner at such Owner's expense. An Owner must install fencing to contain any livestock In the Grazing Area.

3.13.1 DRC Approval Required. Any Owner constructing, installing, erecting, modifying or replacing a fence, whether for purposes of animal containment, security, screening or aesthetic purposes, shall obtain the prior design and construction approval of the DRC.

3.13.2 Type of Fence Permitted. Only unobtrusive fencing, such as electric or barbed wire fencing (free-standing or attached to the interior facing of any community decorative perimeter fencing) or other compatible fencing approved by the DRC, may be erected around the perimeter of a Parcel.

3.13.3 Fence Design. Fences may not exceed forty-eight (48) inches in height, except where installed for screening purposes in locations abutting a structure.

3.13.4 Fenced-in Pet Area. Each Homestead may have a fenced and screened pet area, within which up to 3 pets may be maintained. The area must be adjacent to the primary residence or the barn and may not exceed 200 square feet per pet. Larger pet areas may be allowed at the discretion of the DRC. Any such area shall be regularly cleaned and maintained in a sanitary and odor-free condition.

3.13.5 Fence Maintenance. Each Owner of a Parcel shall be responsible for maintaining, repairing and replacing, in a reasonably attractive manner, any fence located on such Parcel. If a fence, or portion thereof, is located on a lot line separating a Parcel from an adjoining public right-of-way, street, open space area, or other property which is not an adjoining Parcel, then the Owner of such Parcel shall be responsible for maintaining, repairing and replacing, in a reasonably attractive manner, such fence or portion thereof.

3.13.6 Enforcement of Fence Maintenance. Violation by an Owner of any Parcel's fencing condition or maintenance provisions in this Declaration shall permit persons acting in behalf of and with the authorization of the Association to enter on the Parcel and cure the violation or cause compliance with these provisions and shall permit the Association to levy and collect a Reimbursement Assessment against that Parcel and the Owner thereof equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead in so doing.

3.13.7 Community Fences. The Association shall have rights and maintenance obligations within Community Fence Easement areas as set out in Section 10.4 below.

3.14 Landscaping and Maintenance of Parcels. Landscaping may only be planted, constructed or installed by the Owner of each Parcel pursuant to development approvals or limitations imposed on the Parcel by the DRC and after approval of the landscape plan by the DRC. No buildings or Improvements within any Parcel shall be permitted to fall into disrepair. All buildings and Improvements within the Parcels, including any fences and landscaping thereon, shall be kept and maintained in a clean and attractive condition and in good repair. Maintenance, repair, and upkeep of each Parcel and the buildings and Improvements thereon shall be the responsibility of the Owner of the Parcel, except that the Association shall be responsible for maintenance, repair, and upkeep of Community Easement areas. Dead or dying landscape materials shall be replaced as soon as possible, taking into account weather conditions affecting the planting of replacement landscaping. All landscaping shall be regularly maintained in a neat and trim manner.

3.14.1 Enforcement of Landscaping Maintenance. Violation by an Owner of any Parcel's landscaping condition or maintenance provisions in this Declaration shall permit persons acting in behalf of and with the authorization of the Association to enter on the Parcel and cure the violation or cause compliance with these provisions and shall permit the Association to levy and collect a Reimbursement Assessment against that Parcel and the Owner thereof equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead in so doing.

3.15 Signs and Advertising. No commercial sign, poster, billboard, advertising device, or display of any kind shall be erected or maintained anywhere within Horse River Ranch so as to be evident

to public view, except signs as may be approved in writing by the DRC. Notwithstanding the foregoing, a standard Horse River Ranch sign, available through the Association, advertising a Parcel for sale or for lease, may be placed on the Parcel that is for sale or lease. The DRC shall establish guidelines for the erection of non-commercial signs or displays on a Parcel. **GUC Regs.**

3.16 **Storage.** Except during the continuous construction of an Improvement, no building materials, construction equipment or vehicles shall be stored or parked on any Parcel unless parked adjacent to or in the immediate area of a residence or barn; nor shall any such construction equipment or vehicles be parked on any public or private roadway of the Community. Any disabled, junked, or abandoned vehicles kept by any Owner on his Parcel must be stored within a garage or barn or other completely enclosed structure. No Parcel shall be used as storage of explosives, gasoline, or other volatile and/or incendiary materials or devices unless required for the agricultural or ranching operations of a particular Owner. Gasoline or fuel for any Owner's tractor, snowmobile, all-terrain vehicle, motorcycle, motorbike, lawn mower, snow blower, and the like may be maintained on an incidental basis on the Parcel.

3.17 **Vehicle Repairs.** No lengthy (i.e. longer than 48 hours) maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, trailer, equipment, machine or device may be carried on, except within a completely enclosed or screened structure which screens the sight, sound and any odors of the activity from the road and from other Parcels.

3.18 **Parking within the Property.** Parking and storage of motor vehicles, recreational vehicles and various types of equipment, including without limitation those items described in Section 3.6 above, on public and private roads, driveways or on Parcels within the Property may be regulated by the Association pursuant to duly adopted Rules and Regulations.

3.19 **Commercial Use Permitted and Prohibited.** No commercial or business enterprise of any nature shall be allowed or permitted on any Parcel, except that 1) Owners may conduct ranching or agricultural operations pursuant to the restrictions in this Declaration and the rules and regulations of the Association; 2) an owner of a Parcel may conduct horse, cattle and other livestock boarding, training, riding, and other related services or activities for a profit, subject to the approval by the Declarant during Declarant's Control Period, or thereafter by the Association, and further subject to approval and compliance with all applicable governmental authorities' rules and regulations; and 3) the Owner of a Parcel may have an in-home executive office, or conduct an in-home occupation, artistic or literary activity so long as such in-home uses are subordinate to the residential character and use of the Parcel and are limited in the discretion of the DRC to those activities that will cause no more than a negligible additional impact of traffic, sight, sound, odor or disturbance on the Property. Such ranching and agricultural, livestock and in-home uses are subject to review by the Association, which shall retain the power to approve or disapprove such uses or to impose such conditions on such uses as the Association deems necessary to provide benefits to the other Owners and to avoid any detriment to the other Owners. Except as may be approved by the DRC for a ranching and agriculture or livestock commercial use, there shall be no exterior commercial advertising or other permanent evidence outside of the home, visible or audible, that an in-home occupation is being conducted therein.

ARTICLE 4: CONSTRUCTION

4.1 **DRC Approval Required.** No Improvement shall be constructed on any Parcel unless first approved by the DRC as acceptable under the standards set forth in this Declaration. **GUC Regs.**

4.2 **Uniform Building Code.** All Improvements shall meet all of the requirements, including fire protection standards, of the Uniform Building Code and any other requirements of a local or state building plumbing or fire code applicable to the Improvements. **GUC Regs.**

4.3 **Construction Standards.** Approval and compliance by Owners with the following construction standards shall be determined by the DRC in accordance with this Declaration, including the provisions of Article 5 (The Design Review Committee Architectural Approval), subject to the DRC's discretionary power to grant variances. The DRC may allow the use of materials for exterior wall and roof surfaces other than those listed below, provided such materials are determined by the DRC to be in harmony with surrounding structures and natural land features, and not offensive in color.

4.3.1 **New, Permanent Structures.** All buildings erected within the Property after the date of this Declaration shall be new, except that Declarant may move a previously used building onto or within the Property for use as an Owners' Property sales office. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure designed to be transported with axles and wheels may be moved by an Owner onto his property, except as expressly hereinafter provided for temporary buildings.



4.3.2 Setbacks; Placement of Structures on Lots. All residential structures, including decks and patios, must be located within the Building Envelope. Except for Livestock Shelters approved by the DRC, the Barn and all ranching outbuildings must be located within the Livestock Improvements Area. No structure may be located within twenty-five (25) feet of the perimeter of a Parcel or within five hundred feet of Horse River Drive unless located within a Building Envelope approved by Declarant. The provisions of this section shall not preclude the construction, placement or installation of driveways, landscaping or fences any place on a Parcel if approved by the DRC and not prohibited by any governmental rules or regulations. Prior to the sale by Declarant of any Parcel, Declarant may establish additional set-back requirements on individual Parcels in Declarant's discretion. **GUC Regs.**

4.3.3 Utilities. All utility lines must be underground. **GUC Regs.**

4.3.4 Propane Tanks. All propane tanks must either be installed underground, or if installed above ground, they must be contained in a screened area or shelter approved by the DRC. All proposed utility and tank locations and installations will be reviewed and must be approved by a Gunnison County official, building inspector, and/or the Gunnison Fire Protection District during the building permit application process. **GUC Regs.**

4.3.5 Sewage Disposal Systems. An on-site wastewater treatment system, septic tank or other sewage disposal system may only be installed within a Parcel with the prior written consent of the DRC as to location, design and construction. In addition, any sewage disposal system installed for Parcels shall be subject to applicable laws, rules and regulations of any governmental authority having jurisdiction and shall be permitted by such governmental authority prior to installation. Neither the Declarant nor the Association shall have any responsibility for providing a septic system for any Parcel. Owners are responsible for the design and construction costs related to providing a sewage disposal system for their Parcel. Each Owner shall be required to obtain a soils report regarding the adequacy of the soils on such Parcel for a leach field and to determine whether an engineered septic system is required. **GUC Regs.**

4.3.6 Water Wells. All individual water wells on a parcel shall be installed by the Owner of that Parcel at or before the time the first residence is constructed on the Parcel and shall be designed, located, constructed, maintained and equipped in accordance with the requirements, standards and recommendations of any applicable water and sanitation district, Water Court Decree, Gunnison County regulations, the state engineer or other governmental authority having jurisdiction. Water wells placed on any Parcel shall conform to the provisions and requirements of any approved water augmentation plan for the Property, and shall provide sufficient water to meet the in-house water use requirements and any permitted outside watering requirements for such Parcel. **GUC Regs.**

4.3.7 Driveways. The path, design and construction of all driveways must be submitted to and approved in writing by the DRC before construction begins. **GUC Regs.**

4.3.8 Building Height Restriction. Except as may be permitted by a variance authorized by the DRC, no building or other Improvement shall be permitted to exceed thirty-three (33) feet in height as measured from the ground's original elevation at the time of any Owner's purchase of a Parcel to the highest point on the structure.

4.3.9 Engineered Foundation. No building or other Improvement shall be approved by the DRC, which is to be constructed without an engineered foundation.

4.3.10 Wood Burning Devices. No Family Residence or Guest House may contain more than one Gunnison County approved solid fuel-burning device and one fireplace, as defined by, and subject to any fees legally established by, Gunnison County. All chimneys must be equipped with spark arrestors and aesthetically pleasing, DRC approved chimney caps. All firewood must be stacked or stored away from buildings. **GUC Regs.**

4.3.11 Exterior Surface Materials. No building or other Improvement shall be approved by the DRC which is to be constructed of materials other than an exterior surface of natural wood, cementitious sidings and trims, log, stone, brick, stucco, textured concrete or glass. Glass must be substantially non-reflective to avoid direct mirror-like reflections into neighboring homesites or into the path of vehicles traveling the roadways within the Property or accessing the Property. Log homes which use full-length, dimensionally-cut logs are acceptable.

4.3.12 Exterior Surface Colors. The exteriors of all buildings must be finished in earthen tone colors (including but not limited to facades of all sides, roofs, doors and trim). Wood may have a clear finish or stain. Stains or paint shall be muted greens, browns, gray tones or earth tones. Bright white stucco is prohibited on new structures.

4.3.13 Exterior Lighting Plans. All exterior lighting plans shall be submitted to the DRC for approval of design and lighting equipment. All exterior lighting shall be designed and installed to direct



light inward and downward onto the Parcel and away from adjoining Parcels to provide necessary lighting, but to prevent unnecessary glare and annoyance to other Parcels. The DRC shall inspect all such exterior lighting installations to ensure compliance with the exterior lighting plans as approved by the DRC. In the event the DRC determines that any such installation is not in compliance with the design, equipment and plans as approved, the Owner must make such modifications required by the DRC or remove all such exterior lighting ruled by the DRC to be in non-compliance. **GUC Regs.**

4.3.14 Roofs. Wood shake roofs are prohibited on new structures. Roof lines of homes may not be of a continuous unbroken nature; they must be varied in design. Roof pitches shall be a minimum of 6/12. Roof surfaces shall be three (3) tab composition shingles, artificial shake shingles or metal roof with prebaked enamel finish, provided they are of earth tone or muted, colors, substantially non-reflective to avoid direct mirror-like reflections into neighboring homesites or into the path of vehicles traveling the roadways within the Property or accessing the Property.

4.3.15 Chimneys. Chimneys shall be aesthetically capped.

4.3.16 Maintenance of Structures. All structures on any Owner's Property shall be properly maintained at the expense of the Owner.

4.4 Buildings and Improvements Allowed. In making a determination to approve or deny any building other than the Family Residence or a Guest House, the DRC shall assess the impacts to neighboring Parcels as to size, location and design consistent with this Declaration and the Family Residence on such Parcel. If allowed, all buildings shall be constructed of either the same exterior siding and roofing materials as those of the Family Residence or of a type and color consistent with this Declaration and approved by the DRC.

4.5 Temporary Structures and Outdoor Coverings. Trailers, tents, shacks, or any temporary buildings or structures are prohibited unless authorized by the DRC. The design, size and color of materials, including tarps, used by an Owner to cover haystacks, wood piles, or other permitted, but unsheltered, items must be consistent throughout the Property, approved by the DRC, and maintained in a tidy and aesthetic manner. Notwithstanding the above, the Declarant or a Principal Builder may place temporary sales buildings on a Homestead or Estate.

4.6 Normal Construction Activities. Unless specifically provided herein, normal construction activities carried out by a Declarant or a builder within the Property shall not be deemed a violation of any of the provisions of this Declaration. Construction activity, which in the discretion of the DRC produces noise capable of disrupting the peaceful enjoyment of other Parcels, is prohibited on Sundays and federal holidays and before or after normal week days work hours, but is otherwise permitted on normal week days during normal construction hours from 8:00 a.m. to 5:30 p.m.

4.7 Required Approvals to Fill Wetlands. No fill material may be placed in any jurisdictional wetlands, streams, ponds or irrigation ditches within the Property unless all required governmental permits have been issued authorizing such work and the DRC and HRR Water Company have approved such work.

4.8 Restoration in the Event of Damage or Destruction. In the event of damage or destruction of any Improvement on any Parcel, the Owner thereof shall cause the damaged or destroyed Improvement to be restored or replaced in a timely manner to its original condition or such other condition as may be approved in writing by the DRC, or the Owner shall cause the damaged or destroyed Improvement to be demolished; and, the Parcel shall be suitably landscaped so that it will have an appearance similar to that of undisturbed Horse River Ranch land, unless a different appearance is approved by the DRC.

ARTICLE 5: THE DESIGN REVIEW COMMITTEE (DRC) AND ARCHITECTURAL APPROVAL

5.1 Membership of DRC. The DRC shall consist of three (3) people who need not be Owners. The DRC members shall be initially appointed by Declarant. Declarant shall have the continuing right to appoint all three (3) members during the Appointment Period (as hereinafter defined). The Board of Directors of the Association shall have the right to appoint the DRC members after the expiration of the Appointment Period. The Appointment Period shall mean the period of time commencing as of the date of Recordation of this Declaration and continuing until the earliest to occur of the following events: (a) when all Parcels have been conveyed to Persons other than Declarant, a Successor Declarant or a Principal Builder and certificates of occupancy have been issued for the residences constructed thereon; (b) ten (10) years after the date of this Declaration; or (c) when, in its discretion, Declarant voluntarily relinquishes such right. Members of the DRC appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board. After the expiration of the Appointment Period,



the Association may at any time, and from time to time, change the authorized number of members of the DRC, but the number of members of the DRC shall not be less than three.

5.2 **Address of DRC.** The address of the DRC shall be at the principal office of the Association or such other address determined by the Association.

5.3 **DRC Approval of Improvements Required.** The written approval of the DRC shall be required for any Improvement or modification of any Improvement on any Parcel, except (a) for any Improvement to Property made by Declarant or by a Principal Builder who has received written approval for such Improvement from the Declarant, and (b) where prior approval of an Improvement to Property has been waived or exempted in writing or under written guidelines or rules promulgated by the DRC. The DRC may delegate some or all of its authority under this Declaration to such subcommittee or subcommittees as the DRC may elect to establish from time to time. Membership on any subcommittee may include Owners and non-Owners and need not include members of the DRC. Procedures governing the operations of the DRC and such subcommittees shall be adopted by the DRC; and, any delegation of authority to a subcommittee may be revoked at any time by the DRC.

5.4 **Submission of Plans.** Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property (Applicant) shall submit to the DRC at its offices such descriptions, plans, and other materials as the DRC shall reasonably request showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property and proposed fire prevention measures to be implemented on the Parcel as described in Article 8. The Applicant shall submit a soils and foundation report and erosion control plan prepared by a qualified engineer for the Applicant's property. Until receipt by the DRC of all required materials in connection with the proposed Improvement to Property or until the DRC waives the filing of any of the foregoing information, the DRC may postpone review of any materials submitted for approval.

5.5 **Design Review Fee.** The DRC may, in its Design Standards, provide for the payment of a fee to accompany each request for approval of any proposed Improvement or modification of any Improvement. The DRC may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as based upon the estimated cost of the proposed Improvement to Property.

5.6 **Security Deposit.** Prior to the commencement of any work approved by the DRC, the person wishing to commence such work shall pay a security deposit to the DRC to assure that all such DRC approved improvement (including landscaping) is completed according to the plans approved by the DRC and to assure that any damage done to the roadways, waterways, ponds, irrigation ditches or related facilities, easements or common areas has been properly repaired and revegetated. In the event such damage or revegetation has not been accomplished within 30 days following the issuance of a Certificate of Occupancy for the dwelling or, in the event there is no dwelling involved, within 30 days after substantial completion, as determined by the DRC, then the deposited funds may be used by the DRC to repair the damage or complete the revegetation. Prior to the use of such funds, however, the DRC shall give the person making the deposit ten days notice of its intention to make use of the security deposit. Notice shall be given by certified mail to the address or any address shown on the application and shall be posted on the site on a Parcel. Should the deficiency be remedied during the ensuing ten days, then the deposit shall be refunded. Such deposit shall initially be in the amount of \$2,000.00; but, the DRC may, by rule, adopt a greater or lesser amount, or may adopt a formula to determine an amount or variance. The DRC may also provide for different amounts for different types of projects and may provide for retention of the deposit for a period not to exceed one year after substantial completion in the event revegetation or additional landscaping is required.

5.7 **Criteria for DRC Approval.** Except as provided elsewhere in this Declaration, no construction of any Improvement shall be permitted unless and until written approval by the DRC of any Owner's application is received by such Owner. The DRC shall approve any proposed Improvement only if it deems in its reasonable discretion that the Improvement proposed for the Parcel in the location indicated will not be detrimental to the appearance of the surrounding areas of the Parcel or the Property as a whole; that the appearance, exterior design, materials and colors of the proposed Improvement will be in harmony with the surrounding areas of the Property; that the Improvement will not detract from the beauty, wholesomeness, and attractiveness of the Property or the enjoyment thereof by Owners; that the proposed construction is appropriate in light of the soils, slopes and other physical aspects or conditions of the Parcel; that the design and location of the Improvement will minimize the visibility of such Improvement from roads; and that the proposed changes in topography, if any, do not adversely impact adjacent Parcels and the Property as a whole. The DRC may condition its approval of any proposed



Improvement upon the making of such changes therein or satisfaction of such conditions as the DRC may deem appropriate.

5.8 **Design Standards.** In addition to the design and construction standards and rules herein, the DRC may issue standards or rules (Design Standards) relating to approval criteria, recommended materials and designs, submittal and approval procedures, materials to be submitted, fees, and additional factors which will be taken into consideration in connection with the approval of any proposed Improvement. The Design Standards may specify circumstances under which the strict application of limitations or restrictions under this Declaration will be waived or deemed waived in whole or in part because strict application of such limitations or restrictions would be unreasonable or unduly harsh under the circumstances.

5.9 **Decision of DRC.** Any decision of the DRC shall be made within forty-five (45) days after receipt by the DRC of an application for approval accompanied by all materials required by the DRC, unless such time period is extended by mutual agreement. The DRC's decision shall be in writing. The written decision of the DRC shall be promptly transmitted to the applicant at the address furnished by the applicant to the DRC. No construction of any Improvements may begin on any Parcel prior to receipt by the applicant-Owner, or an applicant acting on behalf of an Owner, of approval in writing of such application.

5.10 **Failure of DRC to Act on Plans.** In the event, upon the expiration of forty-five (45) days after the date of receipt by the DRC of all required materials requesting approval of a proposed Improvement to a Parcel, the DRC has failed to act on such request by issuing its written approval, disapproval or a request for additional information or materials, the application shall be deemed approved upon the further expiration of ten days following the Applicant's legal service of process on any member of the DRC notifying the DRC of such failure to act and upon the DRC's failure to cure such inaction within such ten day period by notification to Applicant of DRC's approval or denial of the application, or of DRC's request for additional materials, transmitted by deposit or "posting" into the U.S. Mail to the Applicant by the DRC. Thereafter, the request for approval of a proposed Improvement to a Parcel shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted by deposit or "posting" into the U.S. Mail to the Applicant by the DRC within ten (10) days after the date of receipt by the DRC of all required materials.

5.11 **Prosecution of Work after Approval.** Unless waived or extended in writing by the DRC, all approved Improvements shall be completed within eighteen (18) months from the date of issuance of a building permit by Gunnison County, or the Association may complete such Improvements at the Owner's expense, including interest on all sums expended by the Association at the rate of eighteen percent (18%) per annum until paid in full. Furthermore, in the event construction is abandoned for a period in excess of ninety (90) days, the DRC may assess a non-compliance assessment against the Owner in an amount not less than \$100 per day, which may be enforced as in the case of any other assessment. Such funds shall be deemed a Reimbursement Assessment as provided in Section 15.10 below, and may only be made after notice and DRC hearing. At such hearing, the only defense shall be that the failure to complete construction on a timely basis, or the abandonment, was caused by a circumstance beyond the Owner's control. Except for buildings or Improvements approved by the DRC for ranching uses, either the Family Residence or Guest House on a Parcel must be under a completed roof with siding and windows installed prior to any use of any other building.

5.12 **Failure of DRC to Act after Completion.** Failure of the DRC to inspect the work shall not relieve the applicant from its obligations to comply with this Declaration or all conditions of approval or prevent the DRC from pursuing all remedies available to it in the event of any non-compliance.

5.13 **Correction of Non-Compliance.** If the DRC determines that an Owner has constructed Improvements that do not comply with the Improvements approved by the DRC, or any conditions of such approval, the applicant shall remedy or remove the same within a period of not more than forty-five (45) days from the date of mailing to the Owner of notice of non-compliance from the DRC. If the applicant does not comply with the Committee ruling within such period, the Committee may commence an action at law or in equity to require correction of such non-compliance or removal of the non-complying Improvement.

5.14 **No Implied Waiver or Estoppel.** No action or failure to act by the DRC shall constitute a waiver or estoppel with respect to future action by the DRC with respect to any Improvement to a Parcel. Specifically, the approval of the DRC of any Improvement shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to a Parcel or any similar proposals, plans, specifications, or other materials submitted with respect to any other Improvement.



5.15 **DRC Power to Grant Variances.** The strict application of the limitations and restrictions in this Declaration in any specific case may be modified or waived in whole or in part by the Association or the DRC if the Association or the DRC finds that such strict application would be unreasonably harsh under the circumstances. Any such modification or waiver must be in writing or be contained in written guidelines or rules promulgated by the Association or the DRC. The DRC may authorize variances from compliance with any of the provisions of this Declaration, except those relating to the required minimum size of Parcels and structures, Shares, and except those provisions in the following Declaration Articles:

- Common Easements – Use and Maintenance, Article 10;
- Association Properties, Article 11;
- Water and Water Rights, Article 12;
- Association Operation, Article 13;
- Duties and Powers of Association, Article 14;
- Association Budget, Assessments and Enforcement, Article 15;
- Declarant’s Rights and Reservations, Article 16; and
- Miscellaneous, Article 17.

Examples of DRC variances include restrictions upon materials, color, height, floor area, or placement of structures or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing and shall become effective when signed by at least a majority of the members of the DRC. If any such variance is granted, no violation of the provisions of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted; provided however, that the granting of a variance shall not operate to waive any of the provisions of this Declaration for any purpose except as to the particular Parcel and particular provision hereof covered by the variance, nor shall the granting of a variance affect in any way the Owner’s obligation to comply with all governmental laws and regulations affecting the property concerned, including, but not limited to, zoning ordinances and setback lines or requirements imposed by any governmental authority having jurisdiction.

5.16 **Non-Liability of DRC Action.** There shall be no liability imposed on the DRC, any member of the DRC or any subcommittee appointed by the DRC, any Committee or subcommittee Representative, the Association, any member of the Board of Directors, or Declarant for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the DRC unless due to the willful misconduct of the party to be held liable. In reviewing any matter, the DRC shall not be responsible for reviewing, nor shall its approval of an Improvement to a Parcel be deemed approval of the Improvement from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations. Members of the DRC shall be indemnified by the Association to the same extent as the Board of Directors of the Association, as set forth in the Articles of Incorporation or Bylaws of the Association.

ARTICLE 6: RESTRICTIONS GOVERNING IMPROVEMENTS AND ACTIVITIES

6.1 **Rules and Regulations.** The Association through its Board of Directors or the DRC shall have the authority to promulgate and enforce rules and regulations and/or design guidelines regarding the use of the land within the Property and the construction of Improvements on the condition that such rules and regulations and/or design guidelines are not inconsistent with this Declaration.

6.2 **Wildlife Preservation – No Hunting.** Wildlife in its natural state within Horse River Ranch will be encouraged. The recreational and agricultural usage of Horse River Ranch by the Association, Owners and Associate Owners will be accomplished in a manner which encourages and protects all wildlife; and, no hunting of any wildlife shall be allowed except as permitted by the Board of Directors of the Association for health or safety purposes.

6.3 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be conducted on any Parcel within the Property, nor shall anything be done or placed thereon which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to others as determined by the Association in its sole discretion.

6.4 **Annoying Sounds, Odors and Animal Wastes.** No sound or odor shall be emitted from any Parcel within Horse River Ranch, which is noxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, other than security devices used exclusively for security purposes, shall be located or used on any property except with the prior written approval of the DRC. All materials located upon a Parcel, including animal wastes, which create or cause an odor or unsightly condition shall be disposed of by the



Owner of the property in such a manner as will eliminate such odor or unsightly condition within a reasonable time.

6.5 **No Hazardous Activities.** No activity shall be conducted on, and no Improvement shall be constructed on, any Parcel within Horse River Ranch, which is or might be unsafe or hazardous to any person or property.

6.6 **No Unsightliness.** All large or unsightly objects, facilities, equipment, and conditions, including, but not limited to, disabled, junked, or abandoned vehicles, boats, snowmobiles, all-terrain vehicles, recreational vehicles, motorcycles, motorbikes, snow removal equipment, lawn mowers, and garden or maintenance equipment shall be kept within a structure or screened from view except when in actual use or as otherwise permitted by the DRC. The Association Board of Directors may specify what conditions and other objects constitute unsightliness by Rules and Regulations duly adopted by the Board.

6.7 **Noxious Weeds.** Areas of property and vegetation on Parcels which is disturbed by Owners during construction of driveways and structures must be revegetated and treated for noxious weeds, and kept free from dead brush or other growth or trash which, in the opinion of the DRC, is a health hazard to humans or livestock or domesticated animals, is unsightly, or causes undue danger of fire. Should noxious weeds occur in a disturbed area, it shall be the responsibility of the Owner of that property to contact any Gunnison County Weed Coordinator or Administrator for advice on eradication of such weeds. The Owners of all Parcels shall comply with the requirements of any Noxious Weed Control Plan recorded in the records of the Clerk and Recorder of the County. **GUC Regs.**

6.8 **Restrictions on Garbage and Trash.** No refuse, garbage, trash, lumber, grass, shrub, or tree clippings, plant waste, compost, metal, bulk materials, scrap, refuse, or debris of any kind shall be kept, stored, or allowed to accumulate on any Parcel except within an enclosed structure or in an area appropriately screened from view, and shall be disposed of on a regular basis at a landfill outside of the Property or at any community garbage and trash facility which may be established and maintained by the Association. Trash and garbage shall be stored in bear-proof containers while stored on a Parcel prior to disposal at a landfill outside the Property or at any established community garbage and trash facility.

6.9 **Restriction on Antennae, Satellite Dishes, and Transmitters.** Every Parcel shall have the right to at least one satellite reception dish for television, internet and similar reception, and the DRC shall have the power to establish rules that will enable all Owners to be assured of clear satellite reception from at least one point on their Parcel. All aerials, antennae, satellite dishes and other facilities for the transmission or reception of audio or visual signals must be constructed in compliance with guidelines established by the DRC.

6.10 **Restrictions on Mining or Drilling.** No property within the Property shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling of a domestic water well by Declarant or by an Owner. All individual water wells on a Parcel shall be installed by the Owner of that property at the time a residence is constructed on such property and shall be designed, located, constructed, maintained and equipped in accordance with the requirements, standards, and recommendations of any applicable water and sanitation district, Water Court Decree, Gunnison County regulations, the state engineer or other governmental authority having jurisdiction. Any well shall meet the requirements imposed by the State Engineer or any Water Court Decree affecting the Property.

6.11 **Compliance with Insurance Requirements.** Except as may be approved in writing by the Board of Directors of the Association, nothing shall be done or kept on Parcels which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance owned by the Association.

6.12 **Compliance with Laws.** Nothing shall be done or kept within the Property in violation of any law, ordinance, rule, or regulation of any governmental authority having jurisdiction.

6.13 **Maintenance of Community Roadways and Private Driveways.** Any community roadways constructed in Common Easement areas on the Property shall be maintained and snow-plowed by the Association. Any private driveways constructed on Parcels outside of Common Easement areas shall be maintained by the Owners on which Parcels the driveways are located. Driveways shared by Parcels shall be maintained and snow-plowed by the Owners of such Parcels at an agreed expense-sharing arrangement between or among such Owners. In the event Owners of Parcels sharing a driveway either request the DRC to make a maintenance and expense sharing determination or are unable to agree on the shared maintenance and snow-plowing and on the sharing of expenses thereof, the Association shall issue and deliver by U.S. Mail a written determination to the Owners involved. The Association may periodically modify its determination by written notice delivered by U.S. Mail to the



Owners as circumstances of use of the shared driveway change. In the event the Association determines any Owner's maintenance of any such driveways is inadequate or unsafe, the Association shall have the right to contract for and supervise such maintenance on behalf of the Owners of the Parcels and charge any non-complying Owners a Reimbursement Assessment equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead. All private driveways on Parcels shall be regularly snow-plowed by the Owner(s) and at all times after the issuance of a building permit for a residence. No accumulation of snow in excess of twelve inches in driveways shall be permitted. In the event the accumulation exceeds that amount in any driveway, the Association may plow or contract to plow same and may charge the Owner a Reimbursement Assessment equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead.

ARTICLE 7: ANIMALS

7.1 **Animals Permitted.** Horses, cattle, and any other animals allowed by the Association on any Parcel may be bred, boarded and cared for within the Property. No animal of any kind shall be permitted on a Parcel, which in the opinion of the Board causes an unreasonable amount of noise or odor, or is a nuisance or safety hazard to neighbors in the opinion of the Association.

7.2 **Owner's Financial Responsibility.** Each Owner of an animal kept on a Parcel shall be financially responsible and liable for any damage caused by said animal to any Property, to Parcels owned by any other Persons, for injuries to any Persons, or otherwise.

7.3 **Domestic Household Pets. *Persistent barking or similar noise is absolutely prohibited.*** No more than a total of three (3) domesticated household pets (e.g. dogs and cats) shall be allowed, kept, or maintained on any Parcel unless otherwise permitted by the DRC. Types and limits for the total number of domesticated household pets allowed, kept or maintained on any Estate shall be subject to the approval of the DRC. These maximum number restrictions shall not apply to domesticated birds or fish that are kept indoors or for other indoor pets designated by the DRC.

7.4 **Confinement of Animals.** All animals shall be controlled by their Owner and shall not be allowed off the Owner's Parcel except when properly leashed or otherwise safely contained and controlled and accompanied by the Owner or the Owner's representative. Dogs, cats and other pets shall be confined by the Owner within a Parcel by kenneling, leashing, fencing, physical constraint, or other means of control. The owner of any animal and/or the Owner of any property on which the animal is visiting or staying shall at all times be responsible for all actions of such animal and any damage caused by such animal, and shall take appropriate steps to prevent such animal from harassing wildlife or livestock. Failure to properly control animals may result in enforcement measures by the Association and by the county, the expense of which shall be charged to the offending Owner and against the Parcel.

7.5 **Maximum Animals Allowable.** One horse, cow, sheep or goat shall be allowed per each four (4) acres of the grazing area on a Parcel, as such grazing area is determined by Declarant or the Association, unless a greater number are allowed by the Association on an Estate. During Declarant's Control Period, Declarant may in Declarant's sole discretion determine the maximum number of such animals which shall be allowed on an Estate.

7.6 **Horse Riding.** Horses may be ridden on the Owner's Parcel and on the community trails designated on the Plat.

7.7 **Enforcement of Animal Control.** Violation of any animal control provisions in this Declaration shall permit persons acting in behalf of and with the authorization of the Association to enter on the Parcel where the violation has or is occurring and cure the violation or cause compliance with these provisions and shall permit the Association to levy and collect a Reimbursement Assessment against that Parcel and the Owner thereof for the costs and expenses of the Association in so doing. However, there shall be no entry into the interior of an Improvement intended for human occupancy without the consent of the Owner thereof unless a clear emergency exists.

7.8 **Impoundment of Domestic Pets.** The Association is specifically empowered to impound any dog, cat or other domestic pets running at large within the Property. Upon impoundment, the owner of the dog or cat or other domestic pet, if known, shall be notified and the animal shall be taken to the nearest facility, which accepts impounded domestic animals. It is the duty of the owner of such domestic pets to recover the domestic pets from such facility; and, if any such domestic pet is not recovered by the pet's owner in accordance with the rules and regulations of such facility, the facility may destroy the dog, cat or other domestic pet without liability. Owners are advised that Colorado law (C.R.S. Section 33-3-106) permits the killing of dogs to prevent death or injury to livestock or big game animals.

7.9 **Rules and Regulations.** The Association may adopt suitable rules and regulations regarding animals and may, in particular circumstances, for good cause, approve variances as to the



number and types of animals to be allowed, kept, or maintained on any Homestead or on an Estate, except that the Association may not subsequently reverse a determination by Declarant of the type and number of animals permitted on an Estate at the time of Declarant's sale of an Estate.

ARTICLE 8: FIRE PREVENTION

8.1 **Owners' Responsibility.** All Owners shall be responsible for implementing measures within each respective Owner's Parcel to minimize wildfire hazards, and shall comply with any Wildfire Mitigation Plan adopted by the Association. All buildings must be constructed in accordance with the rules and regulations of the Gunnison Fire Protection District. **GUC Regs.**

8.2 **Monitoring.** Each building where fire protection devices are required by the County or the Association shall have an approved early warning alarm system, which must meet all requirements and be approved by the Gunnison Fire Protection District. Initiation of any early warning device shall activate an external horn and strobe light and an interior audible warning device. Location of the external horn, strobe light, and interior audible warning device shall be reviewed and approved by the Gunnison Fire Protection District at the time of initial system review during the building permit application stage.

ARTICLE 9: TREE MANAGEMENT

9.1 **Wooded Area Management.** The Association may implement minimum defensible space standards on wooded Parcels, create Fire Safe Zones, and implement fire prevention management practices in wooded portions of the Property.

9.2 **Tree Preservation and Maintenance.** Dominant trees should be retained on all Parcels to the maximum extent feasible. Trees should be pruned by removing lower branches which may create a fire hazard. Such work shall be performed by the Owner of the property which contains a wooded area at the time a building site and driveway are cleared.

9.3 **Slash Disposal.** Owners must regularly dispose of all slash and other dead and dying trees, tree limbs and other plant materials which may create a fire hazard. Acceptable disposal methods include, but are not limited to, piling and burning with the approval of the Gunnison Fire Protection District, chipping or removal from the Property.

9.4 **Subordinate Section.** The provisions of this Section 9.4 relating to trees are subordinate to the provisions of Section 9.5.

9.5 **Tree Removal.**

9.5.1 **DRC Removal Approval.** No trees or brush growing on the Property shall be felled or trimmed, nor shall any natural area be cleared or landscaping performed which changes the character of the land on any Parcel without the prior written permission of the DRC. No view corridors can be cut for any reason without first obtaining the written approval of the DRC. In the event any trees or brush are felled or trimmed, the Owner shall be required to remove all portions of such tree or brush from the Parcel, including the slash. The cutting of trees into firewood and the same stacked neatly on a property shall be deemed to meet the requirement of removal from the Parcel. Stumps may be left if cut off to ground level; otherwise, they shall be removed from the Property.

9.5.2 **Removal Expense.** In the event an Owner does not properly remove and clean up any residual debris after tree or brush removal, the DRC is hereby authorized to cause the clean-up to be done at the property Owner's expense and, if not timely paid by the Owner, the Association may collect from the Owner 150% of the Association's costs and expenses, including a charge for the Association's administration overhead, through a Reimbursement Assessment.

9.5.3 **Governing Authorities.** Notwithstanding the limitations of tree removal as provided above, Owners shall comply with any wildfire mitigation authorities and requirements as promulgated from time to time by and including, without limitation, Gunnison County Fire Protection District and the Colorado State Forest Service.

ARTICLE 10: COMMON EASEMENTS – USE AND MAINTENANCE

10.1 **Common Easements.** The Common Easements of Horse River Ranch shall be Access and Maintenance Easements, Roadways Easements, Community Fence Easements, Community Parking Area Easements, Utility Easements, Fishing Easements, and other Recreation Easements, including Community Trail Easements (Equestrian and Pedestrian on the Plat). The use of all Common Easements shall be in accordance with all applicable laws, and the Rules and Regulations of the Association.

10.2 **Access and Maintenance Easements.** The Common Easements in and along Ohio Creek, other waterways, irrigation ditches, and all the community ponds and their banks and adjoining recreation and parking areas on the Property, the community roadways and community utility and fence



easements, and the community trail easements, as designated on the Plat, are controlled, managed, and shall be maintained by the Association, subject to the Association's agreement with HRR Water Company, for the benefit of the Members and the Association.

10.3 Roadway Easements. All Owners, Declarant, Associate Owners and their guests may use the community roadways delineated on the Plat, including Horse River Ranch Drive and the Horse River Ranch Drive bridge and Overlook Trail, on the Property for ingress and egress. Only licensed cars, trucks, motorcycles, motorbikes, all-terrain vehicles and snowmobiles may be driven on the community roadways unless other vehicles are specifically allowed by this Declaration or by the Rules and Regulations of the Association. Roadways may not be used for vehicular recreational activities.

10.4 Community Fence Easements. In Community Fence Easement areas designated on the Plat, the Association shall have the right to erect community fencing around the perimeter of the Property, and along either or both sides of Horse River Ranch Drive and other community roadways. The Association may erect other fencing anywhere within the Common Easements on the Property for historic animal containment, recreational, safety, security or aesthetic purposes. All fencing constructed by and for the Association shall be maintained by the Association.

10.5 Community Parking Area Easements. All Owners, Declarant, Associate Owners and their guests may use the community parking areas designated on the Plat.

10.6 Utility Easements. All Owners and Declarant shall have the right to place, or cause to be placed by utility companies or their agents, underground utility lines within the Utility Easements delineated on the Plat and along each Parcel's driveway, but only with the prior written approval of the DRC. The property within such easement area must be returned to the condition it was in prior to installation and no existing utility lines within the easement area may be disturbed without the consent of the owner of the lines.

10.7 Fishing Easements. In accordance with the Plat, Fishing Easements have been created in and along Ohio Creek and in ponds located in the Property and designated on the Plat as Community Ponds for the private use and enjoyment of all Owners, Declarant, Declarant-approved and Association-approved Associate Owners and guests and invitees of the foregoing. All fishing must be in accordance with the Rules and Regulations of the Association.

10.8 Recreational Easements, including Community Trails. The Owners, Declarant, the Associate Member and Potential Owners and their guests shall have the right to conduct recreational activities on the Property, including fishing, picnicking, cross-country skiing, hiking, bicycling, and horseback riding. Snowmobiles, motorcycles, motorbikes, all-terrain vehicles, and other motor vehicles may not be used for recreational activities on the Association Properties. All use of the Community Trails or other Common Easements shall be in accordance with all applicable laws, and the Rules and Regulations of the Association. All recreational activities also must be compatible with, and conducted in a manner to avoid interference with, the agricultural and ranching operations of Owners.

10.9 Power to Grant Easements. Declarant, during Declarant's Control Period, and the Association shall have the power to grant easements for access, entrances, signage, landscaping, fencing, public safety, utilities, drainage, agricultural irrigation, streams, ponds, water facilities, water storage, community trails and other easements in, on, over, or under the Property and roadways in the Property, except on a Parcel which is owned by a Member other than Declarant.

10.10 Easement for Association Properties Encroachment and Maintenance. There is hereby created a blanket easement across all Parcels for the benefit of Declarant, HRR Water Company and the Association for the purposes of entering upon the portion of any Parcel not within an enclosed structure (1) to allow Declarant or the Association to maintain, repair, replace, or remove any Association Properties or Owner properties existing in violation of these Covenants, drainage or irrigation facilities, or private roadways; (2) to allow the Declarant or HRR Water Company to mow and maintain the irrigation ditches and laterals as provided and in accordance with Section 3.8 above and Article 12 below; (3) to allow the Declarant or the Association to harvest and maintain the hay meadows of Owners as provided and in accordance with Section 3.8 above; or (4) to allow the inspection and reading of well meters and the inspection of septic systems for proper operation. In the event any fence or other properties encroach upon any Parcel, a valid easement is hereby created and does exist for the encroachment and for the maintenance, repair, replacement, or removal of such encroachment as long as it exists. Such encroachments or easements shall not be considered or determined to be encumbrances on any Parcel for the purposes of marketability of title.

10.11 Easements Deemed Created. All conveyances of Parcels or Property hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements, reservations,



and rights of Declarant and Owners contained in this Declaration, even though no specific reference to such easements or to this Declaration appears in the instrument for such conveyance.

ARTICLE 11: ASSOCIATION PROPERTIES

11.1 **Members' Rights of Use and Enjoyment Generally.** All Members may use the Association Properties to the extent and in the manner specified in this Declaration and the rules and regulations of the Association. Specifically, the recreational use of snowmobiles and all-terrain vehicles on Parcels by Members and their guests shall be conducted in a manner and at times during the day, which will not interfere with other Members' peaceful enjoyment of Parcels and the Property in general. Motorcycles, motorbikes, or other similar motorized vehicles may not be used for recreational purposes on Parcels.

11.2 **Right of Association to Regulate Use.** The Association, acting through the Board, shall have the power to regulate use of the Association Properties by Members and the public to further enhance the overall rights of use and enjoyment of all Members and to do all things necessary or appropriate to maintain, repair, or replace the Association Properties.

11.3 **Liability of Owners for Damage.** Each Member shall be liable to the Association for any damage to property or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Member or any Person using the Property through such Member and for any violation by such Member or any such Person of this Declaration or any Rule and Regulation adopted by the Association. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against a Member to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration or of such Rules and Regulations or for any increase in insurance premiums directly attributable to any such damage or any such violation.

11.4 **Association Powers in the Event of Condemnation.** If any properties or interests therein are taken under exercise of the power of eminent domain or by purchase in lieu thereof, the award in condemnation or the price payable shall be paid to the Association, except to the extent payable to any other Person with an interest in such property, including any Mortgage of such property. The Association shall have the exclusive right to participate in such condemnation proceedings and to represent the interests of all Owners. Any award or funds received by the Association shall be held by the Association in the Maintenance Fund as determined by the Board, as a reserve for future maintenance, repair, reconstruction, or replacement of property or may be used for Improvements or additions to or operation of properties. No Owner shall be entitled to participate as a party or otherwise in any condemnation proceedings.

ARTICLE 12: WATER AND WATER RIGHTS

12.1 **Water and Water Rights Ownership and Management.** Declarant is the owner of certain water and water rights in the County of Gunnison, Colorado. Declarant intends to allocate and dedicate an adequate portion of Declarant's water and water rights to the Property for irrigation immediately following the completion of an independent and comprehensive water irrigation and water augmentation study commissioned by Declarant in 2004 for the Property. In due course, following receipt by Declarant of the study, an adequate portion of Declarant's water and water rights will be allocated and dedicated to the Property by Declarant. Declarant will then transfer such water and water rights to HRR Water Company by Special Warranty Deed.

HRR Water Company is in the process of being formed as a Colorado Corporation under the Colorado Non-Profit Corporation Act. Declarant shall initially manage the water and water rights for the benefit of the Property and the Members. All easements for irrigation ditches and the portion of Declarant's water and water rights to be dedicated thereto (except only any well, pond or usage within any Parcel not designated as a Common Easement) shall be owned, managed and controlled by HRR Water Company for the benefit of the Property and the Members. No Owner/Member, family member, guest, invitee or employee shall at any time interfere with, obstruct or utilize Ohio Creek or any irrigation ditch or other body of water in the Property, unless expressly authorized to do so by this Declaration or by HRR Water Company. The ditches and laterals on the Property and the water within them are owned by others who also have historical shared easements to access the ditches and laterals for maintenance and repair. Neither these Covenants nor the Notes on the Final Plat shall restrict or expand on those historical ditch and laterals use, access or easement rights without the Association's written approval.



Crossings by Owners or anyone else of these irrigation ditches and laterals by underground utilities, roadways or culverts shall be permitted, but only with the prior written approval of the Association. All such crossings must be performed in accordance with the Rules and Regulations of the Association and all specific requirements mandated by the Association for the approval of individual crossing applications. Crossing violations by Owners shall be subject to fines and other penalties imposed by the Association in its discretion, including but not limited to repair expenses and sole responsibility of such Owners for any fines or liabilities imposed by governmental authorities or resulting from claims of ditch and water rights owners.

No person other than Declarant during Declarant's Control Period, or HRR Water Company or the Association, shall at any time do any act or take any action pertaining to the Common Easements in and along the banks of Ohio Creek and the community ponds and the water therein, the irrigation ditches, or any other waterways on the Property, unless expressly authorized to do so by this Declaration or by HRR Water Company. HRR Water Company shall be in charge of managing, administering, and using such water and water rights, regardless of the physical location of any spring or other point of diversion upon an individual Parcel. HRR Water Company, in conjunction with Declarant during Declarant's Control Period, and the Association after Declarant's Control Period, shall be in charge of determining how water shall be disbursed and used for the benefit of the Property and the Members.

12.2 Water and Irrigation Management and Reimbursement Assessments. Prior to the dedication and transfer of water rights to HRR Water Company as provided in Section 12.1 above, Declarant shall manage and administer all the water and water rights for the use and benefit of the Property. Following such transfer of water rights, HRR Water Company shall manage and administer all water and water rights irrigation matters on behalf of the Association and for the use and benefit of the Property and all Owners of Parcels. Declarant, and subsequently HRR Water Company, shall have the right to access all the Property (1) as necessary, to mow all irrigation ditches thereon, and (2) to manage and maintain all irrigation ditches and related devices and equipment, including the distribution of irrigation water. Declarant, and subsequently HRR Water Company, will bill the Association for all water and irrigation management and related administration expenses, which will then be charged and assessed by the Association against individual Parcels. HRR Water Company shall have the duty and power to manage and administer the irrigation of Parcels historically irrigated, including the power to determine which Parcels, and how much acreage in those Parcels, have been historically irrigated, and continue to be irrigated, by the irrigation ditches on and traversing the Property. HRR Water Company shall charge the Association for all costs, expenses and fees incurred, including a charge for HRR Water Company's administration overhead, for the irrigation management and administration of Parcels and for necessary capital expenditures. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Reimbursement Assessment against all Members and such Members' Parcels to cover all such Parcels' HRR Water Company irrigation and water management charges billed to the Association.

12.3 HRR Water Company Stock. Declarant shall initially own 100% of the stock of HRR Water Company for the benefit of the Members and the Property to which these irrigation ditch easements and the water and water rights are dedicated and have historically irrigated. After HRR Water Company is formed and the appropriate water and water rights to be dedicated to the Property are determined by Declarant as a result of the independent and comprehensive water irrigation and water augmentation study referenced in Section 12.1 above, Declarant shall transfer stock of HRR Water Company to the then-existing Owners of Parcels and thereafter to new Owners of Parcels as conveyances of Parcels occur. The amount of stock in HRR Water Company to be transferred to the Owner of each Parcel shall be determined by the Board of Directors of HRR Water Company after considering the results of the independent and comprehensive water irrigation and water augmentation study referenced in Section 12.1 above. The Board of Directors of HRR Water Company shall have the sole discretionary power to cancel all or a portion of the outstanding stock of any Owner of a Parcel or to issue additional stock in HRR Water Company to any Owners of Parcels to adequately, fairly and approximately reflect the pro-rata need and usage by each Parcel of the water and water rights dedicated to the Property.

12.4 HRR Water Company Stock Transfers. In the event Declarant either adds to, or deletes from, the Property one or more Parcels or subsequently conveys or permits the conveyance of any of the Property designated as a Homestead or as an Estate out of the Property, the amount of HRR Water Company stock to be transferred either from HRR Water Company to the affected Members or to be cancelled or transferred from the affected Members to HRR Water Company shall be determined in the sole discretion of the Board of Directors of HRR Water Company, and the affected Members shall



cooperate fully to effect such transfers of HRR Water Company stock. In the event property is added to the Property, all the water rights running with such added property must be conveyed to HRR Water Company in consideration of the issuance of HRR Water Company stock to the new Member/Owner of such added property.

12.5 Restrictions on Conveyance of Water and Water Rights. Upon the completion of a water augmentation study and plan commissioned by Declarant and completion of the HRR development, Declarant shall dedicate and transfer the determined adequate portion of Declarant's water and water rights to HRRWC for the irrigation of those Parcels historically irrigated by designated irrigation ditches on the Property and, as appropriate, to individual Owners of Parcels for the use of those Parcels which have not been historically irrigated by such ditches prior to the completion of development of HRR. Such water and water rights as determined by the Board of Directors of HRR Water Company, in Board's sole discretion, to be sufficient to irrigate the Property, once dedicated and conveyed to HRR Water Company for the benefit of the Members and their Parcels, may not be conveyed out of HRR Water Company (thus separating its use and benefit from the Property) other than through use with an augmentation plan for water use on the Property or in the event property is deleted from the Property with the consent of HRR Water Company.

12.6 Maintenance of Drainage and Irrigation. There shall be no interference with Non-Disturbance Areas or the existing drainage or irrigation pattern over any Parcel within the Property, except as approved in writing by HRR Water Company. Approval shall not be granted unless provision is made for adequate drainage and irrigation and unless changes in a drainage or irrigation pattern will not adversely affect any down-gradient property. Owners shall not dam or otherwise redirect any water historically flowing through the Property without the prior written approval of HRR Water Company. No construction within the Property shall violate any federal or state laws or regulations applicable to wetlands or water rights. There is hereby created a drainage and irrigation easement across all of the Property for the benefit of each Parcel, all Common Easement areas and roadways as may be necessary to permit drainage and irrigation to flow off each Parcel in accordance with historic drainage and irrigation patterns within the Property. Any construction on a Parcel shall not interfere with such drainage and irrigation flows, except to the extent the DRC allows an Owner to redirect flows around the developed portion of the Parcel.

12.7 Enforcement of Preservation and Administration of Water Rights. At the expense of the Association, either the Declarant during Declarant's Control Period or the Association following Declarant's Control Period shall have the right, in the event of the failure or inability of the HRR Water Company, to preserve and administer any water system and water rights within the property, and to undertake such action as was required of the HRR Water Company, but was not performed.

ARTICLE 13: ASSOCIATION OPERATION

13.1 Association. The Horse River Ranch Homeowners Association, Inc. has been or will be formed as a Colorado corporation under the Colorado Non-Profit Corporation Act. The Association has been or shall be organized prior to the date the first Parcel located in the Property is conveyed to a Purchaser, as that term is defined in the Act. The Association shall have the duties, powers, and rights set forth in this Declaration and in its Articles of Incorporation and Bylaws. As more specifically set forth hereinafter, the Association shall have a Board of Directors to manage its affairs.

13.2 Association Board of Directors. The affairs of the Association shall be managed by a Board of Directors. The number, term, and qualifications of the Board of Directors shall be fixed in the Articles of Incorporation and Bylaws.

13.3 Membership in Association. Each Owner of a Parcel within the Property, including Declarant, shall be a Member of the Association. There shall be one Membership in the Association for each Parcel within the Property. The Person or Persons who constitute the Owner of a Parcel shall automatically be the holder of the Membership appurtenant to that property, and the Membership appurtenant thereto shall automatically pass with fee simple title to the property.

13.4 Allocation of Shares to Parcels. Shares in the Association, as defined in Section 2.48 above and limited in this Section 13.4, shall be allocated by Declarant in Declarant's sole discretion to a single Owner who acquires an Estate. The number of Shares in the Association allocated to an Estate under this Section 13.4 may be no more than one voting share per 35 acres in the Estate, but may be limited by Declarant or the Association to only one voting share for an entire Estate regardless of its acreage. In allocating the number of Shares to an Estate, the Declarant shall consider the number of structures permitted to be built on the Estate, the type, purpose and use of the land and those structures, and the type of, and actual traffic or anticipated traffic by Declarant. In the event that neither the



Declarant nor the Association allocates a fewer number of Shares in the Association to a particular Estate at or before the time of its acquisition by a new Owner, the Estate shall have the maximum allowable number of Shares for the acreage in the particular Estate, which shall be equal to the multiple of whole 35 acres which comprise the Estate when acquired by the new Owner.

13.5 **Voting Rights of Members.** There shall be one (1) class of Members, comprised of all Members. Except as specifically provided otherwise in this Declaration, the Articles, or the Bylaws, all matters voted on by the Members shall be voted on by the Members voting as a single class. Each Member shall have the right to cast one (1) vote for each Homestead owned by such Member and one (1) vote for each Share allocated to each Estate as provided in Sections 13.4 above. The Bylaws shall provide for the manner, time, place, conduct, and voting procedures for Member meetings. If there is more than one Owner of a Parcel, the Association will accept the vote of any one Owner as the vote of all unless it is notified in writing by any Owner that it should not follow this procedure. If it is so notified, it will not count any vote by an Owner unless all Owners of the Parcel have agreed in writing to be bound by such Owner's vote.

13.6 **Appointment and Election of Directors.** From the date of formation of the Association until the termination of Declarant's Control Period, Declarant shall have the rights set forth below to appoint and remove members of the Board of Directors and the right to appoint all officers of the Association. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Declarant's Control Period, but, in that event, Declarant may require, for the duration of the Declarant's Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Upon the formation of the Association, Declarant shall have the right to appoint all directors of the Association. Not later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Parcels combined to Owners other than a Successor Declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board of Directors will be elected by Owners other than a Declarant. Not later than sixty (60) days after the conveyance of fifty percent (50%) of the Parcels combined to Owners other than a Successor Declarant, not less than 33-1/3% of the members of the Board of Directors will be elected by Owners other than a Declarant. Not later than the termination of the Declarant's Control Period as provided above, the Owners (including Declarant if the Declarant is still an Owner) shall elect the Board of Directors of at least three (3) members. Also, the Board of Directors shall elect the officers, with such Board members and officers to take office upon termination of the Declarant's Control Period. Members of the Board of Directors and officers need not be Owners; but after Declarant's Control Period, at least a majority of the directors must be Owners.

13.7 **Directors and Officers Appointed by Declarant.** All directors and officers appointed by the Declarant shall serve at the pleasure of the Declarant, and the Declarant shall have the absolute right, at any time, and in its sole discretion, to remove any director or officer appointed by it, and to replace such director or officer with another person to serve on the Board or as an officer. Replacement of any director or officer appointed by the Declarant shall be made by written instrument delivered to any officer or any other director, which instrument shall specify the name of the person designated as successor director or officer. The removal of any director or officer and the designation of his successor by the Declarant shall become effective immediately upon delivery of such written instrument by the Declarant.

ARTICLE 14: DUTIES AND POWERS OF ASSOCIATION

14.1 **General Duties and Powers of Association.** The Association has been formed to further the common interests of the Members. The Association, acting through the Board or Persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and set forth elsewhere in this Declaration and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Members, to maintain, improve, and enhance the common interests of the Members, to maintain, improve, and enhance Property, and to improve and enhance the attractiveness, aesthetics, agricultural and ranching use, wildlife refuge and protection, environmental protection, recreational use, and desirability of the Property, including recreational use of the streams and ponds located on Common Easements in Parcels as depicted on the Plat. The Association shall maintain all portions of the Property required to be maintained by the Association under any plat, site plan, or other development approval granted by government officials, including, but not limited to, all the Property, roadways, fencing and landscaping, community trails, ponds and streams, irrigation ditches, entrances and other improvements on public rights-of-way. The Association shall pay all fees, expenses, charges and other obligations incurred in connection with any and all irrigation ditches,



streams, ponds, waterways, drainage and irrigation devices and facilities, any Community Augmentation Plan, and all other HRR Water Company expenses attributable to the management, control, or maintenance of the water or water rights of the Members or affecting the Association.

14.2 **Power to Manage and Care for Property.** The Association shall have the power to manage, operate, care for, maintain, pay taxes on, pay utility expenses incurred in connection with, and repair all the Property and to keep the same in an attractive and desirable condition for the use and enjoyment of the Members.

14.3 **Power to Maintain Insurance.** The Association shall have the power to obtain and keep in full force and effect, property insurance on all insurable Improvements and personal property owned by the Association. The Association also shall have the power and the obligation to obtain and keep in full force and effect general liability insurance against claims and liabilities arising in connection with: 1) the ownership, existence, use, or management of the Property, including, but not limited to, the Association's relationship with HRR Water Company regarding all streams, ponds, irrigation ditches and other waterways and related devices and facilities, 2) the administration and enforcement of this Declaration, 3) insurance covering liability for bodily injury and property damage, and 4) if the Association owns or operates motor vehicles, liability for bodily injury and property damage arising as a result of the ownership and operation of motor vehicles. The Association shall obtain such other insurance as may be required by law, including workmen's compensation insurance, and shall have the power to obtain such other insurance and such fidelity, indemnity or other bonds as the Association shall deem necessary or desirable.

14.4 **Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal, and enforce Rules and Regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of the Property, and the use of any other property within the Property, including the Parcels. Each Member shall comply with such Rules and Regulations and shall see that Persons claiming through such Member comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall prevail.

14.5 **Power to Enforce Declaration and Rules and Regulations.** The Association shall have the power to enforce the provisions of this Declaration and the Rules and Regulations and shall take such action as the Association deems necessary or desirable to cause such compliance by each Member and each Person claiming by, through, or under such Member. Violation by an Owner of any provision in this Declaration with respect to the Owner's Parcel shall permit persons acting on behalf of and authorized by the Association to enter on the Parcel and cure the violation or cause compliance with these provisions, and shall permit the Association to levy and collect a fine and a Reimbursement Assessment equal to 150% of the Association's costs and expenses, including a charge for the Association's administration overhead, in so doing.

14.6 **Power to Grant Easements.** The Association shall have the power to grant easements in, on, over, or under the Property and roadways in the Property as provided in Section 10.9.

14.7 **Parcel Boundaries and Number.** The Association shall have the right given to it under the Act to change the boundaries of Parcels and the number of Parcels, except that all Homesteads must contain at least 35 acres but less than 70 acres, and that there must be at least eighteen (18) Shares, and that the Association may not create more than forty (40) Parcels.

14.8 **Power to Engage Employees, Agents and Consultants.** The Association shall have the power to hire and discharge employees and agents and to retain and pay for legal, management, and accounting services as may be necessary or desirable in connection with the performance of any duties or the exercise of any powers of the Association under this Declaration.

14.9 **General Corporate Powers.** The Association shall have all of the ordinary powers and rights of an Association created pursuant to the Act and of a Colorado corporation formed under the Colorado Non-Profit Corporation Act, including, without limitation, entering into partnership and other agreements, subject only to such limitations upon such powers as may be set forth in this Declaration or in the Articles of Incorporation or Bylaws. The Association shall also have the power to do any and all lawful things which may be authorized, required, or permitted to be done under this Declaration or the Articles of Incorporation or Bylaws and to do and perform any and all acts which may be necessary or desirable for, or incidental to, the exercise of any of the express powers or rights of the Association under this Declaration and the Articles of Incorporation or Bylaws.



ARTICLE 15: ASSOCIATION BUDGET, ASSESSMENTS AND ENFORCEMENT

15.1 **Annual Budgets.** The Board of Directors shall cause to be prepared, prior to imposing any Assessments, commencing not later than calendar year 2005, a Budget for such calendar year. The Budget shall include an amount for contingencies and amounts deemed necessary or desirable for deposits to create, replenish, or add to the reserve fund for major capital repairs, replacements, and improvements to the Association Properties in such amounts as the Board of Directors deems appropriate. Copies of the Budget shall be made available by the Association to any Members requesting a copy of the same upon payment of the reasonable expenses of copying the same.

15.2 **Ratification of Budget.** Within thirty (30) days after adoption of any proposed Budget, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Budget to all Members and shall set a date for a meeting of Members to consider ratification of the Budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the Budget is rejected by the Owners of at least two-thirds (2/3) of the Homestead Share allocations, as provided in Section 13.4 above, then subject to the Declaration, the Budget is ratified, whether or not a quorum is present. In the event the proposed Budget is rejected, the Annual Budget last ratified by the Owners shall be continued and assessments shall be based thereon until such time as the Owners ratify or fail to reject a subsequent Budget proposed by the Board of Directors of the Association.

15.3 **Allocation of Assessments.** Upon the closing of the initial sale of each Parcel to a purchaser other than a Principal Builder or a Successor Declarant, the purchaser shall pay the remaining portion of the annual assessments prorated monthly for the remaining whole months in the year of closing for the Parcel purchased as set forth in a budget adopted by the Association. Such assessments payment may be used by the Association for proper Association purposes and shall not be returned to an Owner upon sale of the Parcel. Under no circumstances may an Owner obtain repayment of such contribution from the Association. However, each Owner shall be given a prorata monthly credit for such deposit upon the sale of such Parcel.

15.4 **Common Assessments and Initial Assessment.** For each calendar year, the Association shall levy Common Assessments against Owners (other than Declarant) of the Parcels. Each such Owner shall be obligated to pay the Common Assessments levied against and allocated to such Owner and the property of such Owner, as provided in this Declaration. Estate Owners shall be obligated to pay the levied Common Assessments according to the number of allocations of Shares as provided in Section 13.4 above. Until the Association makes the initial Common Expense Assessment, the Declarant shall pay all common expenses. The initial Common Expense Assessment for each Share, when made and unless waived by Declarant or the Association, shall be in the amount of \$400.00 per year and may not be increased prior to January 1, 2005. The initial Assessment shall be payable by each new Owner of any Parcel at such time as the Owner of such Parcel takes title to the property or on the first day of the first month assessments have commenced, whichever occurs last. The initial assessment paid by the Owner of a Parcel, including Declarant, any Successor Declarant and Principal Builders, shall be prorated monthly for each Share to reflect the time that the Owner took title to the Parcel.

15.5 **Road Fund Assessments.** For each calendar year, the Association shall levy Road Fund Assessments against Owners other than Declarant of the Parcels. The Association shall assess a sufficient amount to maintain a separate Road Fund set aside in an interest bearing account for the specific purpose of maintaining and repairing the private roadways within the Property and the entrances from county roads into the Property. The initial amount allocated to the Road Fund is \$125.00 per Share per year. Each such Owner shall be obligated to pay the Road Fund Assessments levied against and allocated to each Owner and the Parcel of such Owner, as provided in this Declaration. Such Road Fund Assessments shall be allocated among the Parcels of Owners in the same manner as Common Assessments are allocated. Written notice of any change in the amount of any annual Road Fund Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change, and shall be submitted to the Members as part of a the budget.

15.6 **Payment of Assessments.** Common Assessments and Road Fund Assessments shall be due and payable in advance to the Association by the assessed Member during the calendar year in one installment, on or before January 31st of each calendar year, or in such other manner and on such other dates as the Board of Directors may designate in its sole and absolute discretion. Notice of the amount of the Common Assessments and the Road Fund Assessments for the next calendar year shall be given to each Member prior to December 15th of each year. Other types of assessments shall be due as periodically proscribed by the Association.



15.7 Failure to Fix Assessment. The failure by the Board of Directors to levy a Common Assessment or a Road Fund Assessment for any year shall be deemed to be a continuation of the Common Assessment and Road Fund Assessment previously levied by the Association and shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration or a release of the liability of any Member to pay such assessments, or any installments thereof, for that or any subsequent year. No abatement of the Common Assessment, the Road Fund Assessment, or any other Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or Improvements to the Property or from any action taken to comply with any law or any determination of the Board of Directors or for any other reason.

15.8 Supplemental Common Assessments. If the estimated sums required for Common Assessments prove inadequate for any reason, including nonpayment of any Owner's Common Assessment, the Association may, from time to time, levy a supplemental Common Assessment. Such supplemental Common Assessments shall be allocated among the Parcels of Owners in the same manner as Common Assessments are allocated. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change, and shall be submitted to the Members as part of a supplemental budget.

15.9 Special Assessments for Capital Expenditures. After termination of the Declarant's Control Period, or prior to termination of the Declarant's Control Period with Declarant's consent, in addition to Common Assessments, the Board of Directors of the Association may, subject to the provisions of this Section, levy Special Assessments for the purpose of raising funds not otherwise provided under the Budget from Common Assessments to construct or reconstruct, repair, or replace capital Improvements upon the Property, including necessary personal property related thereto; to add to the Association Properties; to provide for necessary facilities and equipment to offer the services authorized in this Declaration; or to repay any loan made to the Association to enable it to perform the duties and functions authorized in this Declaration. The Board of Directors shall not levy Special Assessments without both the consent of Declarant and the vote of at least sixty-seven percent (67%) of Members, counting the Estate Share vote allocations as provided in Section 13.4 above, at a meeting of Members held in accordance with the provisions of the Act. Special Assessments shall be allocated in the same manner as Common Assessments. The Association shall notify Members in writing of the amount of any Special Assessment and of the manner in which, and the dates on which, any such Special Assessment is payable and the Members shall pay any such Special Assessment in the manner so specified.

15.10 Reimbursement Assessments. The Board of Directors shall levy an annual Reimbursement Assessment against affected Members for HRR Water Company charges (See Section 12.2). And, the Board of Directors may levy an annual Reimbursement Assessment against a Member if the failure of the Member or a Person claiming through the Member to comply with this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations results in the expenditure of funds by the Association to cause such compliance. The Board of Directors may also levy a Reimbursement Assessment against any Member for the provision of services and/or facilities (including transportation facilities and services) provided to fewer than all of the Owners or provided at the request of such Owners. The amount of the Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board of Directors of the Association that the Reimbursement Assessment is owing.

15.11 Obligation and Lien for Assessments. Subject to the provisions of this Declaration, each Owner, other than Declarant, as Owner of any Owner's Parcel, whether containing or not containing a newly constructed Family Residence or Guest House, by acceptance of a Deed, agrees to pay Assessments to the Association, together with interest, late charges, cost of collection, and attorneys' fees as provided herein. Such Assessments, interest, late charges, cost of collection, and attorneys' fees shall also be a continuing lien upon the Parcel against which each Assessment is made in the event of delinquency in payment. Such Assessments, interest, late charges, cost of collection, and attorneys' fees shall also be the personal obligation of the person who was the Owner, or the Persons, jointly and severally, who were the Owners at the time the Assessment was made. Assessments may consist of Common Assessments, Road Fund Assessments, Special Assessments, and Reimbursement Assessments.

15.12 Late Charges and Interest. If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty (30) days after it is due, the Member obligated to pay the Assessment may be required to pay a reasonable late charge to be



determined by the Board of Directors of the Association. Any Assessment or installment of an Assessment, which is not paid within thirty (30) days after it is due, shall bear interest from the due date at the rate of 18% per annum, or such other rate as may be established by the Board of Directors of the Association from time to time.

15.13 Notice of Default and Acceleration of Assessments. If any Common Assessment, Special Assessment, or Reimbursement Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of default (Notice of Default) to the Owner and to each Mortgagee of the Parcels who has requested a copy of the notice. If the delinquent Assessment or installment and any late charges, legal fees or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or by this Declaration, subject to the protection afforded to the Mortgagees under this Declaration.

15.14 Remedies to Enforce Assessments. Each Assessment levied hereunder shall be a separate, distinct, and personal debt and obligation of the Owner or Member against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Road Fund, Special, or Reimbursement, the Board of Directors of the Association may, in addition to any other remedies provided under this Declaration or by law, enforce such obligation on behalf of the Association by suit or by filing and foreclosure of a lien as hereinafter provided.

15.15 Lien to Enforce Assessments. As provided in the Act, all Assessments against a Parcel (including late fees, interest, cost of collection and attorneys' fees) shall constitute a lien on such Parcel superior to all other liens and encumbrances, except: (a) tax and special assessment liens in favor of any assessing authority; (b) liens and encumbrances recorded prior to recordation of this Declaration; and (c) all sums unpaid under a Mortgage encumbering a Parcel (First Mortgage) that has first priority over any other Mortgage encumbering such property to the extent the Assessments were assessed after the First Mortgage is recorded. Fees, charges, late charges, attorney fees, fines, and interest charged pursuant to this Declaration or the Act are enforceable as Assessments. By acceptance of a deed for a Parcel, the Owner or Owners agree that the Assessment lien shall be prior to any homestead exemption or right and irrevocably waive any and all rights they may have to claim a homestead exemption against enforcement of the Assessment lien.

15.16 Limited Priority Over First Mortgages. Notwithstanding the foregoing, the statutory lien for Assessments is also prior to the lien of a First Mortgage to the extent of an amount equal to the Assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution of an action to enforce or extinguish the statutory lien or the lien of the First Mortgage.

15.17 Notice of Lien. The Recording of this Declaration constitutes record notice and perfection of the Assessment lien, and no further Recordation of any claim of lien or assessment is required. However, to evidence such lien, the Association may Record a written notice setting forth the amount of such unpaid Assessments, the name of the Owner of the Parcel and the identification of such Parcel. Such notice shall be signed by one of the Board of Directors, an officer of the Association or an agent appointed by the Board and shall be recorded. The Recording of a notice of lien shall not be a condition precedent to nor delay the attachment of a lien, which shall attach as of the first day of any period for which any Assessment is levied. Such lien may be enforced by foreclosure on the defaulting Owner's Parcel by the Association in the same manner as a mortgage on real property and shall encumber all rents and profits issuing from the Parcel, which lien on rents and profits shall be subordinate to the matters described in Section 15.15 above. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey the Parcel.

15.18 No Offsets. The payment of Assessments is an independent covenant and all Assessments shall be payable in the amounts specified in the levy thereof without notice or demand (except as may be specifically required in this Declaration), and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

15.19 Other Liens. It is possible that liens other than mechanics' liens and Assessment liens may be obtained against the Property, including, without limitation, judgment liens and purchase money mortgage liens.

15.20 Lawsuit to Enforce Assessments. The Board of Directors of the Association may bring suit at law to enforce any Assessment obligation. Any judgment rendered in such action shall include any



late charges, interest, and other costs of enforcement, including reasonable attorneys' fees in the amount as the court may adjudge, against the defaulting Owner or Member.

15.21 **Estoppel Certificates.** Upon payment of a reasonable fee and upon written request of any Owner or any person with any right, title or interest in a Parcel, the Association shall furnish a written statement. Such statement shall set forth the amount of all Assessments, charges, fines or penalties, if any, due or accrued and then unpaid and the amount of the Assessments for the current fiscal period of the Association payable with respect to the Parcel. This statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater or other amounts were then due or accrued and unpaid. If a prospective purchaser of a Parcel wishes to obtain such information, the request to the Association must be made by or on behalf of the Owner or other person with an existing right, title or interest in such Parcel. Such statement shall, with respect to the Person to whom it is issued, be sent to the requesting person within fourteen (14) days after receipt of the written request and, if sent within such time period, shall be conclusive against the Association and all Persons for all purposes, that no greater or other amounts were then due or accrued and unpaid and that no other Assessments have been levied.

15.22 **Association Books and Records.** The Association shall make available to Owners, First Mortgagees of Parcels, and insurers or guarantors of any such First Mortgage, current copies of this Declaration, and the Articles of Incorporation, Bylaws, Rules and Regulations, books, records, and financial statements of the Association, copies of which shall be maintained by the Association. The Association shall make available to prospective purchasers of Parcels current copies of this Declaration, and the Articles of Incorporation, Bylaws, Rules and Regulations, and the most recent annual financial statement, if such is prepared, of the Association. The Association shall not be required to prepare audited financial statements. However, if there is no audited financial statement available, any First Mortgagee shall be allowed to have an audited financial statement prepared, at its expense, three (3) copies of which shall be provided to the Association. Available shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances. The Association may charge a fee for the reasonable copying costs of any materials provided pursuant to this Section.

15.23 **Statement of Unpaid Assessments.** The Association shall provide to an Owner or its designee or to a holder of a security interest or its designee, upon written request, a statement setting forth the amount of unpaid assessments currently levied against such Parcel.

ARTICLE 16: DECLARANT'S POWERS, RIGHTS AND RESERVATIONS

16.1 **Period of Declarant's Powers, Rights and Reservations.** With the exception of the Life Estate granted by Declarant in Section 16.9, Declarant shall have, retain, and reserve the powers and rights set forth from the date hereof until (a) the time that the last Parcel within the Property has been sold and conveyed by Declarant to persons other than Declarant, a Successor Declarant or a Principal Builder and a certificate of occupancy has been issued for the primary residence constructed thereon; or (b) the date which is ten (10) years from the execution hereof, whichever event occurs first. Such powers and rights may be assigned to a Successor Declarant.

16.2 **Power to Grant Easements.** The Declarant shall have the power to grant easements in, on, over, or under the Property and roadways in the Property as provided in Section 10.9.

16.3 **Power to Add to Property.** Declarant shall have the power to add the real estate identified in Exhibits B and C to the Horse River Ranch Property by recording a document making the new real estate subject to this Declaration and recording an amended Plat. The Declarant may establish the additional property as Property; and the Declarant may divide such additional property into Homesteads, each with 35.05 acres or more. However, the Declarant may not cause the total Property to have more than 40 Shares.

16.4 **Power to Identify Associate Owners.** Declarant shall have the power to designate the owner or owners of the real estate identified in Exhibit B and C as Associate Owners ("Associate Owners") for purpose of this Declaration by recording a document signed by Declarant and the Associate Owner.

16.5 **Power to Construct Additional Improvements on the Property.** Declarant shall have and hereby reserves the power, but shall not be obligated, to construct additional Improvements, including irrigation, enhanced streams, non-jurisdictional ponds or augmentation storage ponds and associated devices on the Property in accordance with this Declaration for the improvement and enhancement thereof and for the benefit of the Association and Owners. Declarant reserves the right to convey or transfer to HRR Water Company such Improvements (if Declarant has elected to construct or



install such Improvements) and HRR Water Company shall be obligated to accept title to, manage, care for, and maintain the same as elsewhere provided in this Declaration. The Declarant shall convey to the Association or to HRR Water Company, as appropriate, the Common Easements at the time the Plat is recorded or later amended and recorded.

16.6 **Declarant's Rights to Use Parcels in Promotion and Marketing.** Declarant shall have and hereby reserves the right to reasonable use of Parcels owned by Declarant or a Principal Builder in connection with the promotion and marketing of the Property. Without limiting the generality of the foregoing, Declarant and, with Declarant's written consent, a Principal Builder may erect and maintain on any Parcel owned by Declarant or by a Principal Builder such signs, temporary buildings, and other structures as Declarant may reasonably deem necessary or proper in connection with the promotion, development, and marketing of real property within the Property; may use vehicles and equipment on Parcels owned by Declarant or a Principal Builder for promotional purposes; may permit prospective purchasers of property within the boundaries of the Property who are not Owners or Members of the Association to go upon the Property at reasonable times and in reasonable numbers; and may refer to the Property and to the Association and services offered by the Association in connection with the development, promotion, and marketing of property within the boundaries of the Property.

Notwithstanding the foregoing provisions of this Section 16.6, all uses of the Property for promotional and marketing purposes shall comply with the applicable requirements of the County.

16.7 **Right to Complete Development of Property.** No provision of this Declaration shall be construed to prevent or limit the rights of Declarant or a Principal Builder approved by Declarant to complete development of the roadway or utility infrastructure within the boundaries of the Property or to withdraw land from use as a Homestead as long as 1) the land will be put to another use compatible with the uses of the Property set forth in this Declaration and 2) at least 18 Shares exist in the Property. No provision of this Declaration shall be constructed to prevent or limit the rights of Declarant or a Principal Builder approved by Declarant to construct or alter Improvements on any property owned by Declarant or a Principal Builder within the Property; to maintain model homes, offices for construction, sales purposes, or similar facilities on any property owned by Declarant, a Principal Builder, or owned by the Association within the Property; or to post signs or do any other act or thing incidental to development, construction office, promotion, marketing, or sales of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or a Principal Builder or require Declarant or a Principal Builder to obtain approvals from the Association, the DRC or any other Owners: 1) to excavate, cut, fill, or grade any property owned by Declarant or a Principal Builder or to construct, alter, demolish, or replace any Improvements on any property owned by Declarant or a Principal Builder; 2) to use any structure on any property owned by Declarant or a Principal Builder as a construction office, model home, or real estate sales office in connection with the sale of any property within the boundaries of the Property; 3) to store construction materials, supplies, equipment, tools, waste, or other items on property within the Property that is owned by Declarant or a Principal Builder; or 4) to require Declarant or a Principal Builder to seek or obtain the approval of the DRC or of the Association for any such activity or Improvement to Property on any property owned by Declarant or a Principal Builder. Nothing in this Declaration shall limit or impair the reserved rights of Declarant or the rights granted to Principal Builders approved by Declarant as provided in this Declaration.

16.8 **Successor Declarant.** The person designated as Successor Declarant shall accede to all of the rights and obligations of Declarant under this Declaration and all references to Declarant contained herein shall be deemed to refer to such Successor Declarant.

16.9 **Life Estate.** Declarant hereby grants to Scott C. Shirley and Kim Shirley, for the duration of each of their lives, the right, with accompanied guests, to enter upon the Property (but specifically excluding any Owner's private property without the Owner's permission) and to use and enjoy any amenities or privileges available to all property Owners as a whole, whether or not Declarant may have conveyed all Parcels and whether or not Scott C. Shirley nor any entity owned and controlled by Scott C. Shirley and/or Kim Shirley are a Member of the Association.

ARTICLE 17: MISCELLANEOUS

17.1 **Term of Declaration.** Unless amended as herein provided, each provision contained in this Declaration shall continue and remain in full force and effect until December 31, 2050, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by the vote, by written ballot, of Members holding at least sixty-seven percent (67%) of Members of the Association, counting the Share vote allocations as provided in Section 13.4 above, at duly constituted meetings of the Members.



17.2 Amendment of Declaration by Members. Except as otherwise provided in this Declaration and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provisions, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by Members of the Association holding at least sixty-seven percent (67%) of the vote of Members of the Association, counting the Share vote allocations as provided in Section 13.4 above. The approval of any such amendment or repeal shall be evidenced by the certification by the Board of Directors of the Association of the votes of Members. The amendment or repeal shall be effective upon the Recordation of a document, executed by the President or a Vice-President and the Secretary or an Assistant Secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the required vote of the Members. Any Amendment to the Declaration made hereunder shall be effective only when recorded.

17.3 Required Consent to Amendments Affecting Rights of Declarant. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provisions of this Declaration affecting the rights, powers and privileges of Declarant shall not be effective unless such amendment or repeal has been approved by the Owners of at least ninety percent (90%) of the Parcels, including Sites owned by Declarant, counting the Estate vote allocations as provided in Section 9.4 above. The foregoing requirement shall terminate at such time as all property in the Property and the last Parcel within the Property has been sold and conveyed by Declarant to an Owner other than a Principal Builder or a Successor Declarant and a certificate of occupancy has been issued for a family residence on each Parcel within the Property or within ten (10) years after the execution of this Agreement. Thereafter, all amendments shall be governed by Section 17.2 above.

17.4 Special Rights of First Mortgagees. Any Mortgagee (First Mortgagee) of a First Mortgage encumbering any Parcel in the Property, upon filing a written request therefor with the Association, shall be entitled to (a) written notice from the Association of any default by the Mortgagor of such Parcel in the performance of the Mortgagor's obligations under this Declaration, the Articles of Incorporation, the Bylaws, or the Rules and Regulations, which default is not cured within sixty (60) days after the Association learns of such default; (b) examine the books and records of the Association during normal business hours; (c) receive a copy of financial statements of the Association including any annual financial statement within ninety (90) days following the end of any fiscal year of the Association; (d) receive written notice of all meetings of Members; and (e) designate a representative to attend any meeting of Members; (f) receive thirty (30) days' written notice prior to the effective date of any proposed material amendment to this Declaration, the Articles of Incorporation, or the Bylaws; and (g) receive immediate written notice as soon as the Association receives notice or otherwise learns of any damage to the Association Properties, if the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000), and as soon as the Association receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Property.

17.5 Priority of First Mortgage over Assessments. Each First Mortgagee of a Mortgage encumbering a Parcel, who obtains title to such Parcel pursuant to the remedies provided in the Mortgage by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the Parcel free and clear of any claims for unpaid Assessments or charges against such Parcel which accrued prior to the time such holder acquires title to such Parcel, except as provided otherwise above.

17.6 First Mortgagee Right to Pay Taxes and Insurance Premiums. Any such First Mortgagee or any such First Mortgagees, jointly or singly, shall be entitled to pay any taxes or other charges which are in default and which may or have become a charge against any of the Property and may pay any overdue premiums on hazard insurance policies for any Property, and the First Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

17.7 Amendment Required by Government Mortgage Agencies. Notwithstanding the provisions of Article 17 hereof, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration which any Government Mortgage Agency requires to be amended or repealed may be amended or repealed solely by Declarant and no approval, consent, or vote of any other person or entity shall be required. Any such amendment or repeal shall be effective upon the Recordation of a certificate, executed by Declarant, setting forth the amendment or repeal in full. Governmental Mortgage Agency shall mean the FHA, the VA, the FHLMC, the GNMA, the FNMA, or any similar entity, public or private, authorized, approved, or sponsored by any governmental agency to insure, guarantee, make, or purchase Mortgage loans. FHA shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development, including such department or agency of the United States Government as shall succeed to the FHA in insuring notes



secured by mortgages and deeds of trust on residential real estate. VA shall mean the Veterans Administration of the United States of America, including such department or agency of the United States Government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by Mortgages on Residential Sites. FHLMC shall mean the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto. FNMA shall mean the Federal National Mortgage Association, a governmental-sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successor thereto. GNMA shall mean the Government National Mortgage Association administered by the United States Department of Urban Development, including any successor thereto.

17.8 **Persons Entitled to Enforce Declaration.** The Association, acting by authority of the Board of Directors of the Association, and any Member of the Association shall have the right to enforce any or all of the provisions, covenants, conditions, restrictions, and equitable servitudes contained in this Declaration against any Parcel within the Property and the Owner thereof. The right of enforcement shall include the right to bring an action for damages as well as an action to enjoin any violation of any provision of this Declaration.

17.9 **Violations of Law.** Any violation of any federal, state, municipal, or local law, ordinance, rule, or regulation, pertaining to the ownership, occupation, or use of any Parcel within the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all enforcement procedures set forth in this Declaration.

17.10 **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

17.11 **Costs and Attorneys' Fees.** In any action or proceeding under this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith including reasonable attorneys' fees.

17.12 **Limitation on Liability.** The Association, the Board of Directors, the DRC, Declarant, and any Member, agent, or employee of any of the same shall not be liable to any Person for monetary damages on the basis of any action or for any failure to act if the action or failure to act was in good faith and without malice.

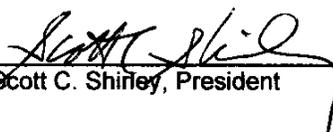
17.13 **Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purpose of this Declaration.

17.14 **Governing Law.** This Declaration shall be construed and governed under the laws of the State of Colorado.

17.15 **Recorded Easements.** In addition to all easements and rights-of-way of record at or before recordation of this Declaration, the Property, and all portions thereof, shall be subject to the easements shown on the Plat. Further, the Property, or portions thereof, is now or may hereafter be subject to easements, licenses, leases, and other recorded documents, or any of them.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:
Summerset Land Group, Inc., a Colorado Corporation

By: 
Scott C. Shirley, President

[No additional text on the following signature notarization page 31 of 32 pages of Covenants]



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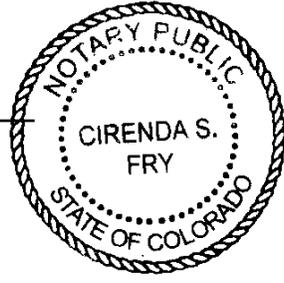
STATE OF COLORADO)
) ss
COUNTY OF GUNNISON)

This Declaration of Protective Covenants for Horse River Ranch Homeowners Association, acknowledged before me this 10th day of April, 2004, by Scott C. Shirley as President of Summerset Land Group, Inc., Declarant.

Witness my hand and official seal:
My commission expires: June 19, 2004

(SEAL)

Cirenda S Fry
Notary Public





**EXHIBIT A
ASSOCIATE MEMBER PROPERTY**

Eighty (80) +/- Acres (the "Messner Parcel" depicted on the attached drawing labeled as Exhibit C) acquired by The Messner Family Partnership, L.L.L.P., a Colorado limited liability limited partnership ("Messner") on the 22nd day of June, 2001 and recorded at reception 5311832, in the records of the Clerk and Recorder for Gunnison County, Colorado, is the sole Associate Member Property with any rights or privileges in the Horse River Ranch Property. Messner, its partners and immediate family members, are granted the right to fish Ohio Creek and the Community Ponds upon the same terms and conditions as provided for all Horse River Ranch Owners (aka "Members") of Parcels in the Declaration of Protective Covenants of Horse River Ranch and in the Rules and Regulations of the Horse River Ranch Homeowners Association, solely in the areas designated on the Plat.

**EXHIBIT B
POTENTIAL MEMBER PROPERTY**

The following real property delineated and depicted on the attached drawing and labeled as Exhibit D and as described below are the Potential Member Properties, which shall be eligible to become subject to this Declaration in the future as provided in the Declaration of Protective Covenants of Horse River Ranch. This delineation, depiction and general description in no way encumbers the real estate defined herein as Potential Member Property.

General Description of Potential Member Properties:

- Eighty (80) +/- Acres (the "Messner Parcel" depicted on the drawing labeled as Exhibit D) acquired by The Messner Family Partnership, L.L.L.P., a Colorado limited liability limited partnership ("Messner") on the 22nd day of June, 2001 and recorded at reception 511832, in the records of the Clerk and Recorder for Gunnison County, Colorado.
- Forty (40) +/- Acres (the "RES Parcel" depicted on the drawing labeled as Exhibit D) acquired by RES-0205, a Colorado Limited Liability Company on the 30th day of August, 2002 and recorded at reception 523366, in the records of the Clerk and Recorder for Gunnison County, Colorado.
- Eighty (70) +/- Acres (the "2nd Messner Parcel" depicted on the drawing labeled as Exhibit D) acquired by The Messner Family Partnership, L.L.L.P., a Colorado limited liability limited partnership ("Messner") on the 4th day of September, 2003 and recorded at reception 534757, in the records of the Clerk and Recorder for Gunnison County, Colorado.
- All property contiguous to the east boundary of the Horse River Ranch Property, bordered on the north by Wiley Lane (CR 818) and bordered on the east by Ohio Creek Road (CR 730), all as depicted on the Plat.
- All that property being 212.609 +/- Acres designated as Tract A on a Plat prepared by NCW & Associates, Inc. dated the 10th day of April, 2004, recorded on the 20th day of April, 2004 at reception number 541028.



EXHIBIT C ASSOCIATE MEMBER PROPERTY

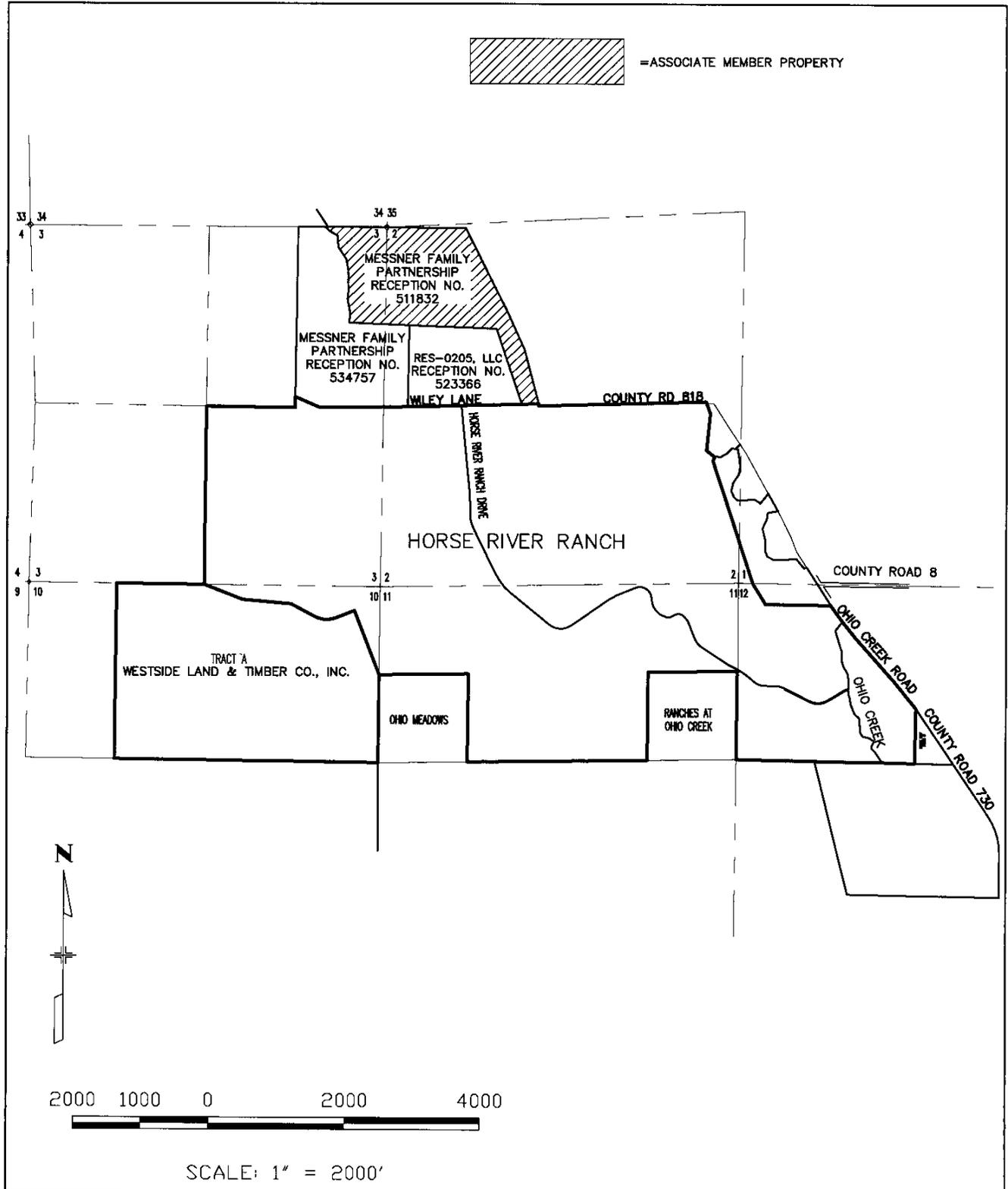




EXHIBIT D POTENTIAL MEMBER PROPERTIES

