

Amended and Restated Declaration
Of
Covenants, Conditions and Restrictions
of Wissler Ranch
as of date (proposed Final (February 22, 2018))

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Exhibit "A" Legal Description

**Amended and Restated Declaration of
Covenants, Conditions and Restrictions of
Wissler Ranch**

as of date (proposed Final (February 22, 2018))

The following Amended and Restated Declaration correctly set forth the provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Wissler Ranch Homeowners Association, Inc., and were duly adopted pursuant to state and local laws, and the Colorado Common Interest Ownership Act (CCIOA), and all other provisions of Colorado statutory laws and regulations applying to contracts.

located in El Paso County Monument, Colorado, the East 1/2, and the East 1/2 of the West 1/2, and Northwest 1/4 of the Northwest 1/4 of Section 2, Township 11 South, Range ~~66 West~~ 66 West of the 6th P.M., El Paso County, Colorado, consisting of 557 acres, more or less (the "Community").

This Amended and Restated Declaration is made this 19th day of May, 2018 ~~6~~ which has been approved by at least 67% of the Owners in the community and 67% of the first mortgagees of the Lots. ~~in accordance with Section . 1996, by MLC Development, LLC, a Colorado corporation, (hereinafter referred to as "Declarant.")~~

~~A. Declarant is the owner of the real property described in Article II of this Declaration (hereinafter referred to as the "Property").~~

~~B.A. The Community Declarant desires and intends to~~ has been developed on the Property as a high-quality residential project ~~to consisting~~ of single-family residences with passive and active recreational amenities.

~~C. Declarant plans to subdivide and develop in accordance with the Preliminary and Final Plats. Initially, Declarant intends to subdivide and develop the property into Lots 1 through 23, in accordance with the First Phase, Final Plat, reserving the right to impose similar restrictions upon additional Phases from time to time so that the entire project encumbered may ultimately be developed, owned, used, occupied and improved as a single project for the benefit of every part thereof and interest therein under a uniform series of restrictions and covenants to preserve the natural amenities of the project, to assure architectural harmony of the improvements and to preserve the environmental values inherent in the project.~~

~~D.B.~~ The Plat for Wissler Ranch includes a parcel of property described as Common Area. The Common Area Parcel is intended to form an integral part of the project but residential lots will not be constructed on the Common Area. The provisions herein contained shall not apply to the Common Area, except as specifically provided herein.

~~E.C. The Association Declarant~~ desires to provide for the preservation of the values and amenities of the Property; and, to this end, desires to subject the Property to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner thereof. ~~7, and~~

~~F. Declarant deems it desirable, for the efficient preservation of the values and amenities of the Property, to create an agency to which should be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collection and disbursing the assessments and charges hereinafter created; and~~

~~G.D. Declarant Association~~ has been incorporated under the laws of the State of Colorado, as a nonprofit corporation, WISSLER RANCH HOMEOWNERS ASSOCIATION, INC, for the purpose of administering and enforcing the covenants and restrictions.

Now, therefore, the Association hereby Declarant adopts these Amended and Restated is Declaration of Covenants, Conditions and Restrictions and places them on the Property for the preservation of the Property and the benefit of Lots and their Owners. ~~Declarant declares that t~~The Property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges and liens ("covenants and restrictions") set forth in the Declaration, all of which shall be covenants running with the land described herein and shall be binding on all parties having any right, title or interest in the Property, except as herein set forth, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

Article I: Definitions

Section 1.1

The following words when used in the Declaration shall have the following meanings.

~~A. "Inclusion" shall mean the process by which portions of additional property are made subject hereto pursuant to article III hereof.~~

~~B.A.~~ **"Association"** or **"Homeowners Association"** shall mean and refer to the Wissler Ranch Homeowner Association, Inc, a Colorado nonprofit corporation, its successors and assigns.

~~C.B.~~ **"Board"** shall mean the Board of Directors of the Association, duly elected and acting pursuant to its Articles of Incorporation and By-Laws.

~~D.C.~~ **"Original Declarant"** shall refer to Wissler Ranch, LLC, a Colorado Corporation, its successors or assigns.

~~E.D.~~ **"Design Guidelines"** shall mean a description of criteria that will be used by the Design Review Committee to ascertain the acceptability of proposed development of individual Lots.

~~F.E.~~ **"Design Review Committee"** shall mean the committee formed pursuant to Section 5.2 hereof to perform the duties and functions delegated and assigned to it in paragraphs 5.1, 5.3 and elsewhere herein.

~~G.F.~~ **"Project"** is the name of the entire planned community located in El Paso County as described above.

~~H.G.~~ **"Plat"** shall refer to the Plat of Wissler Ranch, recorded in Plat Book No. _____, on Film _____, Reception No. _____, in the records of the Clerk and Recorder of El Paso County.

~~I.H.~~ **"The Property"** shall refer to the property described in ARTICLE II.

~~J.I.~~ **"Lot"** shall refer to any of the subdivided lots in Phases shown on any recorded subdivision plat of the Property which is recorded now or hereafter.

~~K.J.~~ **"Living Unit"** shall refer to any portion or all of a building situated upon the Property designed and intended for a single family residence.

~~L.K.~~ **"Member"** shall mean and refer to all those Owners who are members of the Association.

~~M.L.~~ **"Mortgage"** shall include a deed or trust or other form of hypothecation.

~~N.M.~~ **"Owner"** shall refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Property including Original Declarant, but shall not refer to any Mortgagee unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

~~N.~~ **"Mortgagee"** means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage. "First Mortgage" shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by status (such as general ad-valorem tax liens and special assessments). "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage.

~~O.~~ **"Livestock"** shall refer to typical farm animals, such as cattle, horses, pigs, ~~and~~ goats, and poultry.

Article II: Property Subject to this Declaration

Section 2.1: The Property

The real property which is subject to this Declaration is described on Exhibit "A" attached hereto, all of which real property shall hereinafter be referred to as "The Property".

Section 2.2: Easements and Licenses

~~Exhibit "B" attached hereto is~~ the Plat, a copy of which has been filed with the El Paso County Recorder, for all Property indicating recording data, of recorded easements and licenses appurtenant to, or included therein.

Section 2.3: Conveyance of Minerals

Original Declarant has conveyed ~~will convey~~ any mineral rights owned by Original Declarant in and under the Property.

Section 2.4: Reservation of Water Rights

Except for the water rights assigned or conveyed to the Association, Original Declarant hereby reserves unto itself, its successors and assigns, all water and water rights, however designated in any body of water located upon the Property and rights, if any, to irrigate or sell therefrom.

Section 2.5: Water Augmentation Plan Requirements

- A. All Lots in the Project shall be subject to the requirements as set forth in the decree ~~of in~~ the District Court Water Division 2, Case No 93 CW 75, and Water Division 1, Case No 93 CW 147, a copy of which ~~is attached hereto as Exhibit "C"~~ has been filed with the El Paso County Recorder and incorporated herein by this reference (the "Augmentation Plan").
- B. Each Owner shall be responsible for obtaining a permit for a well to provide a water supply to his dwelling and for construction and operating such well. All wells shall be constructed and operated in compliance with the Augmentation Plan and the permits for such well and in compliance with this Declaration.
- C. Each Owner will be required to log a well as it is constructed and a well meter, ~~with an accessible, exterior readout,~~ shall be installed so as to provide information necessary to the Augmentation Plan. Each Owner shall maintain the meter and the ~~well, and well, and~~ shall allow the Association or its agents to ~~enter the Owner's Lot and~~ read and inspect the meter.
- D. Each Owner shall provide any information necessary to enable any reports required under the Augmentation Plan to be filed in a timely manner.
- E. Original Declarant ~~has shall~~ assigned or conveyed to the Association on certain of the water rights described in the Augmentation Plan. By this assignment to the Association, Original Declarant shall be relieved of any responsibility for the administration or enforcement for the Augmentation Plan or the operation of the augmentation water supply, and the Association shall be obligated to perform the same. By such assignment, the Association shall hold such interest in the Augmentation Plan and augmentation water supply for the benefit of all Lot Owners, shall assume the responsibility for administering and enforcing the Augmentation Plan, and shall take all necessary actions to ensure protection of water and well rights for all Lot Owners pursuant to the Augmentation Plan, including pursuing and maintaining all further action required under the Augmentation Plan. Failure of the Association or the Owners to comply with the terms of the Augmentation Plan may result in an order from the Division Engineer's office to curtail or eliminate pumping of the Owners' wells.

Article III: ~~Special Declarant Rights~~, ~~Special Declarant Rights~~

~~Section 3.1: Right of Inclusion of Additional Property~~

~~From time to time, and without requirement of consent by the Owners, Mortgagees, or Association, Declarant reserves the right to add and include all or portions of the subsequent phases, not final platted by recording a Declaration of Inclusion meeting the requirements hereinafter set forth. The real property which may be included is describes in Exhibit "D" hereto. Declarant shall have no obligation to include any portion of the subsequent phases and no such obligation shall be inferred from any provision hereof. By accepting a deed to any Lot or a Mortgage, each owner and Mortgagee grants Declarant a right to expand the Project and consents to such annexation expanding the Project and will not oppose or hinder Declarant's right to expand and annex additional real property and improvements or to develop adjoining properties and improvements.~~

~~Section 3.2: Declaration of Inclusion~~

~~The Declaration of Inclusion shall be recorded in the Office of the Clerk and Recorder of the County of El Paso and shall:~~

- ~~A. describe the real property to be included;~~
- ~~B. declare that the real property so described is included pursuant to the provisions hereof;~~
- ~~C. provide an assessment allocation for the property to be included, to the extent such allocation is not otherwise provided for herein;~~
- ~~D. provide for other restrictions, conditions and allocations of rights and benefits, not inconsistent with the provisions hereof as Declarant may deem appropriate;~~
- ~~E. provide for any other matters required by law.~~

~~Notwithstanding anything to the contrary herein, the provisions of Article IV hereof shall not apply to any improvements on property made subject to this Declaration pursuant to the terms of this Article III to the extent such improvements are in existence as of the date recording a Declaration of Inclusion.~~

~~Section 3.3: Effect of Inclusion~~

~~From and after the date of recording of a Declaration of Inclusion, the additional property subject thereto shall become part of the Property for all purposes of these covenants and restrictions and the definitions contained herein shall be applicable thereto; provided, however, that the additional property so included shall not be or become liable to assessment for the debts or obligations of the Association payable prior to the date of inclusion.~~

~~{There is no Section 3.4 in original document.}~~

~~Section 3.5: Maximum Lots~~

~~The maximum number of Lots that Declaration may create and/or make subject to this Declaration is the total 133 Lots.~~

~~Section 3.6: Exercise of Development Rights~~

~~Any development right may be exercised with respect to different parcels of real estate at different times. No assurances are made as regards to the fixing of the boundaries of these portions of Exhibit D and as regards regulation of the order in which those portions of Exhibit D may be subject to the exercise of each development right. If any development right is exercised in any portion of the real estate subject to that development right, that development right need not be exercised in all or in any other portion of the remainder of that real estate.~~

~~Section 3.7: Limitation on Expansion~~

~~Declarant's rights to include additional property pursuant to the terms of their Article III shall expire on the seventh anniversary date from the recording of this Declaration or the conveyance or two-thirds of the Lots which may be included in the entire Project.~~

~~Section 3.8: Declarant's Development Rights~~

~~Notwithstanding any contrary provision of this Declaration, the Declarant, its successors or assigns, expressly reserves the following rights and privileges, which may or may not be exercised in the Declarant's sole discretion:~~

- ~~A. Declarant may amend or change the plat to add additional property to the subdivision, change Lot lines or subdivide Lots into more Lots, and/or grant utility or other easements and make or construct any improvements or record any documents required or approved by zoning or other governmental entities.~~
- ~~B. The Declarant may construct and maintain sales offices, management offices, advertising signs, model Homes, equipment or vehicles parking, construction yards and construction materials within the Project.~~
- ~~C. Declarant may grant and use easements for utilities or public purposes through the Property and make improvements or changes necessitated by such easements.~~

Section 3.19: Right

- ~~A. The Declarant may, until the time limit set forth in Section 3.7, whichever occurs earlier, appoint or remove any officer of the Association or any member of the Board of Directors of the Association. Following the relinquishment of control by Declarant,~~

~~the Board shall be elected as provided in the Articles of Incorporation and the Bylaws.~~

~~B. The Declarant may, without vote of the Owners or Mortgagees, make such amendments to this Declaration, the Articles of incorporation and/or the By-Laws as may be authorized and approved in writing by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, or the Department of Veterans Affairs so as to induce such organizations to make, purchase, sell insure or guaranty First Mortgages within the Property, provided however, no such amendment will change the intent of these covenants to establish and maintain the Project as a single family residential area of high quality. Each Owner, and Mortgagee, by accepting a deed or mortgage, appoints Declarant as his or its attorney in fact to execute any such amendment.~~

~~C. The Board of Directors or the DRC may follow the established procedure to~~ The Declarant may enter into agreements with the owner purchase of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth, and any such deviation which shall be manifested by agreement in writing shall not constitute a waiver ~~of~~ any such condition, restriction, limitation, or agreement as to the remaining owners of any lot in Wissler Ranch ~~Lots in the Project~~, and the same shall remain fully enforceable on all other Lots or owners located in Wissler Ranch by the Association, the DRC located in the Project by Declarant, its successors or assigns, and the Association or other Owners, except as against the Lot where such deviation is permitted.

Section 3.210: Rules and Regulations

The Association's Board of Directors may adopt, amend, repeal and enforce such rules and regulations as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of the Project including, without limitation, rules to enforce the Augmentation Plan, the zoning and platting conditions, and related matters. Any such Rules and Regulations shall be reasonable and uniformly applied as determined by the Board in its sole discretion. Rules and Regulations shall be effective upon adoption by resolution of the Board of Directors. Each Owner and other person shall comply with such Rules and Regulations and shall see that family members, contractors, guests and invitees of such Owner comply with the Rules and Regulations. Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. The Board of Directors shall have power and discretion to interpret this Declaration, and any such interpretations shall be final, absolute and binding on each owner, unless made with malice or wanton disregard for an Owner's rights.

Section 3.~~311~~: VA Or FHA Approval

If the ~~Association~~~~Declarant~~ has obtained evidence of final approval for guaranteed or insured loans by the Federal Housing Administration or the Department of Veterans, prior written approval of the Department of Veterans Affairs or the Housing and Urban Development shall be required for any of the following (a) Amendment of this Declaration; (b) Amendment of the Articles of Incorporation or the By-Laws of the Association; ~~(c) Annexation of all or any part of any additional property to this Declaration;~~ (c) Encumbering or mortgaging of all or any part of the common properties, if any; (d) dedication of all or any part of any common merger, consolidation or dissolution of the Association.

Article IV: Land Use Restrictions

Section 4.1: Statement of Purpose

The primary purpose of these land use restrictions and the design guidelines adopted in conjunction herewith is to integrate the development into the site and in so doing, maintain the overall quality of the Project and particularly the view corridors, ~~and the natural vegetation, and wildlife migration values associated with~~ on the individual properties sites.

Section 4.2: Design Guidelines

Design guidelines shall be adopted by the Association which shall establish the criteria, in addition to that specifically provided herein, to be used by the Design Review Committee to ascertain the acceptability of proposed development of individual Lots.

Section 4.3: Set Back Lines

Set back lines and building heights have been established within each Lot (as provided in 4.9) to identify areas available for location of the primary structure in order to protect view corridors, vegetation, and maintain ~~ridge lines~~ ridgelines and separation between structures. Such set back lines may be depicted as a supplement to the plat.

Section 4.4: Primary Structure

The only primary structure that may be placed on the residential Lots is a private, single-family dwelling. There shall be only one residential or primary structure on a lot. No other structure or accessory building shall be used on any lot as a residence, either temporarily or permanently. No residential structure shall be erected on any part of the ~~Property which~~ Property, which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Design Review Committee in accordance with the procedures set forth in this Declaration.

Section 4.5: Accessory Structures

All building and structures which are accessory to the residential structure, such as, but not limited to, detached garages, storage sheds, work shops, swimming pools, tennis and other sports courts, pool houses and the like, shall be subject to the same architectural control as a dwelling structure, and where applicable, all buildings and structures shall be constructed out of the same material as the main dwelling on the lot. Any fences or posts erected ~~for the purpose of a dog run or fence around a pool, tennis, or other sports court~~ may not be covered or constructed with aluminum, galvanized, or other reflective material. Court fences shall have dark green mesh and dark metallic or wood structure posts, all of which must be approved by the Design Review Committee prior to installation.

Section 4.6: ~~Prohibition Against~~ Rentals

~~No paying guests shall be quartered in any residence nor shall any portions of any residence be rented or leased. Nothing contained in this section, however, shall be construed as preventing the renting or leasing of an entire residence as a single lot to a single family. Any leasing of a Lot shall have an initial minimal term of 6 months. Owner shall provide to secretary@wisslerranch.com current offsite contact information for Owner and contact information for Tenant, including electronic mail addresses, prior to occupancy. Leases should include the following clause: "Tenant agrees to abide by all Governing Documents of Wissler Ranch Homeowner's Association, located at www.wisslerranch.com." Homeowner shall provide Tenant a copy of the Covenants.~~

Leasing. Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to the following restrictions:

(a) "Leasing" or "Renting" for the purposes of this Declaration is defined as regular, exclusive occupancy of a Lot by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Lot by the child or parent of an Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing.

(b) Short term occupancies and rentals of Lots that are less than sixty (60) days, including but not limited to transient, hotel, bed-and-breakfast or vacation-type rentals, VRBO, Airbnb, HomeAway and other such online rental sites shall be prohibited. Subleasing, meaning the leasing or rental of a leased Lot from the tenant under the lease to another person, is prohibited.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Association's governing documents. Owners are required to provide tenants with copies of the current Declaration, Articles of

Incorporation, Bylaws and any rules and regulations of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, number and type of pets, and any other information reasonably requested by the Association or its agents.

(e) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Association's governing documents shall constitute a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the landlord or the Association, or by both of them.

(f) Leases shall be for or of the entire Lot.

(g) All Owners who reside at a place other than the Lot shall provide to the Association contact information where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(h) The Association shall have the authority to adopt rules and regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

Section 4.7: Barns and Livestock Housing

No barn, shelter, corral, paddock, pen or fenced enclosure for Livestock shall be permitted. ~~Any other structure including fencing shall be subject to the same architectural control as a dwelling structure and, where applicable, all buildings and structures shall be constructed out of the same or complementary material as the main residential structure and shall be contained within the area authorized by the Design Review Committee.~~

Section 4.8: Prohibition Against Business Use

No business or profession of any nature shall be conducted on any Lot or in any residence constructed thereon without first obtaining the approval of the Design Review Committee. No store of any kind, nor any physical or mental health care facility, —or other place of entertainment, nor any church nor any school, shall be erected or permitted upon any of the Lots and no retail or wholesale business or professional services of any nature shall be conducted on any Lot or in any residence, except a portion of any residence may be devoted to a home office, studio or work room so long as such use does not generate more than intermittent customer or client traffic in the subdivision. No external signage of any business shall be permitted.

Section 4.9: Building Locations and Height Restrictions

All primary buildings shall be located ~~within~~without encroaching on the setback lines as designated on the Plat. Only with the approval of the Design Review Committee will any ~~setback lines be moved~~variances be granted. Variances will only be considered pursuant to Article IV, Section 4.3. Each Lot Owner shall be obligated to have the setback lines ~~marked~~demarcated by survey stakes on a Lot prior to construction. If there are any discrepancies between the setback lines as shown on the supplement to the Plat and the survey stakes, the setback lines as shown on the Supplement will take precedence. The Design Review Committee shall approve the location and height of any structure placed on any Lot. Such approval must be obtained prior to commencement of any construction or alteration in accordance with the procedures set forth in this Declaration. In addition, no dwelling or house or structure may exceed the height limitation of 50 feet. The height limitation shall be measured by the method used by El Paso County building department as of the date of adoption of this Declaration. Excessive cuts and fills for home construction shall not be permitted.

Section 4.10: Dwelling Size

Every principal residence constructed on a lot shall have not less than 2500 square feet of floor area for multiple level homes and 2000 square feet for ranch style homes, devoted to living purposes (exclusive of roofed or un-roofed porches, terraces, basements, or garages) and shall have an attached or semi-attached garages of sufficient size to house not less than two cars; further each such residence shall provide hard-surfaced or approved rock driveway and off-street parking for at least two cars excluding the space in the garage. Approval for a rock driveway must be obtained from the Design Review Committee. If a residence of more than one story is constructed, then the main floor shall have not less than 1500 square feet of floor area devoted to living space.

Section 4.11: Resubdivision of Lots

No Lot shall be resubdivided into smaller lots nor conveyed or encumbered in any less than full original dimensions as originally ~~conveyed by Declarant~~depicted on the Plat drawings titled in Wissler Ranch Filings 1, 2, 3, and 4, except in the case of dedication or conveyance of portions of a Lot for public utilities on joint access, in which case the remaining portion of the Lot shall be treated as a whole Lot.

Section 4.12: Temporary Structure

No temporary house, trailer, garage, temporary outbuilding or similar structure shall be constructed on any part of the Property and no residence on any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans. Nor

shall any residence when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants and restrictions herein set forth, provided however, that during the actual construction or alteration of a building on any Lot, reasonable and necessary temporary buildings or trailers for storage of materials may be erected and maintained by the person doing such work. Such temporary storage buildings shall be removed upon completion of the construction, alteration or remodeling. The work of constructing, altering and modeling any building on the properties shall be pursued diligently from its commencement and completed within one year from its commencement.

Section 4.13: Variances

The Design Review Committee may grant reasonable variances or adjustments of these conditions and restrictions in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the restrictions contained herein. Such variances or adjustment shall be granted only in case the granting thereon shall not be materially detrimental or injurious to other property or improvements in the neighborhood and shall not mitigate against the general intent and purposes hereof.

Section 4.14: Fences

All ~~Lot~~ fences must be approved by the Design Review Committee.

Section 4.15: Materials and Finishes

In keeping with the goals of the Property to maintain the natural ~~surroundings~~ surroundings, designs in harmony with nature should be extended to material, finish, scale and color selection. ~~Natural material such as stone and wood, by their nature, are inherently compatible with their surroundings.~~ Only those colors that complements the color palette of the site will be acceptable to the Design Review Committee.

Section 4.16: Roof Composition and Style

The goal is to use natural, warm, attractive, and fire resistant roof materials that blend into the landscape. All roofs must be covered with fire resistant materials of appropriate color and texture that meets with the approval of the Design Review Committee.

Section 4.17: Energy Creation Devices ~~Solar Design~~

Energy creating devices are encouraged: however, such devices should not mitigate against the intent of the covenants or design guidelines for Wissler Ranch. State Law and Wissler Ranch guidelines must be carefully considered relative to such devices on a case-by-case basis. The Wissler Ranch Design Review Committee (DRC) should be consulted relative to plans for installing related devices on homes or

~~properties. Solar: Passive solar and energy efficient designs are encouraged in the design of the homes at Wissler Ranch. It is felt that these thermal and comfort strategies should not compromise the quality of architecture, but rather reinforce a sense of place. Active solar and photovoltaic systems should be integrated into architectural form and not be treated as an afterthought or awkward appendage to the home or landscape.~~

Section 4.18: Landscaping

Prior to commencement of landscape construction or planting of any vegetation, each Owner of a Lot shall submit to the Design Review Committee a detailed landscaping plan which includes the proposed planting of vegetation on the Lot and conforms to the Design Guidelines. The precise area and type of landscaping on each lot shall be shown to and approved by the Design Review Committee and no deviations from the landscaping plan shall take place without the express approval of the Design Review Committee. Each Owner ~~must~~ must complete the final grade and installation of all materials as shown in his landscape plan within ninety (90) days of ~~receiving the certificate of occupancy for the dwelling unit on the Lot~~ commencement of the landscaping project, unless seasonal weather does not permit. The Design Review Committee shall have the power to affirmatively require a landscape plan to be carried out on a Lot which meets a reasonable standard for the subdivision, is consistent with Design Guidelines and is comparable to and compatible with the other Lots in the subdivision.

Each Owner shall maintain the landscaping materials on such Owner's Lot in a healthy, attractive, and well-maintained condition and in accordance with the approved landscaping plan. ~~If such Owner fails to maintain such landscaping materials, the Association shall have the right to enter upon such owner's Lot and remove, replace, or maintain the landscaping materials. The owner shall reimburse the Association, upon demand, for all expenses incurred in connection with such removal, replacement or maintenance by the Association. If such expenses are not promptly reimbursed, the Board may levy and assess the amount of such expenses as an Assessment against each Lot and its owner. The right of the Association to remove, replace and maintain any non-complying landscape materials shall be in addition to all other rights and remedies which the Association may have by law, in equity or under this Declaration.~~ Landscape area is limited to the equivalent of 1500 square feet in water usage.

Section 4.19: Swimming Pools

Swimming pools shall be permitted, subject to the provisions of section 4.54 hereof, and subject to well permit limitations and Wissler Ranch Water Usage Policy. No above-ground pools shall be permitted. This is not intended to prohibit the use of children's temporary wading pools.

Section 4.20: Animals and Pets

No more than two (2) dogs and two (cats) may be kept on any one Lot. No ~~horses (including burrow or donkeys), goats, rabbits, ducks and fowl~~ Livestock may be kept or maintained on any Lot. ~~No pigs, cows, or guinea hens, or poultry shall be permitted.~~ The keeping and maintaining of any other animal shall only be permitted with the express prior consent of the ~~Design Review Committee~~ Board of Directors. The maintenance and keeping of any animals shall not be permitted if done for commercial or breeding purposes, if they constitute an annoyance or nuisance because of repeated noise or trespassing within the subdivision or adjacent area, or if the area where the animals are maintained is unsightly, in disrepair, or is hazardous to the health and welfare of the residents or ~~other animals in the subdivision, or the cattle or farming operation conducted by Wissler Ranch.~~ All animals kept shall have current inoculations as required by the El Paso County Health Department or good veterinary practice. ~~El Paso Leash Law will be in effect at all times because of the sensitive nature involved in controlling noise, nuisance and care of animals when viewed from the perspective of adjoining Lot Owners. All decisions relating to the enforcement of these restrictions and retention of animals on any Lot in the subdivision shall reside in the absolute control and authority of the Design Review Committee. The board shall also be in charge of enforcing the covenants of this Declaration relating to animals and livestock.~~ The Board shall have the absolute authority to require the removal of an animal from the subdivision for repeated violation of the Covenants. El Paso County Leash Law will be in effect at all times. ~~The Board Committee may develop rules and regulations pertaining to health, safety and welfare of the animals in the subdivision.~~ Dogs must be under the control of the owner at all times. Dogs will not be permitted to chase, annoy or endanger any wildlife ~~or domestic livestock on the Property.~~

Section 4.21: Nuisance

No boats, trailers, campers, motor homes, wrecked, inoperable or partially disassembled cars, tractors, equipment, machinery, or any such item, shall be kept or stored so that they are visible from neighboring Lots or from any street. ~~No~~ external tanks, including tanks for the storage of gas, propane, oil or water, shall be permitted on any Lot. Rain barrels are permitted in accordance with Colorado state law. All types of refrigerating, cooling or heating apparatus, must be concealed. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood. No discharging of firearms will be allowed in the project or in any outlet.

Section 4.22: Trash, etc.

Each owner shall provide an enclosure for trash storage to prevent any unsightly or unsanitary condition and must provide for the prompt

(within a two-week period of time) removal of trash, and no litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot or any street, except as reasonably necessary during the period of construction. In the event any structure is destroyed either wholly or partially by fire or other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration, or all debris and remaining portions of the structure including the foundations shall be promptly removed from the property. ~~No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or a nuisance to the neighborhood. No discharging of firearms will be allowed in the project or in any outlet.~~ No open fires/burning will be permitted.

Section 4.23: Delivery BMailboxes and Signs

No sign may be placed upon any property ~~within Phases 1 through 6~~ without the prior approval of the Design Review Committee. ~~All mailboxes, nNewspaper boxes,~~ and similar receptacles shall be placed at the entrance of the driveway as is detailed in the Architectural Guidelines.

Section 4.24: Utilities

All electric, television, radio, telephone line and gas line installations and connections from the Owner's property line to the residence shall be placed underground. In 1996, the Federal Communications Commission (FCC) adopted rules for Over the Air Reception Devices (OTARD) which protect a property owner or tenant's right to install maintain or use an antenna to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations. While OTARD restricts anything that might prevent or delay installation, maintenance or use of such antennas covered by the ruling, the homeowner must coordinate with the DRC in terms of where such utilities may be constructed. This coordination should be done in sufficient time to prevent any delays. Antennas not covered by the OTARD rules such AM/FM radio, amateur ("ham") radio, CB radio, and Digital Audio Radio Services or devices used as part of a hub to relay signals among multiple locations must be reviewed and approved by the DRC. ~~All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed. No sSatellite reception dishes shall be permitted in accordance with the Over The Air Reception and Transmission Devices Act ("OTARD") without the prior approval of the Design Review Committee.~~

Section 4.25: Sewage

Each Lot Owner is responsible for design, approval, construction and maintenance of individual septic systems, either a new or a replacement system. ~~Prior to soil testing and preliminary design A~~ Prior to any soil testing, a preliminary site plan locating the home,

water well, proposed septic tank/filter field, property lines, County utility setback lines, and Wissler Ranch setback lines should be submitted to the DRC for review. The location of each previously referenced element should also be located on the ground for inspection by the DRC. The process for locating such elements on the ground and preparing a preliminary site plan does not require a formal survey. This process can be done by using a 100-foot tape to locate all corners of the various elements with wood or metal stakes. ~~a proposed site should be identified on the ground and approved by the Design Review Committee. Location-Design~~ of septic system must be in accordance with El Paso County standard engineering practices and must be ~~located and~~ designed by a professional engineer. The ~~location~~preliminary final site plan, locating of the living unit, the well and the septic shall be prepared ~~simultaneously~~ by a the professional-engineer/draftsman or architect, and submitted to the Design Review Committee for approval prior to construction. A copy of the engineered-septic system design should be submitted with preliminary final site plan.plans. Some Lots may require ~~evapo-~~transportionevapotranspiration or other septic system which require additional care be taken with placement of the system, and additional site work, to included restoration of the original site if system needs to be relocated.~~may be more expensive than leaching systems.~~

Section 4.26: Easements and Rights-of-Way

Easements and rights-of-way in perpetuity are hereby reserved for subsurface drainage purposes and for the erection, construction, maintenance and operation of underground wires, cable, pipes, tile lines, conduits, and apparatus for the transmission of electrical energy, for telephone, television, and radio lines and for the furnishing of water, gas, sewer service or the furnishing of other utility purposes, together with the right of entry for the purpose of installing, maintaining, and reading gas, electric and water meters, under, along, across, upon and through strips of land shown as easements on the recorded plat of the Project, except those easements which have been or may be released of record.

[There is no section 4.27.]

Section 4.28: Common Area

Subject to the provisions of Article II hereof, the Common Area may be used for recreational and open space purposes and will be managed by the Association. Motorized vehicles are only authorized in the designated parking area. Other than vehicles performing maintenance operation at the direction of the Association, use of motorized vehicles on the trails and fields are prohibited. The Property will be managed to maintain a natural appearance but recreational amenities may be developed thereon subject to approval by the Design Review Committee and in accordance with law. All notes on the drawing and final plat are binding and enforceable under these covenants.

Section 4.29: Wildfire Mitigation

The Design Review Committee shall enforce the following general standards of construction, to the extent reasonable and applicable:

1. All roofing material shall be non-combustible or fire resistive Class A, B, or C rated.
2. All exterior walls shall have a fire resistance rating of one hour. Materials such as stucco, rock and brick shall be encouraged.
3. All under-eave vents shall be located near the roof line rather than near the wall. All eaves shall be boxed and minimum overhangs shall be encouraged.
4. All windows and patio doors shall be made of tempered safety glass or double pane glass. Exterior fire-resistive shutters and interior fire resistant drapes or blinds shall be encouraged.
5. Masonry patios and/or one hour fire rated decks shall be encouraged to create a setback safety zone.

Each Owner shall comply with the following:

- ~~1. All homes shall have a 30-foot safety zone or primary fuel break in all directions. All brushlow-growing plants within 10 feet of the house shall be removed and replaced with anunless irrigated greenbelt (including grasses, shrubs and/or flowers) or non-combustible materials such as rock or grave.~~
- ~~2. All large trees within the 30-foot safety zone shall be thinned to eliminate overlapping crowns. All tTrees within two tree heights of the house shall be pruned of all dead limbs a minimum of 10 feet from the ground. Prune live branches to 10 feet from at least half of the trees within the 30-foot safety zone. Trim all branches which extend over or under the eaves of the roof.~~
- ~~3.1. Owners shall be required to maintain the 30-foot safety zone by removing dead shrubs and fallen limbsall fuels from beneath large trees. Keep grasses trimmed to 2 inches and well watered. Keep roofs and roof gutters clear of pine needles and leaves. Stack firewood uphill and at least 10 feet from structures. Remove dead limbs, leaves and grass clippings from all areas.All lots will be maintained in accordance with National Fire Prevention Association and Firewise guidance on creating defensible space using zone landscaping principles and reducing fuels in the home ignition zone. Homeowners will adhere to National Weather Service Red Flag and weather warnings and all county and state issued restrictions including any restrictions on such things as recreational fires, grilling, outdoor smoking and operating equipment.~~
- ~~4.2. All driveways shall be readily identifiable and maintained unobstructed at all times.~~
- ~~5.3. All house addresses shall be clearly visible from the street.~~
- ~~6.4. All chimneys shall be equipped with a mesh spark arrestor and inspected and cleaned on a regular basis.~~
- ~~7.5. On-site burning of trash, leaves and weeds shall beis prohibited.~~
- ~~8.6. Fireworks of any kind shall beare prohibited.~~
- ~~9.7. All motor vehicles shall be parked on non-combustible surfaces.~~

10. ~~All homes shall be equipped with smoke detectors and a minimum of one 2.5 pound fire extinguisher maintained in accordance with the manufacturer's recommendations.~~

Article V: Design Review

Section 5.1: Design Review

- A. The Design Review Guidelines are subject to change from time to time at the discretion of the Wissler Ranch Board of Directors~~Design Review Committee~~. Every Owner shall have the responsibility of ascertaining and obtaining the then-current Guidelines prior to commencing plans for improving any Lot. Before anyone shall commence any clearing of vegetation, grading, landscaping or the construction, reconstruction, exterior remodeling, addition to, or alteration of any building, wall, fence, pool or any structure whatsoever, on any lot, there shall be submitted to the Design Review Committee (herein referred to as the "Committee") two (2) complete sets of plans and specifications for said improvements. No such structure or improvement of any kind shall be erected, altered, placed or maintained upon any Lot unless and until the final plans, elevations, and specification therefor have received written approval as herein provided. The Design Review Committee may require models, sketches, computer simulations or other design aids at their sole discretion. Such plans include plat plans, landscape plans, ~~dwelling and the development of a Lot as an architectural lothouse plans, detached structures~~, together with the proposed color scheme and materials for fences, roofs, and exteriors. In addition, water wells and engineered septic systems, with exact locations will be required to determine location of systems and home. In order to avoid unnecessary hardships, it is mandatory that all owners contemplating such construction or alteration as mentioned above, shall submit Preliminary drawings, in duplicate, of such work to the Committee in order to obtain tentative action thereon before causing the preparation of detailed or complete drawings, plans, or specifications or incurring substantial additional expense. One set of said plans and specifications and details, with the approval or disapproval endorsed thereon, shall be returned to the person submitting same within thirty (30) days and the other copy thereof shall be permanently retained by the Committee.
- B. The Committee shall have the right to disapprove of any such plans or specifications, grading or landscaping plans which are not suitable or desirable, in the Committee's opinion, for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the architecture of the proposed building or other structure and of the materials of which it is to be built the same color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other structure or landscaping as planned on the view from adjacent or neighboring Lots, the general welfare of each owner

in the subdivision, whether the same are consistent with the Design Guidelines, and if in accordance with all of the provisions of their Declaration. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of the Design Guidelines or these conditions and Restrictions. THE DECISIONS OF THE COMMITTEE SHALL BE FINAL and binding on any Owner or other party ~~except Declarant.~~

~~B.~~

C. ~~Neither the Declarant nor any architect or agent of the Declarant nor any~~ No member of the Committee by virtue of his or her membership thereon or discharge of his or her duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing, nor for any structural or other defects in any work done according to such plans or specifications. No buildings or improvements of any kind constructed or placed upon any of said lots thereafter shall be moved without the prior written approval of the Committee. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced within one year from the commencement thereof, approval will not be required and there will be deemed to have been full compliance with the related covenants.

Section 5.2: Design Review Committee

The Design Review Committee shall consist of one or more persons, not to exceed five persons appointed by ~~Declarant~~ Board of Directors, its successors or assigns. ~~Declarant, its successors or assigns~~ The Association shall have the absolute right to remove and appoint members of the Committee at any time. The members of the Committee shall, as long as the restrictions, covenants, and conditions herein set forth are in force and effect, perform the duties imposed on the Committee as herein set forth. Members of the Committee shall not be entitled to any compensation for services performed pursuant to their Declaration. ~~At any time while the restrictions, covenants, and conditions herein set forth remain in force and effect, Declarant, its successors or assigns, may relinquish their powers to determine the number and members of the Committee. Such relinquishment may be made by the County Clerk and Recorder of El Paso County, Colorado, and such relinquishment must occur no later than seven years from the date of recording of this Declaration. From and after such relinquishment, the number and members of the Committee shall be determined by the Board of Directors of the Association. Members of the Committee shall not be entitled to any compensation for services performed pursuant to this Declaration. However, this provision shall not be construed to prevent or limit Declarant, or its designated representative, from obtaining and compensating professional consultants in connection herewith.~~

Article VI: Membership and Voting Rights in the Association

Section 6.1: Membership

Every person or entity who is a record Owner of a fee or undivided interest in any Lot shall be a Member of the Association, provided that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member.

Section 6.2: Voting Rights

- A. Each Member shall be entitled to one vote for each Lot in which such Member holds the interest required for membership under Section 6.1, as to all matters in which the Owner of such Lot or Lots shall be entitled to vote. When more than one person holds such interest in any Lot, all such persons shall be Members, and the vote of such ~~lot~~Lot shall be exercised by the Owners of the Lot. In no manner may the vote for a Lot be split into more than one-~~for~~ or into fractions of a vote. in the same proportionate interests as such persons own such Lot, as set forth in the Bylaws, but in no way shall more than one vote be cast with respect to any such Lot.
- B. The Association may suspend the voting rights of a Member for failure to comply with rules or regulations of the Association or with any other obligations of the Owners of a Lot under the Declaration.

Article VII: Covenant for Assessments

Section 7.1: Creation of the Lien and Personal Obligation for Assessments

~~Declarant, for each Lot within the Peroperty, hereby covenants, and each~~ Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenants and agree to pay to the Association:

1. annual assessments or charges, which are payable in quarterly installments or such other installments as determined by the Board of Directors annually.
2. special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided.

The annual and special assessments on each Lot, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the real estate against which each such assessment is made. Each such assessment, together with such interest thereon and the cost of collection thereof as hereinafter provided, shall also be the personal obligation of any person who was an Owner of such Lot at the time when the assessment fell due. If title to such property is held by more than one person, the obligation for payments

due under this Section 7.1 shall be the joint and several obligation of all such persons.

Section 7.2: Purpose of Assessments

The assessments levied by the Association through its Board of Directors shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property and in particular for the enforcement of the covenants and restrictions contained therein, including the supervision and compliance with all types of insurance and premiums deemed necessary by the Board of Directors, legal and accounting fees and costs associated with activities of the Association.

Section 7.3: Budget Annual Assessments

The Board of Directors shall adopt a proposed budget not less frequently than annually. ~~The first such budget shall be adopted not later than one year from the date of recording of this Declaration.~~ Within thirty 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 the Lot Owners and shall set a date for a meeting of the Members to consider ratification of the budget not less than ten or more than fifty days after mailing or other delivery of the summary.

- A. Unless at that meeting a majority of all Members reject the budget, the budget is ratified, whether or not a quorum of members is present.
- B. In the event that the proposed budget is rejected, the periodic budget last ratified by the members shall be continued until such time as the members ratify a subsequent budget proposed by the Board of Directors.
- C. Nothing herein shall prevent the Board of Directors from collecting the annual assessment ~~on a quarterly or more frequent basis.~~

Section 7.4: Special Assessments for Capital Improvements

- A. In addition to the annual assessments authorized ~~but~~ Section 7.3 hereof, the Association may levy special assessments, applicable to such years as are described in the resolution authorizing the assessment, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement or a described capital improvement upon the common properties, including the necessary fixtures and personal property related thereto, provided that a resolution establishing any such assessment shall have the assent of sixty-~~seven~~ percent (67~~6~~%) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- B. All or any part of the proceeds of any special assessment made as above provided, for the entire period over which the assessment is

to be levied or any part thereof, may be assigned to calendar as security for repayment of a loan or loans made to pay, in whole or in part, the expenditure for which the special assessment was authorized. The rights granted to lender under such assignment may include the right to require the Association to collect the special assessment, and the right to the lender directly to enforce any right of the Association to collect the special assessment itself.

C. Capital reserve funds for the major maintenance, repair and replacement of common capital assets may be established as general or restricted reserves. The purpose of a Restricted Reserve is to address specific repair or replacement requirements for high-dollar value HOA assets. Restricted Reserves will not supplant the need for a General Unrestricted Reserve. Restricted Reserves shall be established as determined by the Board of Directors to address specific future needs of the association, minimize the size of or eliminate future special assessments for unanticipated replacement of costly assets while preventing use of those funds for less critical assets or routine expenditures. Future contributions to the Restricted Reserve account(s) shall be included in the annual budget, to meet potential future expenses to the extent possible. Excess funds after all operating expenses have been recognized at the end of each fiscal year, may also be contributed to the Restricted Reserve Account(s) or maintained in the Unrestricted Reserve Account, at the discretion of the Board of Directors. Funds for restricted reserves shall be maintained in interest-bearing accounts, separate and apart from the Association's operating account and any general or Unrestricted Reserve Account. Release of funds from a Restricted Reserve Account for purposes other than the those specified by the Board of Directors at the establishment of the reserve, shall require the affirmative vote of 67%~~67%~~ the Majority of the association members.

~~B.~~

Section 7.5: Change in Basis and Maximum of Annual Assessments

Subject to the limitations of Section 7.3 hereof, and for the period therein specified, the Association may change the maximum and basis of the assessments fixed by Section 7.6 hereof prospectively for any such period that any such change shall have the assent of sixty-~~seven~~^{ix} percent (67~~6~~⁹%) of the votes of the members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of section 7.6 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 7.6: Limit on Annual Assessment

~~Until January 1, 1996 the maximum annual Assessments on each Lot shall be fifty dollars (\$50.00), and thereafter until January 1, 1997, the~~

~~maximum annual assessment shall not exceed one hundred and fifty dollars (\$150.00) and after that date it~~ Annual Assessments may be increased by the Associations' Board of Directors at a rate not to exceed ten percent (10%) per year over the previous year's assessment. ~~thereafter, provided however, notwithstanding anything to the~~ contrary or other provision of this Declaration, ~~that~~ the annual Assessment, exclusive of any optional user's fees and any insurance premiums paid by the Association shall not exceed \$300.00 per year per Lot.

Section 7.7: FHLMC Restriction

Subject to the terms of Colorado law, unless at least ~~seventy-~~ ~~fivesixty-seven~~ percent (~~6775~~%) ~~of the First Mortgagees of the Owners~~ of the lots within the Property have given their prior written approval, the Association shall not be entitled to change the method of determining the obligation, assessment, dues or other charges which may be levied against a Lot.

Section 7.8: Date of Commencement of Assessments: Due Dates

~~The annual assessments provided for herein shall commence when the Lot is conveyed by the Declarant to the first purchaser. The first annual assessment shall be made for the balance or the calendar year and become due and payable as set by the Board of Directors, and subsequent~~ ~~a~~ Annual Assessments shall be payable ~~annually~~ quarterly ~~unless~~ annually unless the Board directs otherwise.

The due date for any special assessment under Section 7.4 hereof shall be fixed in the resolution authorizing such assessments.

Section 7.9: Allocation of Common Expenses

All assessments authorized to be levied under this Article VII shall be allocated to each Lot based on a fraction, the numerator of which shall be one and the denominator of which shall be the number of lots existing on the Property subject to this Declaration at the time such assessment is to be made. Provided, however, that any common expenses or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against the lots benefitted. In such case, such assessments shall be allocated to such Lots based on a fraction, the numerator of which shall be one and the denominator of which shall be the number of lots so benefitted.

Section 7.10: Duties of the Board of Directors

A. Except for the assessments due on the date of transfer of a Lot, the Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each lot for each assessment period at least thirty (30) days in advance of such a date or period and shall, at that time, prepare a roster of the

Lots and assessments applicable thereto, which shall be kept ~~in the office of~~by the Association and shall be open to inspection by any Owner.

- B. Written notice of the assessment ~~should thereupon~~will be sent to every Owner ~~subject thereto~~.
- C. The Association shall, upon demand, ~~at any time~~ furnish to any Owner liable for said assessment or any mortgagee or potential mortgagee purchaser of property subject to assessment a certification in writing signed by an officer of the Association, setting forth whether said assessment has been paid and the amount of any unpaid assessments.

The Association may charge a ~~fee not to exceed seventy-five and no/100 dollars (\$75.00)~~reasonable fee for each certification. As to any mortgagee or purchaser who has disbursed funds in good faith reliance thereon, such certification shall be conclusive against the Association as to items set forth therein.

Section 7.11: Effect of Non-Payment of Assessment; the Personal Obligation of the Owner; the Lien; Remedies of the Association

- A. If an assessment is not paid on the date when due as specified in ~~this Article VII Section 7.10~~ or as set by the Board of Directors, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon becoming a continuing lien on the property subject to the assessment, which shall bind such property in the hands of the then Owner, his or her heirs, devisees, personal representatives and assigns. The assessment shall be a lien against the real property which comprises the lot assessed, and all appurtenances thereto and fixtures thereon. The real property comprising a Lot or living unit shall include fee ownership in any lot, together with the dwelling, if any, and all fixtures and appurtenances. The personal obligation of the then owner to pay such assessment, however, shall remain such Owner's personal obligation for the statutory period and shall not pass to such owner's successors in title unless expressly assumed by them.
- B. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and the Association may bring action at law against the Owner personally obligated to pay the same ~~or~~ to foreclose the lien against the property subject. Interest shall be added to the amount of such assessment as above provided plus late charges and all costs of collection, including the Association's reasonable attorney's fees incurred in connection with the default and collection amount due and any other amounts allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by ~~non-use~~ of the common area or abandonment of his or her Lot, or any set-off or claim against the Association or other party.

Section 7.12: Examination of Books and Records

The Association shall make available to Owners and Mortgagees, current copies of the Declaration, Bylaws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours in accordance with the requirements set forth in the Colorado Revised Nonprofit Corporation Act at C.R.S. 7-136-101 et. seq. ~~or under other reasonable circumstances. If the Project contains fifty (50) or more Lots, the Association shall provide an audited, annual financial statement to any First Mortgagee making a written request for it and without expense to such First Mortgagee. If the Project contains less than fifty (50) Lots, the holders of fifty-one percent (51%) or more of First Mortgagees shall be entitled to have an audited financial statement prepared at their expense if one is not furnished within a reasonable time following such request.~~

Section 7.13: Notice to Mortgagee

Upon request of a First Mortgagee of any Lot, the Association shall report to such first mortgagee any unpaid assessments or other default under the terms of this Declaration which are not cured by said mortgagee's mortgagor within thirty (30) days. ~~A fee not exceeding seventy five and no/100 dollars (\$75.00)~~ The Association may charge a reasonable fee for each such report ~~may be charged by the Association to the Mortgagee.~~

Section 7.14: Notice of Meetings

Any First Mortgagee of a lot, upon written request, shall be entitled to written notice of all Association meetings and be permitted to send a representative to such meetings.

Section 7.15: Mortgagee as Proxy

Each Owner shall have the right to irrevocably constitute and appoint the beneficiary of a trust deed his or her true and lawful attorney to cast his or her vote in this Association at any and all meetings of the Association and to vest in the beneficiary any and all rights, privileges and powers that such Owner has as an Owner under the Articles of Incorporation and By-Laws of this Association or by virtue of the recorded Declaration of Covenants, Conditions and Restrictions. Such proxy shall become effective upon the filing of notice by the beneficiary with the Secretary of the Association at such time or times as the beneficiary shall deem its security in jeopardy by reason of the failure, neglect or refusal of the Association, the managing agent or the Owners to Restrictions. A release of the beneficiary's deed of trust shall operate to revoke such proxy herein; nothing in this section shall be construed to relieve a Lot Owner as mortgagor of his or her duties and obligations as an Owner or to impose upon the beneficiary of the deed of trust the duties and obligations of an Owner.

Section 7.16: Assessment Reserves

The Association or the managing agent may require an Owner to deposit with the Association, within thirty days of the date of notice to such effect, up to one-third of the amount of the estimated annual assessments, without interest, which sum shall be held by the managing agent or the Association as a reserve to be used for paying such Owner's annual assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular payments of any assessments as the same comes due. On the sale of a Lot, the Owner thereof shall be entitled to credit from the grantee for any unused portion thereof.

Section 7.17: Subordination of Lien to First Mortgagee

~~The lien for any Assessment provided for herein shall be subordinate to the lien of a First Mortgage recorded before the delinquent Assessment was due. Sale or transfer of any Lot shall not affect the lien for said Assessment except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of Assessment which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, of any proceeding in lieu thereof including, without limitation, any deed in lieu of foreclosure. No such sale, transfer, foreclosure, or any above-described proceeding in lieu thereof, shall relieve any Lot from liability for any Assessment becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his ownership. A lien under this section is prior to all other liens and encumbrances on a unit except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. However, a lien under this section is also prior to the security interests described in subparagraph (ii) to the extent of an amount equal to the common expense assessments based on a periodic budget, adopted by the association, which would have become due, in the absence of any acceleration, during the six months immediately preceding institution of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien.~~

~~Sale or transfer of any Lot shall not affect the lien for said Assessment except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of Assessment, except as provided above, which became due prior to any acquisition of title to such Lot by the First Mortgagee pursuant to any such sale or transfer, or foreclosure, of any proceeding in lieu thereof including, without limitation, any deed in~~

lieu of foreclosure. No such sale, transfer, foreclosure, or any above described proceeding in lieu thereof, shall relieve any Lot from liability for any Assessment becoming due after such acquisition of title, nor from the lien thereof, nor the personal liability of the Owner of such Lot for assessments due during the period of his ownership.

Article VIII: General Provisions

Section 8.1: Duration

The covenants and restriction of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Amended and Restated Declaration is recorded, and after which time said covenants shall be automatically extended for successive periods of ten (10) years. ~~Future Amendments shall comply with Section 8.6 unless an instrument signed by the then Owners of sixty seven percent (67%) of the Lots and the then holders of sixty seven percent (67%) of the First Mortgages has been recorded agreeing to change said covenants and restrictions in whole or in part.~~

Section 8.2: Notices

Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent when either hand delivered or mailed, postpaid, to the last-known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Covenant violation notices will be sent via First-class regular US mail and via certified , return signed return receipt required. All Owners are required to provide a current valid mailing address.

Section 8.3: Enforcement

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and restrictions; and failure to enforce any covenants or restriction herein contained upon any such violation or attempted violation thereof shall in no event be deemed a waiver of the right to do thereafter. Any person or party who enforces this Declaration shall be entitled to recover any ~~attorneys~~attorney's fees, costs and expenses, in addition to all other rights and remedies.

Section 8.4: Severability

Invalidation of any one of these covenants and restrictions judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 8.5: Titles and Section Headings

Titles of Articles and section headings shall be disregarded in the interpretation of this document, and shall have no binding effect.

Section 8.6: Amendment

The covenants and restrictions of this Declaration may be amended only by ~~approval of an instrument signed by~~ an instrument signed by not less than sixty-seven (67%) of the Owners ~~and sixty-seven (67%) of the First Mortgagees of the Lots (based upon one vote for each mortgagee)~~ and sixty-seven (67%) of the First Mortgagees of the Lots (based upon one vote for each mortgagee). The notice of any meeting at which an amendment is to be considered shall contain a summary of the proposed amendment. Any such amendment must be properly recorded.

IN WITNESS WHEREOF, Wissler Ranch Homeowner's Association, a Colorado non-profit corporation, has caused this instrument to be executed by its duly authorized officers on the day and year first above written.

Wissler Ranch Homeowner's Association

President

ATTEST

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this day of _____, 201____, by Wissler Ranch Homeowner's Association Board of Directors.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

[seal]

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this day of _____, 201____, by Wissler Ranch Homeowner's Association Board of Directors.

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

[seal]

Exhibit "A" LEGAL DESCRIPTION

The real property which is subject to this Declaration, Subject to the exclusions provided elsewhere in this Declaration, is described as follows:

A Tract of Land being a portion of the North half of Section 2, Township 11 South, Range 66 West of the sixth Principal Meridian, El Paso County, Colorado, being more particularly described as follows:

The Easterly portion of the North line of section 2, Township 11 South, Range 66 West of the sixth Principal Meridian, being monumented at the Southwest corner of Section 35, Township 10 South, Range 66, West of the sixth Principal Meridian, Douglas County, Colorado, by a recovered 3- 1/4" diameter aluminum survey monument stamped "pls 4842" all as shown on the surveyors deposited in the records of the clerk and recorder of El Paso County, Colorado, under deposit No. 87000023, said line assumed to bear 89'59'59" E, a distance of 4890.94 feet.

Commencing at the Northwest corner of said section 2, said point being the point of beginning: thence S89'55'59" on the North line of said section 22, a distance of 383.41 feet, thence S89'55'59" E on the North line of said section 2, a distance of 2724.02 feet; thence s00'00'01" W, a distance of 488.89 feet, thence Southeasterly on the arc of a curve to the left, having a delta of 18'00'01', a radius of 370.00 feet, a distance of 116.24 feet to a point of tangent. Thence 18'00'00" E, a distance of 181.24 feet to a point of curve, thence Southeasterly on the arc of a curve to the right, having a delta of 06'18'18'47", a radius of 1155.00 feet, a distance of 127.26 feet, thence S78'18'47" W, radial to the last mentioned curve, a distance 60.00 feet; thence N90'00'00" W, a distance of 1051.11 feet; thence S300'00'00" W, a S300'00'00" W, a distance of 440.99 feet; thence S89'38'22" W, a distance of 352.65 feet to the Northwest corner of the Southeast quarter of the line of the Northwest quarter of the Northwest quarter of said section 2, a distance of 1323.22 feet to the Southwest corner thereof, thence N00'50" W on the West line of said section 2, a distance of 1631.60 feet to the point of beginning.

Containing 96.313 Acres.