

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF
SERENITY AT WOLF CREEK RANCH ROAD ASSOCIATION

THE UNDERSIGNED “DECLARANT,” BEING THE OWNER OF THE REAL PROPERTY DESCRIBED IN EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE (“PROPERTY”), DECLARES THE FOLLOWING TO BE THE COVENANTS, CONDITIONS, AND RESTRICTIONS GOVERNING THE ROADS (“ROAD COVENANTS”) WITHIN THE SERENITY AT WOLF CREEK RANCH COMMUNITY (THE “COMMUNITY”).

ARTICLE 1. GENERAL PURPOSE AND SCOPE

- 1.1 Declarant is the Owner of the Real Property described in *Exhibit A* hereto.
- 1.2 Declarant intends to deed the Real Property to future Owners and each Owner will own part of the roads within the Community (the “Roads”).
- 1.3 Pursuant to the Declaration of Covenants, Conditions and Restrictions of Serenity at Wolf Creek Ranch, every Owner grants an easement to all other Owners over and across the Roads which is part of their Parcel for purposes of ingress and egress. Every Owner and his or her family, tenants, guests, and invitees shall have a right and easement of access to his or her Parcel and of enjoyment in and to the roads within the Community and such easement shall be appurtenant to and shall pass with the title to every Parcel.
- 1.4 These Covenants are intended to control the use of the Roads (shown on the Plat and a road that may be installed road between lots 35 and 36) and to require that all of the Owners, users, and possessors of any of the Property comply with reasonable restrictions and regulations intended to improve and enhance the right of every owner of any Parcel to use the Roads.

ARTICLE 2. DEFINITIONS

- 2.1 **Articles.** The articles of incorporation for Serenity at Wolf Creek Ranch Road Association currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.
- 2.2 **Association.** The Serenity at Wolf Creek Ranch Road Association, a Colorado non-profit corporation.
- 2.3 **Board.** Board of Directors of the Association.
- 2.4 **Bylaws.** The bylaws of the Association.
- 2.5 **Common Expenses.** As used in this Declaration, this term includes all charges levied by and for the benefit of the Association, pursuant to the Governing Documents, including but not limited to annual costs and expenses of the Association resulting from maintenance of the Roads.

2.6 **Common Expense Assessment(s); Assessment(s).** These terms will include but not be limited to the following items levied against a particular Owner: (i) the Owner's allocated interest in the Common Expenses; (ii) late charges, attorneys' fees, fines and interest charged by the Association at the rate as determined by the Bylaws and rules and regulations enacted by the Association, (iii) charges against a particular Owner and the Parcel for the purpose of reimbursing the Association for expenditures and other costs of the Association in curing any violation of the Governing Documents by the Owner or related users; (iv) charges levied against an Owner pursuant to Section 4.5, below, due to the Owner's negligence or misconduct ("Default Assessment") and (iv) any sums permitted by the Governing Documents to be assessed against a particular Owner or Parcel.

2.7 **Community.** Serenity at Wolf Creek Ranch located in Elbert County, Colorado.

2.8 **Covenants.** Collective term for all promises, restrictions, reservations, conditions, terms, easements, and rights-of-way specifically set forth or referenced in this Declaration and set forth in the Governing Documents, as the same may be adopted and amended from time to time. Each and every Covenant will be given the same force and effect at law or equity without regard to in which Governing Document it is set forth.

2.9 **Declarant.** 2773, LLC, a Colorado limited liability company together with any Person to which any or all of the rights of Declarant may expressly be transferred in accordance with the requirements of the Act, including its successors and assignees. A Person shall be deemed to be a "successor and assignee" of 2773, LLC, as a Declarant, only if specifically designated as a successor or assignee of Declarant under this Declaration in an instrument recorded in the real property records of Elbert County and shall be deemed a successor and assignee of Declarant only as to the particular rights or interests of Declarant under this Declaration that are specifically designated in the written instrument. A successor to Declarant by consolidation or merger shall automatically be deemed a successor or assignee of Declarant as Declarant under this Declaration.

2.10 **Declarant Control Period.** The period that begins with the appointment of the initial Board of Directors and continues until the earlier of: (a) sixty (60) days after Declarant conveys 75% of the Parcels that may be created to Owners other than Declarant; or (b) two (2) years after the last conveyance of a Parcel by Declarant in the ordinary course of business. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and Recorded, and, in such event, Declarant may at its option require that specified actions of the Association or the Board of Directors as described in the recorded notice, during the period that Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

2.11 **Governing Documents.** Collective references to those documents that govern the operation of the Association, including: (a) Articles; (b) Bylaws; (c) its rules and regulations; and (d) this Declaration, as one or more of the same may be amended from time to time. Each and every provision of the Governing Documents will be given the force and effect as if set forth in this Declaration.

2.12 **Owner.** The owner of record, whether one or more persons or entities of fee simple title to any Parcel.

2.13 **Parcel.** One individual parcel located within the Community and subject to the Declaration of Restrictive Covenants, Conditions and Restrictions for Serenity at Wolf Creek Ranch.

2.14 **Special Assessments.** The Association may at any time, from time to time, determine, levy, and assess a Special Assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of a capital improvement of the Easement. Any such Special Assessment will be due and payable as determined by the Board. Notice in writing setting forth the amount of such Special Assessment per Parcel and the due date for payment thereof will be given to the Owners not less than thirty (30) days before such due date.

ARTICLE 3. THE SERENITY AT WOLF CREEK RANCH ROAD ASSOCIATION

3.1 **Formation of the Association.** The Association is a Colorado nonprofit corporation under the Colorado Nonprofit Corporations Act. The Association reserves all of the duties, powers, and rights set forth in the Act, the Colorado Nonprofit Corporations Act, this Declaration, the Articles of Incorporation, and the Bylaws.

3.2 Board of Directors.

- (a) **Management Responsibilities.** The affairs of the Association shall be managed by the Board of Directors. The number, term, and qualifications of the Directors shall be fixed in the Articles of Incorporation and the Bylaws in accordance with the provisions hereof. The Board of Directors may, by resolution, elect to delegate portions of its authority to its Officers or a committee, but such delegation of authority shall not relieve the Board of Directors of the ultimate responsibility for management of the Association. Action by or on behalf of the Association may be taken by the Board of Directors or any duly authorized executive committee, Director, Officer, agent, or employee without a vote of the Owners, except as otherwise specifically provided in this Declaration.
- (b) **Selection of Directors.** Not later than sixty (60) days after the conveyance by Declarant to Owners other than Declarant of 50% of the Parcels that may be created within the Community, at least one (1) Director, and not less than 25% of the Directors must be elected by Owners other than Declarant; and that no later than sixty (60) days after the conveyance by Declarant of 75% of the Parcels that may be created within the Community to Owners other than Declarant, not less than 50% of the Directors must be elected by Owners other than Declarant. Upon expiration of the Declarant Control Period, the Owners shall elect an Executive Board of at least three (3) Directors, a majority of whom shall be Owners other than Declarant or designated representatives of Declarant.

3.3 **Indemnification.** To the extent permitted by law, each Officer and Director of the Association shall be and are hereby indemnified by the Owners and the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer or director of the Association, or any settlements thereof, whether or not they are an Officer or Director of the Association at the time such expenses are incurred, except in such cases wherein such Officer or Director is adjudged guilty of reckless or willful misconduct in the performance of his duties. In the event of a settlement, the indemnification shall apply only when the Executive Board approves such settlement and reimbursement as being in the best interests of the Association.

3.4 **Membership in Association.** Every record Owner of fee simple title in any Parcel shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Parcel. Ownership of a Parcel shall be the sole qualification for membership. Where more than one (1) person holds an interest in any Parcel, all such persons shall be members of the Association. Declarant shall be a member of the Association for as long as Declarant is an Owner. Membership in the Association shall not be pledged, transferred, alienated, or assigned separate and apart from the fee simple title to a Parcel, except that an Owner may assign some or all of his rights as an Owner and as a member of the Association to a tenant or Mortgagee and may arrange for a tenant to perform some or all of such Owner's obligations as provided in this Declaration. Notwithstanding the foregoing, no Owner shall be permitted to relieve itself of the responsibility for fulfillment of the obligations of membership in the Association under this Declaration.

3.5 **Voting Rights of Owners.** Each Owner shall have the right to cast one (1) vote for each Parcel owned by such Owner in accordance with the Bylaws, but in no event shall there be more than one (1) vote per Parcel. If title to a Parcel is owned by more than one (1) Person, such Persons shall collectively vote their interest as a single vote.

3.6 **Eligible Votes.** Notwithstanding anything to the contrary contained herein, only Owners whose voting rights are in good standing under the Bylaws (e.g., voting rights that have not been suspended as provided therein) shall be entitled to vote on Association matters. In accordance therewith, any and all provisions contained herein requiring the approval of a requisite percentage of Owners shall be deemed satisfied when the requisite percentage of Owners entitled to vote has been met.

3.7 **Subdividing.** In the event that an Owner, subdivides a Parcel (if allowed to do so under the Serenity at Wolf Creek Ranch Declarations and governing documents), then Owners of the subdivided Parcel(s) abutting or crossed by the Roads will be members of the Association. The Owner of the new Parcel(s) will be entitled to serve as a voting member of the Board.

3.8 **Duties.** The Association will have the obligation, subject to and in accordance with the Covenants, to perform each of the following duties for the benefit of the Owners of each Parcel within the Property.

- 3.8.1 To accept and exercise jurisdiction over the Roads, entrance signs and mailbox pavilion area.
- 3.8.2 To adopt and amend bylaws and rules and regulations.
- 3.8.3 To adopt and amend budgets for revenues, expenditures and reserves and collect Assessments.
- 3.8.4 To hire and terminate management agents and other employees, agents, and independent contractors.
- 3.8.5 To institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Roads.
- 3.8.6 To make contracts and incur liabilities.
- 3.8.7 To regulate the use, maintenance, repair, replacement and modification of Roads.
- 3.8.8 To cause additional improvements to be made to the Roads.
- 3.8.9 To impose charges for late payment of Assessments, recover reasonable attorney fees and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether or not suit was initiated, and after notice and opportunity to be heard, levy reasonable fines for violations of the Governing Documents.
- 3.8.10 To impose reasonable charges for the preparation and recordation of amendments to the Declaration or statements of unpaid Assessments.
- 3.8.11 To provide for indemnification of its officers and Board and maintain directors' and officers' liability insurance.
- 3.8.12 To assign its right to future income, including the right to receive Assessments.
- 3.8.13 To exercise any other powers conferred by the Declaration or the Bylaws.
- 3.8.14 To obtain and maintain in force policies of insurance covering the liability of the Association for all activities of the Association and its directors and officers, and such other insurance as it deems advisable.
- 3.8.15 To exercise all other powers that may be exercised in this state by legal entities of the same type as the Association.

3.8.16 Such other powers as are consistent with the powers herein outlined and those powers adopted by the Association not in conflict herewith.

3.9 **Rights of Action.** The Association on behalf of itself and any aggrieved Owner will be granted a right of action against any and all Owners for failure to comply with the provisions of the Governing Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Governing Documents. The Owners will have a right of action against the Association for failure to comply with the provisions of the Governing Documents, or with decisions of the Board made pursuant to authority granted to the Association in the Governing Documents. In any action covered by this section, the Association or any Owner will have the right but not the obligation to enforce the Governing Documents by any proceeding at law or in equity, or as set forth in the Governing Documents, or by mediation or binding arbitration if the parties so agree. Failure by the Association or by any Owner to enforce compliance with any provision of the Governing Documents will not be deemed a waiver of the right to enforce any provision thereafter.

3.10 **Implied Rights and Obligations.** The Association may exercise any right or privilege expressly granted to the Association in the Governing Documents or by the Colorado Nonprofit Corporation Act.

3.11 **Notice.** Any notice to an Owner of matters affecting the Property by the Association or by another Owner will be sufficiently given if in writing and delivered personally, by courier or private service delivery, or the third business day after deposit in the mails for registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Parcel.

ARTICLE 4. ASSESSMENTS

4.1 **Purpose of Assessments.** Assessments will be used for the purposes of promoting the health, safety, and welfare of Owners and related users, and in particular:

- 4.1.1 To provide for a Common Expense Assessment made on an annual basis against all Parcels based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year,
- 4.1.2 To enforce all provisions of the Governing Documents;
- 4.1.3 To exercise all rights and powers and to discharge all duties and obligations pursuant to the Governing Documents;
- 4.1.4 To discharge all expenses incurred by the Association in the alteration, improvement, construction, reconstruction, repair, maintenance or replacement of the Roads, the entrance signs and the mailbox pavilion;

4.1.5 To fund any operating deficit or reserves the Association deems necessary to meet its financial obligations.

4.2 **Budget.** Within thirty (30) days after the adoption of any proposed budget for the Association, the Board will mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and will set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) or more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board will adopt a budget for the Association and will submit the budget to a vote of the Owners as provided herein no less frequently than annually. The Board will levy and assess the Annual Assessments in accordance with the annual budget.

4.3 **Annual Assessments.** Annual Assessments made for Common Expenses will be based upon the estimated cash requirements as the Board will from time to time determine to be paid by all of the Owners, subject to Section 4.1 above. Estimated Common Expenses will include, but will not be limited to, the cost of routine maintenance and snow removal on the Roads, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, wages, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance of the Roads on a periodic basis, as needed.

Annual Assessments will be payable annually in advance and will be due on the 1st day of January. The omission or failure of the Association to fix the Annual Assessments for any assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association will have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

4.4 **Apportionment of Common Expenses.** Except as provided below and elsewhere in this Declaration, all Common Expense Assessments will be assessed pro rata against each Parcel (regardless of whether construction has been started on a Parcel).

4.4.1 Any Common Expense for insurance may be assessed in proportion to risk.

4.4.2 If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner and that Parcel, in addition to sums charged to the Owner pursuant to paragraph 4.5 below.

4.4.3 Fees, charges, taxes, impositions, late charges, fines, collection costs and interest charged against an Owner are enforceable as Common Expense Assessments.

4.5 **Owner's Negligence or Misconduct.** In the event that the need for maintenance or repair of the Roads or any portion thereof, the entrance signs or the mailbox pavilion is caused by or in any way results from the negligent or willful act or failure to act, or the misconduct of an Owner or an Owner's related user, then the expenses, costs, and fees incurred by the Association for such maintenance or repair will be a personal obligation of such Owner, and such obligation will be considered a Default Assessment, collectible as a Common Expense Assessment.

4.6 **Special Assessments.** The Association may at any time, from time to time, determine, levy, and assess a Special Assessment applicable to that particular assessment year for the purpose of defraying, in whole or in part, payments for any operating deficit and/or unbudgeted costs, fees and expenses of any construction, reconstruction, repair, demolition, replacement or maintenance of the Roads or any portion thereof or of the entrance signs or mailbox pavilion. Any such Special Assessment will be due and payable as determined by the Board. Notice in writing setting forth the amount of such Special Assessment per Parcel and the due date for payment thereof will be given to the Owners not less than thirty (30) days before such due date.

4.7 **Effect of Nonpayment; Assessment Lien.** Any Assessment installment whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before five (5) days after its due date will be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- 4.7.1 Assess a late charge for each delinquency in such amount the Association deems appropriate.
- 4.7.2 Assess an interest charge from the due date at the yearly rate of six (6) points above the prime rate charged by the Association's bank, or such other lawful rate as the Board may establish, not exceeding twenty-one percent (21%) per year.
- 4.7.3 Suspend the voting rights of the Owner during any period of delinquency.
- 4.7.4 Bring an action against any Owner personally obligated to pay the delinquent Assessments.
- 4.7.5 Proceed with foreclosure as set forth in more detail below.

4.8 **Lien Rights.** Assessments chargeable to any Parcel will constitute a lien on such Parcel. the Association may institute foreclosure proceedings against the defaulting Owner's Parcel in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of foreclosure, the Owner will be liable for the amount of unpaid assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the costs and expenses for filing the notice of the claim and lien, and all reasonable attorneys' fees incurred in connection with the enforcement of the lien. The Association will have the power to bid on a Parcel at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

4.9 **Personal Obligation.** Each Assessment against a Parcel is the personal obligation of the person or entity who owned the Parcel at the time the Assessment became due and will not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Parcel or by waiver of the use or enjoyment of all or any part of the Roads. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith will be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

ARTICLE 5. MECHANIC'S LIENS

5.1 **No Liability.** If any Owner will cause any material to be furnished to his Parcel or any labor to be performed therein or thereon, no Owner of any other Parcel, nor the Association, will under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work will be at the expense of the Owner causing it to be done, and such Owner will be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Parcel.

5.2 **Indemnification.** If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money will be filed against any other Owner's Parcel or an Owner or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order will at his own cost and expense cause the same to be cancelled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further will indemnify and save all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

ARTICLE 6. DURATION OF COVENANTS AND AMENDMENTS

6.1 **Term.** The Covenants and Restrictions of this Declaration will run with and bind the land in perpetuity.

6.2 **Amendment.** This Declaration may be amended at any time by Owners holding not less than two-thirds (2/3) of the votes possible to be cast under this Declaration in a meeting of the Owners called for that purpose.

6.3 **Evidence of Amendment.** Any amendment must be executed by the president of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the secretary of the Association to the recorded instrument certifying the approval of a sufficient number of owners of the amendment.

ARTICLE 7. GENERAL PROVISIONS

EXHIBIT A

**LEGAL DESCRIPTION OF REAL ESTATE
BURDENED BY THE COVENANTS**

**EAST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 33,
WEST ONE-HALF, WEST ONE-HALF OF THE EAST ONE-HALF, SOUTHEAST ONE-
QUARTER OF THE SOUTHEAST ONE-QUARTER OF SECTION 34,**

**SOUTHEAST ONE-QUARTER, EAST ONE-HALF OF SOUTHWEST ONE-QUARTER,
SOUTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER OF SECTION 35, ALL
IN TOWNSHIP 7 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY
OF ELBERT, STATE OF COLORADO**

AND

**WEST ONE-HALF OF THE WEST ONE-HALF OF SECTION 1,
ALL OF SECTION 2,
ALL OF SECTION 3, IN TOWNSHIP 8 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL
MERIDIAN, COUNTY OF ELBERT, STATE OF COLORADO**

AND

**EAST ONE-HALF OF THE NORTHEAST ONE-QUARTER, NORTHEAST ONE-QUARTER OF
THE SOUTHEAST ONE-QUARTER OF SECTION 34,
NORTH ONE-HALF, NORTHWEST ONE-QUARTER OF THE SOUTHWEST ONE-QUARTER
OF SECTION 35, ALL IN TOWNSHIP 7 SOUTH, RANGE 63 WEST OF THE 6TH PRINCIPAL
MERIDIAN, COUNTY OF ELBERT, STATE OF COLORADO.**