

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
WILD HORSE RANCH SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions is made this 5th day of March, 1998 by Wild Horse Ranch L.L.C., a New Mexico limited liability company, hereinafter called "Declarant".

WITNESSETH:

Whereas, the Declarant is the owner of certain real property which is designated as "Phase 1" on the Subdivision plat for the following described real property in Catron County, New Mexico:

A certain Subdivision known as WILD HORSE RANCH and shown on that certain plat thereof filed with the County Clerk of Catron County, New Mexico, on the 19th day of December, 1997 as Slide B159.

Whereas, upon and subject to the successful development of Phase 1 and subsequent Phases the Declarant intends to acquire the balance of the Property in additional Phases as described on the Subdivision plat.

Whereas, upon acquisition of each additional Phase, the Declarant shall determine whether such Phase is to be subjected to the protective covenants, conditions, charges, liens, restrictions, easements and reservations hereinafter set forth, in which case the Declarant shall record a notice to that effect with the County Clerk of Catron County, New Mexico.

Whereas, the Declarant intends to convey the said properties which have been subjected to such protective covenants, conditions, charges, liens, restrictions, easements and reservations.

Now, therefore, the Declarant hereby declares that the properties constituting such Phases which have been Activated shall be held, sold and conveyed subject to the following covenants, conditions, charges, liens, restrictions, easements and reservations, as amended from time to time, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the said real property, and all of which are hereby declared to be for the benefit of all the properties described herein and the owners thereof, their heirs, successors, grantees and assigns. These restrictions shall run with the properties constituting such Phases which have been Activated, or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Terms used in this Declaration having initial capital letters but not otherwise defined in this Declaration shall have the meanings specified below.

“Activate”, “Activated” and “Activation” shall refer to the recordation in the office of the County Clerk of Catron County, New Mexico of a notice executed by the Declarant to the effect that a particular Phase which has been acquired by the Declarant has been subjected by the Declarant to this Declaration. Phase 1 shall be Activated by the recordation of this Declaration.

“Association” shall mean Wild Horse Ranch Landowners’ Association, Inc., its successors and assigns.

“Board” shall mean the Board of Directors of the Association.

“Declarant” shall mean Wild Horse Ranch L.L.C. and the successors and assigns of its rights and powers hereunder.

“Declaration” shall mean this entire document as amended from time to time.

“Default Rate” shall mean a rate of interest equal to the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law.

“Lot” shall mean any numbered lot as shown on the Subdivision plat of a Phase which has been Activated.

“Member” shall mean a member of the Association, including the Declarant so long as the Declarant is the Owner of one or more Lots.

“Owner” shall mean a record holder of beneficial or equitable title and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot. Owner shall not include: (a) a Person having an interest in a Lot merely as security for the performance of an obligation; or (b) a tenant of a Lot.

“Person” shall mean a natural person or a corporation, limited liability company, partnership, joint venture, trust, or any other legal entity.

“Phase” shall mean a portion of the Subdivision indicated as a “phase” on the plat for the Subdivision.

“Property” shall mean the real property comprising the Subdivision.

“Restrictions” shall mean the covenants, conditions, charges, liens, restrictions, easements and reservations contained or referred to in this Declaration, as it shall be amended from time to time.

“Subdivision” shall mean that portion which has been Activated of Wild Horse Ranch Subdivision, a subdivision located in Catron County, New Mexico and developed by Declarant,

including the roads and any common areas shown on the Subdivision plat.

ARTICLE II

ASSOCIATION

Section 1. ESTABLISHMENT OF THE ASSOCIATION. Promptly after the execution and recordation of this Declaration, the Declarant shall establish the Association as a New Mexico nonprofit corporation named "Wild Horse Ranch Landowners' Association, Inc." which shall be charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation and Bylaws of the Association and this Declaration.

Section 2. PURPOSE OF ASSOCIATION. The purpose for which the Association is organized is to provide for the maintenance of the roads and common areas serving the Subdivision, to enforce the Restrictions, to engage in any lawful activities which are determined by the Association to be in the best interest of the Subdivision, and to promote the health, safety, and welfare of the residents of the Subdivision, including any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. MEMBERSHIP AND VOTING RIGHTS. By acceptance of a deed to a Lot or by becoming an Owner of a Lot, including by execution and delivery of a real estate contract therefor with the Declarant, a Person shall, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, automatically be and become a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Only Owners shall be qualified to be Members. The Association shall have one class of voting membership. Each Member shall be entitled to one vote for each Lot owned. When more than one person is an Owner of a Lot, the vote of all such Owners shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any Lot, nor may the vote for any Lot be split or fractionalized. A Member who has not paid up all assessments owing the Association together with interest, if any, and costs of collection of the Association, including attorneys' fees, or who is the subject of an uncured notice from the Declarant to the Association informing the Association that such Member is then in default under his real estate contract with the Declarant, shall not be entitled to vote on any matter. The determination of the existence of a quorum for any meeting of Members and the calculation of the percentage of the votes of Members required to terminate, extend or amend this Declaration under Article VII hereof shall be made without reference to such a Member or the Lots owned by him.

Section 4. POWERS OF THE BOARD. The Board shall be responsible for the supervision, control and direction of the affairs of the Association, shall execute the policies and

decisions of the membership, shall actively carry out the Association's purposes, and shall have discretion in the disbursement of funds. The directors shall in all cases act as a board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Association as they may deem proper, provided such rules and/or regulations are not inconsistent with the Articles of Incorporation and Bylaws of the Association, this Declaration or the laws of the State of New Mexico.

ARTICLE III

ASSESSMENTS

- Section 1. **REGULAR ANNUAL ASSESSMENTS.** The Association shall levy a regular annual assessment against each Lot in an amount necessary, as determined by the Board, to maintain the roads and common areas serving the Subdivision, to maintain the Association's existence and to fund the Association's activities, including enforcement of these Restrictions. Except as provided in Section 6 below with respect to the Declarant, such regular assessments shall be uniform for all Lots, with each Member responsible for the assessments levied against the Lots owned by such Member, and shall be due 30 days following the date a Member is sent notice thereof or at such later date as the Board may declare.
- Section 2. **SPECIAL ASSESSMENTS.** The Association may levy special assessments against each Lot for the purpose of providing funds necessary to pay for such of the Association's activities as are not covered by regular annual assessments, but no such special assessments shall be levied without the affirmative vote of a majority of the total number of votes of all the Members voting on the issue, either in person or by proxy. Except as provided in Section 6 below with respect to the Declarant, such special assessments shall be uniform for all Lots, with each Member responsible for the assessments levied against the Lots owned by such Member, and shall be due 45 days following the date a Member is sent notice thereof or at such later date as the Board may declare.
- Section 3. **ASSESSMENT LIEN.** By acceptance of a deed or other instrument conveying title to a Lot, each Owner covenants and agrees to pay all regular assessments and special assessments (a regular or special assessment is hereinafter referred to as an "Assessment") levied with respect to all Lots owned by him. If an Assessment is not paid on the date due, the Lot on which such Assessment is unpaid shall be subject to a lien (an "Assessment Lien") against such Lots for the amounts specified in Section 4 below. Any unpaid Assessment Lien shall continue as a lien against the Lot acquired by any subsequent Owner.
- Section 4. **DELINQUENCY.** Any Assessment not paid when due shall be delinquent. If any

Assessment on any Lot is not paid within 30 days immediately following the due date, the Assessment shall bear interest from the date due until paid at the Default Rate. The Association may, at its option, bring a legal action against the Owner of such Lot to pay the delinquent Assessment together with the interest just specified and/or foreclose the Assessment Lien against the Member's Lot or Lots in accordance with the then prevailing law of the State of New Mexico for the foreclosure of mortgages. In the event of foreclosure of an Assessment Lien, the redemption period shall be one month, in lieu of the statutory period of nine months. The amount owed, which shall be secured by the Assessment Lien, shall be the delinquent Assessment together with interest at the Default Rate from the due date and all collection costs, including attorneys' fees, relating to such action. Each Member vests in the Association, or its agents, the right and power to bring all actions at law or equity against such Member for the collection of the delinquent Assessments and other sums just specified.

Section 5. SUBORDINATION OF ASSESSMENT LIEN TO FIRST MORTGAGE OR DEED OF TRUST. The Assessment Lien shall be subordinate to any first mortgage or deed of trust on the affected Lot. Sale or transfer of any Lot shall not affect the Assessment Lien unless the sale or transfer is pursuant to foreclosure of a first mortgage or first deed of trust or pursuant to any trustee's sale or any proceeding in lieu thereof.

Section 6. UNIFORM ASSESSMENT, DECLARANT EXCEPTION. Assessments shall be levied at the same rate for all Lots, except the Lots owned by the Declarant. The Declarant shall not pay an Assessment for any Lots owned by the Declarant but in lieu thereof shall be responsible for maintaining the roads and common areas within each Phase until 75% of the Lots within such Phase are sold as provided for in Article V, Section 6 below.

Section 7. DATE OF COMMENCEMENT OF REGULAR ANNUAL ASSESSMENTS. The first regular annual assessment on all Lots shall be due January 31st, 1998 and on the 31st of January every year thereafter. Each Owner shall pay a pro rated amount of the regular assessment which was levied on each Lot (other than Lots owned by Declarant) on the preceding January 31st upon execution of his real estate contract with Declarant.

ARTICLE IV

LAND USE

Section 1. Natural vegetation shall be left undisturbed, except for such clearing as is necessary to use a Lot for residential purposes. No logging or tree cutting operations are to be conducted on any Lot except to thin trees where reasonably necessary to protect or

improve the health of the remaining natural vegetation. The natural beauty of the land must be preserved and maintained.

Section 2. Any and all structures, buildings, mobile homes, driveways, fences, corrals or other improvements located on a Lot ("Improvements") shall be constructed in compliance with all applicable building codes and shall be of new construction materials except that used brick may be used to construct buildings or walls and used railroad ties or used oil field pipe may be used to construct fences. Conventional building materials shall be used for all Improvements, including fencing. Exterior walls may utilize treated metal siding such as that used in commercially manufactured mobile homes (but not corrugated or galvanized metal siding), wood, or wood siding if it is a high-grade exterior manufactured wood siding. Any and all exposed wood utilized in permanent Improvements shall be painted and/or treated. Indoor plumbing shall be installed in an Improvement before that Improvement is occupied for any residential purpose or used for any residential purpose. Exterior colors of permanent Improvements shall be of muted earth tones so as to blend in with the natural surroundings. No structure of a temporary character, recreational vehicle, camper unit, trailer, basement, tent or accessory building shall be used on any Lot as a residence. Recreational vehicles, camper units and tents may be used for vacation camping for periods not to exceed a total of 90 days in any calendar year. With receipt of written Board approval in advance, a recreational vehicle may also be used as a temporary residence while a permanent dwelling is under construction but in no case for a period longer than one year. The exterior of all Improvements shall be completed within one year from commencement of construction. If any business is operated on any Lot, all equipment other than vehicles shall be kept and maintained inside buildings on the Lot.

No mobile home may be placed on any Lot if such mobile home was manufactured more than 10 years prior to the date of installation on the Lot. All mobile homes must be at least 500 square feet and must have pitched or gabled roofs and eaves on all sides. Mobile homes must be skirted and porches installed within 90 days of the date on which the mobile home is placed on a Lot.

Section 3. All primary dwellings other than mobile homes shall consist of not less than 800 square feet of heated living area. No Improvement on any Lot shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, then such Improvement shall be repaired immediately, rebuilt, or demolished and removed from the Lot by the Owner thereof.

Section 4. No garbage or trash of any character whatsoever shall be allowed, stored, placed or dumped on a Lot except in sanitary, covered containers. All garbage and trash shall be removed regularly from each Lot and shall not be allowed to accumulate thereon.

No portion of any Lot shall be used to store any property or thing that will cause such property to appear unclean or untidy, or that will be obnoxious to the eye; no hazardous waste shall be stored or disposed of on any Lot; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might unreasonably disturb the peace, quiet, comfort or serenity of the occupants of the surrounding property. No business or commercial venture which is obnoxious, noisy or offensive, which determination shall be made by the Board of Directors in its sole discretion, may be conducted on any of the Lots. No mining or mineral extraction operations, including, without limitation, drilling for oil, natural gas or other hydrocarbons, shall be permitted within the Subdivision. Lots shall be kept in a clean and tidy condition. No junk vehicles or junk equipment of any kind, unkempt trailers or dilapidated or unkempt mobile homes shall be permitted on the Property. No dilapidated or unkempt Improvements are to be constructed, placed, or kept on any Lot.

Section 5. All domestic animals shall be confined within the boundaries of the Lot or contiguous Lots owned by the Owner of such domestic animals. Such animals shall not be allowed to graze or wander upon adjoining Lots owned by others. Livestock must be kept in sanitary conditions. No sheep, goats or pigs may be kept on any Lot; provided, that this shall not prohibit such animal from being kept on a Lot for 4-H or FFA project purposes. Horses or any riding animals may be kept but must be confined in corrals or behind fences when not being ridden.

Section 6. Road right-of-ways are 50 feet in width and are used for access and utilities as provided for by the plat of the Subdivision. No structure (other than windmills, which shall be permitted), mobile home or corral on any Lot shall be nearer than 150 feet to the nearest road right-of-way, nor nearer than 100 feet to the side lot line, nor nearer than 100 feet from the back lot line. On a case by case basis, these set-back requirements may be modified by the Board of Directors but only if the configuration, topography, or unique circumstances of a particular Lot impose, in the Board's sole judgement, an undue hardship on the Owner. No obstructions (except cattle guards and the connected fencing, which shall be permitted), fencing, gates, structures, improvements or any other obstructions shall be placed within the road right-of-ways.

Section 7. No Improvement other than windmills shall be more than 30 feet in height.

Section 8. No Lot shall be divided or subdivided into smaller lots nor conveyed in less than the full dimensions as shown by the Subdivision plat. No more than two dwellings, including mobile homes, shall be allowed on any Lot.

Section 9. No shooting, hunting or trapping shall be permitted within the Subdivision.

Section 10. No foundations shall be poured or otherwise established for any structure without prior inspection by the Association to confirm compliance with set-back requirements. The Board of Directors shall have the authority to modify the requirements of this Article IV if required, in the Board's sole judgement, by the unique circumstances of an individual case.

ARTICLE V

GENERAL

Section 1. INTERPRETATION OF RESTRICTIONS. The Board shall have the exclusive right to construe and interpret these Restrictions and its decision shall be final, conclusive and binding upon all Persons and all Lots.

Section 2. APPLICABILITY. This Declaration shall apply to each Phase upon the Activation of such Phase.

Section 3. SEVERABILITY. Any determination by any court of competent jurisdiction that any provision in this instrument is invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions of this instrument and the same shall remain in full force and effect.

Section 4. WAIVER OR ABANDONMENT. Failure on the part of the Persons specified in Section 5 below to enforce the terms of this Declaration in the case of any breach or violation of any of the provisions of this Declaration shall not constitute an abandonment or waiver of any right to enforce such provision for that or any subsequent breach or violation of such provision or of any of the other terms, provisions or Restrictions herein set forth.

Section 5. ENFORCEMENT. The Restrictions, which shall run with every Lot, are for the exclusive benefit and protection of the Owners and the Association and shall be enforceable by the Board or may be enforced by an individual Owner, including the Declarant, or Owners in accordance with the intent of this Declaration, who may pursue whatever remedies may be afforded such Person by law or in equity. Each Owner acknowledges that these Restrictions may be enforced by injunctive relief as well as by suits for damages, and agrees, in any such action for injunctive relief, that it shall not be necessary for the Association or any Owner to post any bond in connection with any such action. If the Owner is not a prevailing party in any proceeding brought by the Association, the Declarant or another Owner seeking to enforce these Restrictions, he shall pay the costs, including attorneys' fees, of the Association or the Declarant relating to such action. Such obligation shall constitute a lien against the Lot of such Owner. The Association may, at its option, bring an action at law or in equity against an Owner personally who is obligated to pay the

fees and/or foreclose the lien against the Owner's Lot in accordance with the then prevailing law of the State of New Mexico for the foreclosure of mortgages. If any such action is commenced to collect such fees, there shall be added to the amount of such fees the expenses of the Association incurred in connection with collection and all attorneys fees' and costs relating to such action.

Section 6. **ACCEPTANCE OF ROADS AND COMMON AREAS AND ASSUMPTION OF MAINTENANCE OF ROADS AND COMMON AREAS.** The Association shall accept the condition of the construction of all roads, accept common areas and assume maintenance of all roads and common areas serving the Subdivision upon the following schedule:

- 6.1 Upon adoption of this Declaration and formation of the Association, the Declarant shall immediately convey all roads, roadways, road and utility easements and common areas within Phase 1 to the Association.
- 6.2 Upon conveyance by the Declarant, the Association shall immediately accept the condition of construction of all such roads, roadways, road and utility easements and common areas within Phase 1 and accept for maintenance such roads, roadways utility easements and common areas as contemplated herein.
- 6.3 Upon Activation of the real property comprising each additional Phase, the Declarant shall immediately convey all roads, roadways, road and utility easements and common areas within such Phase to the Association.
- 6.4 Upon conveyance by the Declarant, the Association shall immediately accept the condition of construction of all such roads, roadways, road and utility easements and common areas within such additional Phase and accept for maintenance such roads, roadways, utility easements and common areas as contemplated herein.
- 6.5 Notwithstanding the above conveyance to and acceptance by the Association of the roads, roadways, road easements and common areas, the Declarant will maintain all such roads, roadways, road easements and common areas until such time as the Declarant has advised the Association in writing that at least seventy-five percent (75%) of the Lots within the respective Phase have been sold. Upon such notification the Association shall assume the maintenance and responsibility of all such roads, roadways, road easements and common areas and assume the costs thereof, and shall deliver to the Declarant acknowledgment of such assumption of responsibility. Prior to such time, the Association may participate in the maintenance of the roads, roadways, road easements and common areas of the Subdivision or serving the

Subdivision and pay a portion of the cost thereof from available funds of the Association.

Section 7. **TERM/METHOD OF TERMINATION.** This Declaration shall be effective upon its recordation and, as amended from time to time, shall continue in full force and effect until the commencement of the calendar year 2020. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years each unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the total number of votes of all the Members at such time, or such greater percentage as may be required by applicable law, at a meeting of Members held for such purpose within six (6) months prior to the expiration of the initial term hereof, or any ten (10) year extension. In addition, this Declaration may be terminated at any time if seventy-five percent (75%), or such greater percentage as may be required by applicable law, of the total number of votes of all the Members shall be cast in favor of termination at a meeting of Members held for such purpose. If the necessary consents and votes are obtained, then they shall be recorded in the form of a Certificate of Termination. Upon the recording of the Certificate of Termination, this Declaration shall have no further force and effect.

Section 8. **AMENDMENT.** The Restrictions of this Declaration shall run with and bind the land until the year 2020, and thereafter shall continue concurrently with the extensions, if any, of the Declaration pursuant to Section 7. This Declaration may be amended from time to time by recording in the Office of the County Recorder of Catron County, New Mexico, an instrument in writing reciting said Amendment and certifying that the Amendment has been approved by qualified Members of the Association owning seventy-five percent (75%) of the Lots and by Declarant. If the Amendment affects one or more Activated Phases only but not the entire Subdivision, the Amendment may be effected by an instrument in writing reciting said Amendment and certifying that the Amendment has been approved by qualified Members of the Association owning seventy-five percent (75%) of the Lots in the Phases which are affected by the Amendment and by Declarant.

Section 9. **LIMITATION ON THE DECLARANT'S LIABILITY.** Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Declarant (including without limitation any successor or assign of the interest of the Declarant hereunder), nor any manager, member, employee, agent or affiliate of the Declarant shall have any personal liability to the Association, or to any Owner, or other Person, arising under, in connection with, or resulting from (including without limitation resulting from action or failure to act with respect to) this Declaration and, in the event of a judgment against the Declarant or any of such other Persons just specified, no execution or other action shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor. Each of the provisions of this Section 9 shall apply to, and neither the Declarant nor any manager, member,

employee, agent or affiliate of the Declarant shall have any liability to any Person with respect to, the performance by the Declarant of its duty to maintain the roads and common areas serving the Subdivision.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of this 5th day of March, 1998.

WILD HORSE RANCH L.L.C.

By: [Signature]
Co-Manager

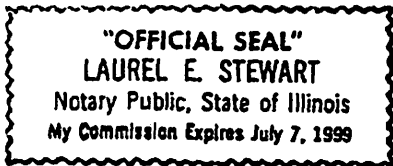
State of Illinois)
) ss.
County of Cook)

The foregoing instrument was acknowledged before me this 5th day of March, 1998, by Thomas G. Fitzgerald, who is a co-manager of Wild Horse Ranch L.L.C., a New Mexico limited liability company.

Laurel E. Stewart
Notary Public

My Commission Expires:

July 7, 1999



STATE OF NEW MEXICO, }
CATRON COUNTY, } ss

This instrument of writing was filed for record on the 13 day of March A.D. 1998 at 1:04 o'clock P.M., and duly recorded in Vol. 96 of Books on Page 91-101

[Signature]
County Clerk