

## DECLARATION OF PROTECTIVE COVENANTS FOR COWBOY AT OLD WEST RANCH

THIS DECLARATION OF PROTECTIVE COVENANTS, ("Declaration"), is made this 22nd day of June, 2018 by Old West Ranch CO Partners, LLC, a Colorado limited liability company ("Declarant").

### BACKGROUND AND PURPOSE

A. Declarant is the owner in fee simple of certain real property (the "Property") in El Paso County, State of Colorado, legally described in the attached **Exhibit A** and incorporated by this reference (the "Property").

B. Declarant desires to place protective covenants, conditions, easements and restrictions on the Property in order to establish, protect and maintain the quality residential environment, character, values and amenities of the Property.

### DECLARATION

Declarant, for itself and its grantees, successors and assigns, imposes and establishes upon the Property, and all of the Property shall be subject in the future to all of the following covenants, which shall be deemed to run with the land and shall inure to the benefit of and be binding upon Declarant, its grantees, successors and assigns, and all parties having or acquiring any right, title or interest in or to all or part of the Property.

Declarant shall have, retain and reserve certain rights as set forth in this Declaration with respect to the Property for so long as Declarant or an affiliate of Declarant owns an interest in real property within the approximate 2,846-acre development known as Old West Ranch ("Declarant's Interest"). Declarant's rights shall be deemed excepted and reserved in each conveyance of all or a portion of the Property.

### COVENANTS

1. **Land Use.** All of the Property shall be used for ranching, agricultural, residential or other uses allowed within the zoning, as may be conditioned herein.
2. **Construction Type.** All construction shall be new. No mobile home, pre-cut, or manufactured home may be placed on the Property. No building previously used at another location, nor any building or improvement originally constructed as a mobile dwelling may be moved onto the Property, except for temporary construction storage purposes (and not for a temporary residence) for a period not to exceed twelve (12) months.
3. **Modular Homes.** A modular home may be approved for construction on the Property, subject to Declarant approval during the period of Declarant's Interest, and provided the following conditions are met:
  - (a) The modular home must comply with the IRC (International Residential Code), which is similar or identical to site-built home requirements.

- (b) A home built under HUD Code standards is prohibited (e.g., singlewides and doublewides). Single section or mobile home park models are prohibited.
- (c) The home must have at least a 5/12 roof pitch, with a minimum of 12-inch overhang, and at least 1 dormer or covered porch on the front side of the home.
- (d) The home must have an attached garage for at least two vehicles that is painted, sided or shingled to match the home.
- (e) Vinyl siding materials are prohibited. Smart lap, smart panel or Hardie siding is acceptable.
- (f) The home must have poured concrete front steps or a deck entering the home.
- (g) The home's exterior must be finished with at least 30% stone or masonry materials on the front side of the home. The painted exterior of the home must have at least three colors (trim, body and accent colors).
- (h) The home must not look like or have the appearance of a manufactured or mobile home.

4. **Access Road to the Parcel.** The Property owner is responsible for compliance with all county regulations and ordinances concerning installation of a driveway or access road serving all or a portion of the Property.

5. **Completion of Construction.** Construction of a residence and any other improvement consisting of a building or structure must be completed within twelve (12) months from commencement of construction. All vegetation and other surface areas disturbed by construction activities must be promptly revegetated and restored to its prior natural condition. No building material of any kind may be stored on the Property except in connection with construction occurring on the Property, unless it is stored in an enclosed structure or adequately screened from adjacent property and roads. Construction shall be promptly commenced and diligently pursued as soon as any building materials are placed on the Property. If any structure under construction is abandoned, Declarant and/or any other owner of real property within the Property shall have the authority to take enforcement action against the owner to cause the removal of all or portions of such structure so as to prevent it from being unsightly. Notice of intent to initiate enforcement action to remove the structure will be posted at least ten (10) days prior to initiating such action, and if the enforcement action is successful and the structure is removed, the owner shall be liable for all costs of such work, and the owner's property may be subject to a lien for costs incurred for the removal.

6. **Soils, Grading and Maintenance.** The soils within the State of Colorado consist of both expansive soils and low-density soils, and an alluvial high water table may be present, all of which may adversely affect the integrity of any improvement if the improvement and the property containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains thereby resulting in consolidation and/or collapse of the soils. The property owner should take special note and care to insure and maintain water drainage away from the residence and other structures and not to interfere with the drainage patterns established by any grading plan for the Property and the finished grading set by a builder. Drainage patterns cannot be directed to adjacent property, but must be maintained within the boundaries of the property generating the drainage and then to adjacent roads or drainage easements.

7. Nuisances. No noxious or offensive activity shall be carried on within the Property, and nothing shall occur within the Property to cause annoyance, embarrassment, discomfort, or a nuisance, or which unreasonably offends or disturbs any other owner or occupant or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of any portion of the Property by other owners or occupants. No hazardous activity shall be permitted on or within the Property. No annoying lights, sounds or odors shall be permitted to emanate from the Property that unreasonably impacts owners or occupants of adjacent properties. Refuse piles or other unsightly materials or objects shall not be allowed to be placed or remain in open storage upon the Property. All applicable laws, ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed.

8. Weeds and Insects. The Property should be kept free of noxious weeds, diseased vegetation and harmful insects. The Property owner is responsible for ensuring weed control and eradication in accordance with state and county laws and regulations.

9. Drilling and Mining Operations. Except for the drilling of water wells for use on the Property, no owner may engage in drilling, development operations, refining, quarrying or mining operations of any kind on the Property.

10. Livestock Grazing. Grazing of horses, cattle, or other livestock outside a corral, stable or barn should be in conformance with USDA guidelines or generally accepted industry standards to ensure that the natural vegetation is not overgrazed.

11. Garbage and Refuse Disposal. No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, garbage, building materials, tires, scrap materials or other waste. All waste must be stored in closed sanitary containers.

12. Outdoor Burning. Outside burning of leaves, trash, garbage or household refuse is not permitted. Fires in barbecues, covered fire pits and outside fireplaces contained within receptacles intended for such purpose will be allowed. The Property owner must not permit any condition that creates a fire hazard or is in violation of fire prevention regulations adopted by any governmental authority having jurisdiction and control over outside burning.

13. Marijuana Cultivation and Use. No portion of the Property may be utilized for the purpose of cultivation or production of marijuana, including medical marijuana, for other than an owner's own personal use as allowed by applicable laws and ordinances. If an owner or occupant grows or produces marijuana for personal use only, such operation must not create a nuisance and must be in full compliance with state and local laws and ordinances. No owner or occupant may distribute or sell marijuana on any portion of the Property.

14. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities and for other uses may be reserved and shown on the plat of the Property and as may be shown in documents recorded in the title to the Property. Within these easements, no structure, planting or other material shall be placed or permitted to remain which damages or interferes with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. Drainage easements and all related drainage facilities in those drainage easements shall be maintained by the owner of the property where the drainage easement is located, except for improvements or facilities for which a public authority, private company or utility company is responsible. When installing improvements, the owner is responsible for locating all utility lines and easements. The owner should request the location of underground utility lines and easements through a utility line location center.

15. **Term of Declaration; Termination.** Unless amended as herein provided, all provisions of this Declaration shall be effective for twenty (20) years following the date this Declaration is recorded, and thereafter shall be automatically extended for successive periods of ten (10) years each unless terminated by written agreement of at least two-thirds of all owners of property subject to this Declaration and with the written consent of Declarant, for so long as Declarant's Interest exists as of the date of termination. Notice of the termination shall be acknowledged by the required number of owners and the Declarant in a written instrument and recorded in the El Paso County records.

16. **Amendment of Declaration.** Any provision contained in this Declaration may be amended, added, modified or repealed upon the approval of at least two-thirds of all owners of Property subject to this Declaration and with the written consent of Declarant, for so long as Declarant's Interest exists as of the date of amendment. No amendment may be made to a provision that will eliminate any easement or government-required obligation or that will diminish the quality, value, desirability and attractiveness of the Property. An approved amendment shall be evidenced in a written instrument acknowledged by the required number of owners and the Declarant and recorded in the El Paso County records.

17. **Notices.** Except as may be otherwise provided in this Declaration, any notice must be in writing and may be served either personally, by nationally recognized overnight delivery service or by U.S. certified mail. If served by mail or overnight delivery upon an owner, notice shall be sent postage prepaid, addressed to the owner's address shown in the El Paso County Assessor records.

18. **Persons Entitled to Enforce Declaration.** Declarant and any owner of land subject to this Declaration (acting on such owner's own behalf), shall have the right, but not the obligation, to enforce any or all of the provisions, covenants, conditions and restrictions contained in this Declaration. The right of enforcement shall include the right to bring an action for damages, as well as an action to enjoin any violation of any provision of this Declaration, and all other rights and remedies provided in this Declaration or available at law or in equity.

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

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

21. **Costs and Attorney Fees.** In any action or proceeding to enforce any provision of this Declaration, the party who prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney fees, costs and expert witness fees.

22. **Limitation on Liability.** Declarant and any agent or employee of Declarant shall not be liable to any owner of the Property subject to this Declaration for any action or for any failure to act if the action or failure to act was in good faith and without malice.

23. **No Representations and Warranties.** No representations, guaranties or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant, or by any of its officers, members, agents or employees, in connection with any portion of the Property or any improvement, its physical condition, structural integrity, freedom from defects, zoning, compliance with applicable laws, fitness for intended use, retention of views, or in connection with the development, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless specifically set forth in writing.

24. Governing Law. This Declaration shall be interpreted and governed in accordance with the laws of the State of Colorado. Exclusive venue for any legal action shall be in El Paso County, Colorado.

25. Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of any other provision.

26. Resolution of Questions of Construction. If any doubt or question arises concerning the true intent or meaning of any of the provisions contained in this Declaration, the Declarant, for as long as Declarant's Interest exists, shall determine the proper construction of the provisions in question and shall set forth the meaning, effect, and application of the provision in a written document acknowledged by the Declarant and recorded in the El Paso County records. This determination will thereafter be binding on all parties so long as it is not arbitrary or capricious.

IN WITNESS WHEREOF, Declarant has executed this Declaration to be effective as of the day and year first written above.

**DECLARANT:**

**Old West Ranch CO Partners, LLC**  
a Colorado limited liability company

By:   
Dan Carless, Sr., Manager


STATE OF COLORADO     )  
  ) ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this 22nd day of June, 2018, by Dan Carless, Sr., as Manager of Old West Ranch CO Partners, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[SEAL]

  
Notary Public

