

**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
ADMENDED HORSESHOE MOUNTAIN RANCH ESTATES  
A TOTAL ENVIRONMENTAL AND WILDLIFE GAME PRESERVE  
COMMUNITY DEVELOPMENT**

The undersigned constitute the various owners of parcels within that certain real property located in Sanpete County, Utah and known as Horseshoe Mountain Ranch Estates, more particularly described below. The undersigned desire, by this instrument (the "Declaration") to amend and restate the protective covenants, conditions and restrictions (the "CC&Rs") that encumber Horseshoe Mountain Ranch Estates and to that end agree as follows:

**RECITALS**

WHEREAS, Declarants are the owners of certain property in Sanpete County, State of Utah, which is more particularly described as follows:

HORSESHOE MOUNTAIN RANCH ESTATES SUBDIVISION,  
as officially recorded in the Sanpete County Recorder's Office.

Upon which real property Declarants have developed a Subdivision containing Lots (as those terms are hereinafter defined).

WHEREAS, by this Declaration, Declarants desire to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Subdivision, and the interests therein will be conveyed in accordance with the terms hereof.

WHEREAS, Declarants intend to create a Utah non-profit corporation, to be known as HORSESHOE MOUNTAIN RANCH ESTATES OWNERS ASSOCIATION, to maintain and operate certain portions of the Subdivision, administer, collect and disperse funds, enforce the covenants, conditions and restrictions, and maintain and oversee the needs and wants of the owners within the Horseshoe Mountain Ranch Estates Subdivision.

NOW, THEREFORE, it is hereby declared that the Subdivision shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarants, their successors and assigns and all owners of all or any part of the Subdivision, together with their grantees, successors, heirs, personal representatives, administrators, devisees and assigns, all as set forth herein.

**I PURPOSE OF COVENANTS**

1.1 Purpose: It is the intention of the Declarants that the "HORSESHOE MOUNTAIN RANCH ESTATES" subdivision (the "Subdivision") be developed and maintained as a highly desirable environmental residential development. It is the purpose of these covenants that the natural beauty, serenity, views and present surroundings of the Subdivision shall always be protected insofar as is possible in connection with the uses and structures permitted by this Declaration. The Declarants' desire is to maintain a mountain setting regarding all construction, including but not limited to the following:

- (a) No stucco, vinyl or metal style homes will be allowed;

- (b) No dome, A-frame, or modified A-frame Dwellings;
- (c) No prefabricated Dwellings.

Every Structure must be custom built to compliment the area. Declarants hereby declare that the Subdivision and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved and otherwise affected in any manner subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plan and scheme of ownership referred to herein and are further declared to be for the benefit of each owner thereof. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the Declarants, their successors and assigns, and to all parties hereafter, owning any interest in the Subdivision. Notwithstanding the foregoing, no provisions of this Declaration shall be construed as to prevent or limit Declarants' rights to complete development of the Subdivision or Improvements thereon, nor Declarants' rights to maintain model homes, construction, sales or leasing offices or similar facilities on any Lot owned by Declarants nor Declarants' right to post signs incidental to construction, sales or leasing.

## II DEFINITIONS

- 2.1 Association: "Association" shall mean and refer to the Horseshoe Mountain Ranch Estates Owners Association, Inc., a Utah non-profit corporation and its successors and assigns, which corporation will be created by Declarants.
- 2.2 Common Areas: "Common Areas" shall mean the areas designated on the Subdivision plat as roads, open space, and common ground access corridors.
- 2.3 Declarants: "Declarants" means Thomas E. Crisp, Norma A. Crisp and Interwest Engineering, a Utah corporation, the original owners of property within the Subdivision, together with their successors and assigns.
- 2.4 Dwelling: "Dwelling" means any structure constructed for personal residence.
- 2.5 Environmental Committee: "Environmental Committee" shall mean the committee created pursuant to these provisions.
- 2.6 Improvement: "Improvement" shall mean all Structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, barns, corrals, walkways, sprinkler systems and pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.
- 2.7 Limited Common Areas: "Limited Common Areas" shall mean the areas designated on the Subdivision plat as Limited Access areas and Lots P102-117.
- 2.8 Lot: "Lot" shall mean Lot P101 and Lots 1-22 of the Subdivision shown as such on the recorded subdivision plat of Horseshoe Mountain Ranch Estates Subdivision, as amended.
- 2.9 Structure/Barn: "Structure/Barn" means any Structure not for human use but for animal use.
- 2.10 Subdivision: "Subdivision" shall mean the Horseshoe Mountain Ranch Estates Subdivision as recorded in the records of Sanpete County, Utah.
- 2.11 Wildlife/Access Areas: "Wildlife/Access Areas" shall mean all areas, including trails, across all Lots for the ingress and egress of equestrian, foot and non-vehicular travel, but excluding Dwellings and Structures. These areas are also designed for the protection and welfare of all native wildlife and the aesthetic enjoyment of the owners.

### III DURATION OF DECLARANTS

3.1 General Purposes and Powers: Declarants will perform functions as provided in this Declaration and to further the common interests of all owners of Lots which may be subject, in whole or in part, to any or all of this Declaration. Declarants shall be obligated to and shall assume and perform all functions and obligations imposed on Declarants until an Owners Association and Environmental Committee are formed. When the Association is formed, it will have all powers necessary or desirable to effectuate these purposes and will not engage in commercial or profit making activity.

3.2 Membership in the Owners Association: All persons who own any Lot in the Subdivision, by whatever means acquired, shall automatically become members of the Association in accordance with the Articles of Incorporation and Bylaws of said Association as may be amended from time to time.

### IV ENVIRONMENTAL COMMITTEE

4.1 Environmental Committee: The Environmental Committee shall initially consist of Tom Crisp and one (1) Lot owner appointed by the Declarants. Upon the initial sale of 75% of the Lots, the Environmental Committee shall consist of three (3) people, including Edward A. Klarich, \_\_\_\_\_, and one (1) Lot owner, as chosen by the members of the Association at its annual meeting. The Lot owners that are appointed by the Association shall serve on the Environmental Committee for a term of one (1) year and/or until their respective successors have been appointed by the Association. In no event shall Edward A. Klarich or \_\_\_\_\_ be removed from the Environmental Committee, except upon a showing that the individual engaged in fraudulent or criminal misconduct relating to the Association or the Environmental Committee or if the individual sells his interest to all Lot(s). Edward A. Klarich or \_\_\_\_\_ may resign his position if he chooses to do so. If Edward A. Klarich or \_\_\_\_\_ is removed from the Committee or resigns his position on the Environmental Committee, he shall appoint a Lot owner to fill the vacancy. The Lot owner appointed to fill the vacancy shall serve on the Environmental Committee until the next annual meeting of the Association. The Environmental Committee shall have and exercise all of the powers, duties and responsibilities set forth in this Declaration.

4.2 Approval by the Environmental Committee: No Improvement of any kind shall be erected, altered or permitted to remain on any lands within the Subdivision, nor shall any excavating, clearing, removal of trees or landscaping be done on any lands within the Subdivision, unless the completed plans and specifications therefore are approved by the Environmental Committee prior to the commencement of such work.

4.3 Variiances: The Environmental Committee has the authority to deviate from the requirements contained herein in extenuating circumstances, when following these covenants would create an unreasonable hardship or burden for a Lot owner. An affirmative vote of the majority of the members of the Environmental Committee must be obtained for a variance to be granted. The Environmental Committee does not, however, have the authority to altogether deviate beyond the guidelines of the Sanpete County Building Code, Sanpete County Building Inspector, Sanpete County Planning and Building Office or any other Governmental Regulatory Agency.

4.4 General Requirements: The Environmental Committee shall exercise its best judgment in overseeing all Improvements, construction, landscaping and alterations on the lands within the Subdivision, conforming and harmonizing with the natural surroundings and existing Structures as to external design, materials, color, location, height, topography, grade and finished grade elevations in keeping with the general environmental guidelines. The Environmental Committee shall prepare, and from time to time may modify and amend, a document entitled "the General Environmental and Architectural Guidelines for Horseshoe Mountain Ranch Estates", which guidelines shall be available to any Lot owner and shall be intended to provide, in a general manner, such general guidelines as the Environmental Committee shall use in their review of plans and specifications for an Improvement. All Improvements must compliment the overall area for everyone's benefit.

4.5 Preliminary Approvals: Persons who anticipate constructing Improvements on lands contained within the Subdivision, whether they already own lands or are contemplating the purchase of such lands, may submit preliminary

sketches of such Improvements to the Environmental Committee for informal and preliminary approval or disapproval. All preliminary sketches will be kept by the Environmental Committee, shall be submitted in duplicate, and shall include but not be limited to, a proposed site plan, together with sufficient general information of all aspects that will be required to be in the complete plans and specifications to allow the Environmental Committee to act intelligently on giving an informed preliminary approval or disapproval until such time as complete plans are submitted and approved or disapproved.

4.6 Construction Phase: The Environmental Committee shall have authority, in the exercise of its sole discretion, to supervise and control the activities of contractors constructing Improvements in the Subdivision.

4.7 Declarants and Environmental Committee not Liable: The Environmental Committee shall not be liable for damages to any person or persons submitting any plans for approval, or to the Association, or to any owner or owners of lands within the Subdivision by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove, with regard to such plans. Any person or group acquiring title to any property in the Subdivision or doing any work in the Subdivision shall be deemed to have agreed and covenanted that he, she or they, will not bring any action or suit to recover damages against the Environmental Committee, its members as individuals, or its advisors, employees, or agents. The Environmental Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The structural integrity of the Dwelling and/or said Improvements are not the responsibility of the Environmental Committee. If any person shall bring an action against the Environmental Committee, the Association shall hold the members of the Environmental Committee harmless from any judgment entered against the Environmental Committee either jointly or severally and shall indemnify the members of the Environmental Committee for any amounts that they might be ordered to pay. The Association shall indemnify and hold harmless the Environmental Committee and its members for the reasonable actions taken by the Environmental Committee in the performance of their duties under this Declaration, provided that the Environmental Committee and its members exercise reasonable and ordinary care in the exercise of their duties.

4.8 Written Records: The Environmental Committee shall keep and safeguard complete written records of all applications for approval submitted to it. Said written records shall be maintained for a minimum of five (5) years after approval or disapproval.

4.9 Limited Extent of Committee Review: The Environmental Committee and the Declarants shall review and approve or disapprove of all plans submitted to them for any proposed improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result on the immediate vicinity and the Subdivision generally. The Environmental Committee and the Declarants shall take into consideration, the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features.

4.10 Completion Required Before Occupancy: Unless approved by the Environmental Committee, no Dwelling within the Subdivision shall be occupied until and unless the owner of any Dwelling shall have completed the Dwelling in accordance with, and complied with, all approved plans and specifications, and all necessary governmental approvals have been obtained.

## V GENERAL USE RESTRICTIONS

5.1 Zoning Restrictions: No lands within the Subdivision shall ever be occupied or used for any Dwelling or purpose or in any manner which is contrary to the zoning regulations applicable thereto.

5.2 No Mining, Drilling or Quarrying: No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including but not limited to oil, gas, minerals, gravel, sand, rock, and earth, shall ever be permitted on the surface of the property located within the Subdivision.

5.3 No Business Uses: The Lots within the Subdivision shall be used exclusively for residential living purposes.

5.4 Restriction of Signs: With the exception of a sign not larger than three (3) square feet identifying the architect and a sign of similar dimension identifying the prime contractor to be displayed only during the course of construction, no for sale signs or advertising devices, including but without limitations, commercial, political, informational or directional signs or devices, shall be erected or maintained on any property within the Subdivision, except signs approved in writing by the Environmental Committee as to size, materials, color and locations:

- a) as necessary to identify ownership of the Lot and its address;
- b) as necessary to give directions;
- c) to advise of rules and regulations;
- d) to caution or warn of danger; and
- e) as may be required by law.

5.5 Restrictions on Animals: Although the Subdivision is designed as a total environmental development, all horse and/or animals must be of a nature to compliment the area. The Environmental Committee will retain the right to require removal of any animal or animals, which are deemed to be a problem to other Lot owners. Excessive animal noise and harassment of wildlife are legitimate bases for removal. Owners are required to maintain control over their respective animals and pets.

5.6 No Resubdividing: No Lot shall be resubdivided. More than one (1) Dwelling shall not be constructed or allowed on a Lot without approval by the Environmental Committee.

5.7 Public Drinking Water System: The drinking water system will be serviced and maintained by a committee appointed by the Association and governed under the Utah Department of Environmental Quality Division of drinking water rule R309-110.

5.8 Underground Utility Lines: All water, gas, electrical, telephone and all other utility lines within the limits of the owner's Lot, running from the centerline of the road or the point of distribution to the Dwelling, will be installed underground, and be the responsibility of the Lot owner for installation and cost to their dwelling. All utility lines must be buried underground and may not be exposed above the surface of the ground. All Lot owners will be responsible for maintaining building code water pressure into Dwellings by means of pressure pumps or pressure reduction valves.

5.9 Service Yards: All equipment, service yards or storage piles on any Lot in the Subdivision shall be kept screened by approved planting or fencing so as to conceal them from view from neighboring Lots, access roads and areas surrounding such property.

5.10 Maintenance of Lots: All property and all Improvements on any Lot shall be kept and maintained by the owner thereafter in a clean, safe, attractive and sightly condition and in good repair.

5.11 No Noxious or Offensive Activity: No noxious or offensive activity shall be carried on upon the Subdivision nor shall anything be done within the Subdivision which is or may become a nuisance or embarrassment, disturbance or annoyance to others.

5.12 No Hazardous Activities: No hazardous activities shall be conducted on any Lot. No Improvements shall be constructed within the Subdivision which are or may be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any property located within the Subdivision. No open fires shall be lighted or permitted within the Subdivision except in a contained unit well attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

5.13 No Unsightliness: No unsightliness shall be permitted upon any of the Subdivision, and without limiting the generality of the foregoing, the following explicit conditions shall apply:

(a) Any unsightly Structures, facilities, equipment, tools, boats, vehicles other than automobiles in working order, objects and conditions shall be enclosed within an approved garage or appropriately screened from view, except equipment and tools when in actual use for maintenance, remodeling or repairs.

(b) No trailers, mobile homes, tractors, truck campers, motor homes or trucks other than pickup trucks shall be kept or permitted to remain upon the Subdivision unless enclosed in an appropriate garage or Structure.

(c) No lumber, grass, shrub or tree clippings, plant waste, metals, building materials or scrap shall be kept, stored or allowed to accumulate within the Subdivision, except in service yards meeting the requirements of Section 5.9.

(d) Refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed Structure or appropriately screened from view.

(e) Hanging, drying or airing of clothing or household fabrics shall not be permitted outside a Dwelling or on Lots if visible from a Dwelling, Lots or surrounding areas.

(f) After a Lot is initially sold, each Lot owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and other flammable materials on his Lot so as to minimize fire and other hazards to surrounding Lots, Dwellings, the Common Areas, and surrounding properties, and shall otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants that are injurious to crops, livestock, land or the public health.

5.14 No Annoying Lights, Sounds or Odors: No light shall be emitted from any Lot or any portion of the Subdivision which is unreasonably bright or causes unreasonable glare. No sound shall be emitted from any Lot or Dwelling which is unreasonably loud or annoying including but without limitation, speakers, horns, whistles, bells or other sound devices, with the exception of security devices and/or fire alarms used exclusively to protect any of the Subdivision or Dwellings. No odors shall be emitted from any Lot or Dwelling which is noxious or offensive to others.

5.15 No Cesspools: No cesspools shall be permitted within the Subdivision. All types of sewage disposal systems shall be installed only after approval by the Environmental Committee and any other governmental regulatory health authorities having jurisdiction.

5.16 Wildlife Protection: No hunting will be allowed within the boundary of the Subdivision. Discharging of firearms will also be prohibited within the boundary of the Subdivision. All violators will be prosecuted to the maximum extent of the law. Game trails will not be obstructed and access will always be maintained to all streams, creeks and ponds for the protection and welfare of the native wildlife within the Subdivision.

5.17 No Interference of Streams or Ponds: The flow of any stream, creek, spring or pond may not be stopped or dammed without Environmental Committee and/or appropriate governmental agency approval, where applicable.

5.18 Restrictions on Vehicles: All vehicles operated within the Subdivision shall be properly licensed, inspected and maintained so as not to create a dangerous situation, become a nuisance, nor emit unreasonable smoke, oil or noise. The Environmental Committee shall have the power to restrict the use of any vehicle which may create any nuisance or noise, preventing the owner or owners from enjoying their property and private streets unless the noise is muffled to meet the required noise standards of the Subdivision and environment. In no event shall motor driven bikes or other vehicles be permitted on the private streets unless the noise is muffled to meet the required noise standards of the Environmental Committee. Under no circumstances will motorized vehicles, including but not limited to, snowmobiles, dirt bikes, and other forms of all terrain vehicles be allowed along game trails or used to pursue the native wildlife.

5.19 Wildlife/Access Area Usage: All motor vehicles shall be prohibited from using any open and Wildlife/Access Areas set aside specifically for hiking, horseback riding, bicycling and cross country skiing. Every Lot owner shall have a right and easement of enjoyment in and to the Wildlife/Access Areas. Any Lot owner may

delegate his right of use and enjoyment of the Wildlife/Access Areas to the members of his family, members of his household, his tenants or contract purchasers and his guests. These Wildlife/Access Areas are for use on foot, on horseback, by bicycle or on skis. The Environmental Committee or the Association may, from time to time, establish additional rules and standards with respect to the use of the Wildlife/Access Areas, such as: (i) appropriate times of use; (ii) appropriate seasons of use; (iii) appropriate speeds of travel; (iv) rules of use etiquette; (v) restricting use to designated areas and/or trails, including the closing of other areas and trails; (vi) restrictions on use by guests of owners; (vii) rules for maintenance and clean up; and (viii) nighttime use of the Wildlife Areas/Access. Notwithstanding the foregoing provisions, a Lot owner may fence a reasonable portion of an area within the boundaries of the Lot Owner's Lot for use as a pasture in which event other Lot owners shall not have access to the fenced portion.

5.20 Use of Limited Common Area: When any or all of the Limited Common Area is sold the Buyer or Buyers will have to abide with the Rules and Regulations set forth by the Association and entered into the Buyer or Buyers purchase contract, which will stipulate that the Limited Common Area will be utilized to grow and harvest Agricultural and Farm Related Products only. No Buildings or Structures will be allowed without the approval of the Association. The Limited Common Area will always be properly maintained in an Agricultural Setting. Any change in this use will have to be approved by the Association. The Owner or Owners will be required to give a report each year at the Home Owners Association Meeting on the overall operation of the Limited Common Area.

5.21 Additional Improvements: In the event the Association desires or is required by a governmental authority to develop additional Improvements, all Subdivision owners, occupants, users or their assigns of the Subdivision shall proportionately share the development expenses, costs and charges. Said proportionate share shall be calculated on a per Lot basis and shall be due thirty (30) days prior to construction.

5.22 Rules and Regulations: No owner shall violate the rules and regulations for the use of the Lots as adopted from time to time by the Environmental Committee, or the rules and regulations for the use of the other areas within the Subdivision, as adopted from time to time by the Association. No such rules or regulations shall be established which violate the intention or provisions of this Declaration or which shall unreasonably restrict the use of any Lot by the owner thereof.

## **VI RESTRICTIONS ON LOTS**

6.1 Number and Location of Dwelling: No Dwelling or Structure shall be placed, erected, altered, or permitted to remain on any Lot other than one (1) single family Dwelling and one (1) garage together with related nonresidential Structures and Improvements of the types described in Section 4.2 hereof. At the time of construction of the single family Dwelling on any Lot, said Lot must also be improved with a garage with at least a two (2) car capacity. Whenever possible, the garage doors will not face towards the main access road or the main view corridor from other Lot owner's homesites. A garage must be provided for each owned vehicle.

6.2 Residence Floor Area: The single family Dwelling which may be constructed on a Lot in the Subdivision shall have a minimum living floor area, exclusive of garages, balconies, porches, decks and patios of two thousand (2000) square feet.

6.3 Single Family Dwelling to be Constructed First: No garage or other Structure shall be constructed on any Lot until after commencement of construction of the single family Dwelling on the same Lot except as otherwise specifically permitted by the Environmental Committee. All construction and alteration work shall be prosecuted diligently, and each Dwelling, Structure or Improvement which is commenced on any Lot shall be entirely completed within fifteen (15) months after commencement of construction. A three (3) month grace period after the initial fifteen (15) month period has expired may be given with Environmental Committee approval.

6.4 Setbacks and Dwelling Placement: The placement of Dwellings shall respect existing land forms and generally follow contours and fit into the existing land mass rather than ignoring and dominating these forms. All Dwellings on all Lots shall be set back at least fifty (50) feet from the sides, fifty (50) feet from the rear, and fifty (50) feet from the front

lot line. The “front lot line” is defined to mean that lot line of a Lot abutting on a road. On corner Lots, the side yard which faces a street is to be set back a minimum of fifty (50) feet with consideration given to the maintenance of a clear view of intersecting streets as defined in the Sanpete County Building Code. All Dwelling site locations, driveways and any excavations must be approved by the Environmental Committee. Building zones will be enforced to insure maximum privacy, view corridors and maximum benefit to the individual Lot and the surrounding Lot owners to maintain the overall beauty of the area.

6.5 Height Limitations: No portion of a Dwelling within the Subdivision shall exceed a height greater than twenty-eight (28) feet, measured from natural or unmodified grade at that point to a point midway between the lowest part of the eaves or cornice and ridge of a hip or pitched roof. The maximum height of the ridge shall be the height designated for that Dwelling site by the Environmental Committee. This measurement applies to all elevations of the Dwelling, the intent being that buildings will conform with and reflect the natural contour of the land.

6.6 Towers, Satellite Receivers and Antennae: No towers, exposed or outside radio, television or other electronic antennae, with the exception of television receiving antennae, shall be allowed or permitted to remain on any Lot. It is recommended that lightning rods be installed on all Structures. Satellite receivers must have an enclosure to screen them from view from any surrounding Lots.

6.7 Used or Temporary Structures: No used or previously erected or temporary house, Structure, house trailer, mobile home, camper, or nonpermanent outbuilding shall ever be placed, erected, or allowed to remain on any Lot except during construction periods, and no Dwelling shall be occupied in any manner prior to its completion and approval in accordance with Section 4.10 hereof.

6.8 Fences: Fencing shall be allowed with Environmental Committee approval. All fencing within the Subdivision shall have a continuity of appearance in keeping with the setting and surroundings of the Subdivision. All fencing shall be of a type specified by the Environmental Committee. Interior fences, screens or walls which are associated or connected with a Dwelling or Structure may be of such design, material and height as may be approved by the Environmental Committee.

6.9 Flashing and Roof Gutters: Flashing and/or roof gutters or other metal fittings on the exterior of Buildings shall be painted to match or blend with adjacent materials on Buildings or Structures.

6.10 Dwelling Location and Driveway Length: A plot plan showing the desired location of the future Dwelling and the driveway and any additional excavation shall be submitted to the Environmental Committee for approval before any construction shall commence. As a general guideline, all Dwelling locations will be within the building zones within each Lot and will not be allowed on the Wildlife/Access Areas located within each Lot. The driveway that connects with the street to a point at which said driveway first touches a Dwelling situated on said Lot may not exceed the longest straight boundary line of the particular Lot unless receiving approval from the Environmental Committee.

6.11 Driveway Access: All individual driveway access locations within the Subdivision shall be designed to function well with the site location and layout of each appropriate residential building. Care shall be taken in locating driveways to allow for the least amount of site and vegetation disturbance. The maximum grade of any driveway shall not exceed ten percent (10%) unless a variance is received from the Environmental Committee. The minimum width of any driveway shall be twelve (12) feet, with the maximum width of twenty (20) feet prior to entering a garage. Where possible, driveways shall parallel the slope to lessen site impact.

(a) All buildings, Structures and Improvements on any Lot shall comply with the construction guidelines and specifications of the Sanpete County Building Department.

(b) Lot owner water lines and septic lines shall be buried a minimum of six (6) feet deep and also the lines are not to be installed in the outside walls, overhangs or in uninsulated attic or crawl spaces.



## VII ENFORCEMENT

7.1 Enforcement and Remedies: The obligations, provisions, covenants, restrictions and conditions contained in this Declaration of any Supplemental or Amended Declaration with respect to the Association or Lots shall be enforceable by the Declarants, Association or by any owner of a Lot subject to this Declaration by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration or any supplemental or Amended Declaration with respect to a person or entity or party of a person or entity other than the Association or Declarants shall be enforceable by the Declarants or the Association by a proceeding for a prohibitive or mandatory injunction. If court proceedings are instituted in connection with rights of enforcement and remedies provided in this Declaration, the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorney's fees.

7.2 Protection of Encumbrances: No violation or breach of any provision, restriction, covenant or condition contained in this Declaration or any Supplemental or Amended Declaration and no action to enforce the same shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value and perfected by recording prior to the time of recording of an instrument giving notice of such violation or breach, or the title or interest of the holder thereof or the title acquired by any purchaser upon foreclosure of any such mortgage or deed of trust. Any such purchaser shall, however, take subject to this Declaration or any Supplemental or Amended Declaration except only that violations or breaches which occur prior to such foreclosure shall not be deemed breaches or violations hereof with respect to such purchaser, his heirs, personal representatives, successors and assigns.

7.3 Limited Liability: Neither Declarants, the future Owner's Association, the Board of Directors of the Association, the Environmental Committee, nor any member, agent or employee of any of the same shall be liable to any party for any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

## VIII DURATION AND AMENDMENT

8.1 Duration of Declaration: Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration which is subject to the Common Law Rule sometimes referred to as the "rule against perpetuities", shall continue and remain in full force and effect for the period of fifty (50) years or until this Declaration is terminated as hereinafter provided, whichever first occurs. All other provisions, covenants, conditions and restrictions contained in this Declaration or in any Supplemental or Amended Declaration shall continue and remain in full force and effect until January 15, 2020, provided however, that unless at least one (1) year prior to said time of expiration, there is recorded an instrument directing the termination of this Declaration executed by the owners of not less than ninety percent (90%) of the Lots then subject to this Declaration. Said other provisions, covenants, conditions and restrictions shall continue automatically for an additional ten (10) years and thereafter for successive periods of ten (10) years unless, at least one (1) year prior to the expiration of such extended period of duration this Declaration is terminated by a recorded instrument directing termination signed by the owners of not less than ninety percent (90%) of the Lots then subject to this Declaration as aforesaid.

8.2 Amendment or Revocation: Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration which is in force and effect, may be amended or repealed by the recording of a written instrument specifying the amendment or the repeal, executed by the owners of not less than ninety percent (90%) of the Lots then subject to this Declaration. No such amendment or repeal shall be effective with respect to the holder or successor or assign of the holder of a mortgage or deed of trust recorded prior to recording the instrument specifying the amendment or repeal unless such holder executes the said instrument.

## IX THE ASSOCIATION

9.1 Formation of Association: Declarants agree that promptly following the recording hereby, Declarants will execute and file with the Utah Department of Commerce, Division of Corporations and Commercial Code, Articles of

Incorporation of the Horseshoe Mountain Ranch Estates Owners Association, hereinafter referred to as the "Articles", which Articles shall be in the form of Exhibit "A", attached hereto by this reference and made a part hereof. Upon receipt by Declarants of the Certificate of Incorporation for the Horseshoe Mountain Ranch Estates Owners Association, Declarants agree that they will cause to be executed, Bylaws for the Association in the form of Exhibit "B", attached hereto and by this reference made a part hereof.

9.2 Transfer of Title. Declarants agree that they shall, at or prior to the time the first Lot is conveyed by Declarants, convey to the Association title to the Common Areas and Limited Common Areas, free and clear of all liens, other than the liens of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, or for easements or rights of way reserved to the Declarants or otherwise enforceable in law or equity.

9.3 Membership: Each owner of a Lot shall be deemed to be a member of the Association (hereinafter referred to as "Member"). Memberships in the Association shall not be assignable except to the successor in interest of the Lots and membership in the Association shall be appurtenant to and may not be separated from the fee ownership of the Lots. Ownership of a Lot shall be the sole qualification for membership in the Association. The Association membership held by any owner of a Lot shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of said Lot, and then only to the purchaser or purchasers of said Lot. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event an owner of a Lot shall fail or refuse to transfer the membership registered in his name to the purchaser of said Lot, upon the transfer of fee title thereto, the Board of Directors of the Association shall have the right to record the transfer upon the books of the Association.

9.4 Personal Liability: No Member may exempt himself from personal liability for assessments to be levied by the Association nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of Wildlife/Easement Areas and the facilities thereon or by abandonment of his Lot.

9.5 Voting: Each Member shall be entitled to one (1) vote for each Lot owned by said Member. When more than one (1) person holds such interest or interests in any Lot ("Co-Owner"), all such Co-Owners shall be Members and may attend any meetings of the Association, but only one such Co-Owner shall be entitled to exercise the vote to which the jointly owned Lot is entitled. Such Co-Owners may from time to time all designate in writing one of their number to vote. The vote for each Lot shall be exercised, if at all, as a unit. Where no voting Co-Owner is designated or if such designation has been revoked, the votes for such Lot shall be exercised as the majority of the Co-Owners of the said Lot mutually agree. Unless the Board of Directors of the Association receives a written objection from a Co-Owner, it shall be conclusively presumed that the voting Co-Owner is acting with the consent of his or her Co-Owner. No votes shall be cast for any Lot where the majority of the Co-Owners of said parcel present in person or by proxy cannot agree to said votes or other action. The non-voting Co-Owner or Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Lot and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or by the Bylaws of the Association, shall be deemed to be binding on all owners, their successors and assigns. Said voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and Bylaws of the Association.

9.6 Powers and Duties of Association: The Association acting through the Board, shall have the power and duty to:

(a) maintain and repair the water system and the private roads and replace those elements of the water system and private roads that must be replaced on a periodic basis, and otherwise manage the private roads and all facilities, Improvements and landscaping thereon;

(b) maintain, repair, improve and manage the use of the Common Areas and Limited Common Areas;

(c) maintain such policy or policies of liability and fire insurance with respect to any commonly owned

buildings, barns, and or personal property, if any, owned by the Association as provided herein;

(d) levy and collect all assessments as provided herein in sufficient quantity to enable the Association to adequately perform its duties hereunder;

(e) grant easements and rights of way for sewer, water, electricity, telephone and natural gas lines and similar utilities and uses beneath, along and traversing the private roads; and

(f) such additional powers as shall be reasonable and necessary for the Association to accomplish the purposes of its creation.

9.7 Liability for Assessments: Each owner of any Lot, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) common assessments for common expenses;

(b) capital improvement assessments; and

(c) special assessments, such assessments to be established and collected as herein provided.

Such assessments, together with interest at the rate of 18% per annum, and costs and reasonable attorneys' fees for the collection thereof, shall be a charge on and a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest at the rate of 18% per annum, and costs and reasonable attorneys' fees, shall also be the personal obligation of the owner(s) of the Lot at the time when the assessment fell due.

The Declarants shall not be responsible for any Association common assessments (described in subpart (a) above) on Lots owned by Declarants, but shall be responsible for assessments for additional capital improvements and special assessments (described in subparts (b) and (c) above), that are approved by an affirmative Association vote.

9.8 Common Assessments:

(a) Common assessments levied by the Association shall be used to promote the common health, safety, benefit, recreation and welfare of the Members and for the improvement and maintenance of the Common Areas and common amenities of the Subdivision. The assessments shall also be for an adequate reserve to be used as appropriate for maintenance, repairs and replacement of those elements of the Subdivision that must be replaced on a periodic basis. All Common Areas and Limited Common Areas will be taxed by Sanpete County as separate property within the Subdivision. The property tax on the Common Areas and Limited Common Areas of the Subdivision will be paid by the Association.

(b) The total common assessments against all of the Lots shall be based upon advance estimates of annual cash requirements by the Association to provide for payment of all estimated expenses growing out of or connected with the maintenance and operation of the common facilities, which estimates may include, among other things, expenses of taxes, special assessments, premiums for all insurance which the Association is required or permitted to retain pursuant hereto, repairs and maintenance, wages for Association employees, legal and accounting fees, the creation of reasonable contingency reserve, surplus and or sinking funds, and any other expenses and liabilities which may be incurred by the Association. Common assessments shall be made on a calendar year basis. The amount of the common assessments shall be initially proposed by the Board, and presented to a meeting of the Members for approval. Notice of the proposed assessment for the ensuing year shall accompany the notice of the meeting and shall be mailed to each Member no later than thirty (30) days prior to the date set for said annual meeting.

9.9 Capital Improvement Assessments:

(a) Capital improvement assessments levied by the Association shall be used for additional improvements

or additional common amenities of the Subdivision not part of a Lot.

(b) The total capital improvement assessments against all of the Lots shall be based upon advance estimates of annual cash requirements by the Association to provide for the improvements. Capital improvement assessments shall be as determined by the Board of Directors. The amount of the capital improvement assessments shall be initially proposed by the Board, and presented to a meeting of the Members for approval. Notice of the proposed capital improvement shall accompany the notice of the meeting and shall be mailed to each Member no later than thirty (30) days prior to the date set for the Member meeting.

9.10 Special Assessments: In addition to the common assessments and the capital improvement assessments authorized by this Declaration, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of Members owning at least sixty-six percent (66%) of the Lots, who vote in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of Improvements not part of a Lot, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, common expenses).

9.11 Allocation of Assessments: All common assessments and capital improvement assessments of the Association payable during a calendar year shall be prorated among the Members with all Lot owners bearing a proportionate share. All special assessments shall be allocated to the Members as determined by the Board of Directors and approved by the Members owning at least sixty-six percent (66%) of the Lots.

9.12 Liability for Willful, or Negligent Damage: Maintenance, repair or replacement of all or any part of common facilities arising out of or caused by the willful or negligent act of a Member, his family, guests or invitees shall be done at said Member's expense or a Special Assessment therefore shall be made against his Lot.

9.13 Notice and Quorum: Written notice of any meeting called for the purpose of taking any action by the Members authorized under this Declaration shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of the Members or of proxies entitled to cast fifty-one percent (51%) of all votes eligible to be cast at said meeting shall constitute a quorum. If the required quorum is not present, another meeting may be called, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the Association. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

9.14 Enforcement of Assessment Obligation; Priorities: If any part of any assessment is not made and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge of One Hundred Dollars (\$100.00) shall be assessed and additional One Hundred Dollar (\$100.00) sums shall be assessed for each month or fraction thereof from the due date until six (6) months thereafter. After 6 months, an automatic late charge of One Thousand Dollars (\$1,000.00) will be assessed for each month or fraction thereof until the Assessment and all late charges are paid. If the assessment and any late fees are not paid within 6 months, the Association or its designees shall have the right, but not the obligation, to initiate legal proceedings to collect the unpaid assessment, including any accumulated late fees and attorney's fees. Each unpaid assessment shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record made in good faith and for value. To evidence a lien for sums assessed pursuant to this Section 9.14, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the owner of the Lot and a description of the Lot. Such a notice shall be signed and acknowledged by an officer of the Association and may be recorded with the Sanpete County Recorder. Such lien, when delinquent, may be enforced by sale of foreclosure by the Association, its attorney or other person authorized by this Declaration, the Association or by law to make the sale, after failure of the Lot owner to pay such assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs

and expenses shall be secured by the lien being foreclosed. The Association, acting on behalf of the owners, shall have the power to bid for the Lot at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Lot owner as allowed by law. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorneys' fees and costs and may temporarily suspend the Association membership rights of a Lot owner who is in default in payment of any assessment.

## **X GENERAL PROVISIONS**

10.1 **Enforcement:** This Declaration may be enforced as follows:

(a) Breach of any of the covenants contained in this Declaration and the continuation of any such breach may be enjoined, by Declarants, any owner or by the Environmental Committee. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs;

(b) The result of every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part, is hereby declared, to be and constitutes a nuisance, and every remedy allowed by law or every such result and may be exercised by Declarants, any owner, or by the Environmental Committee;

(c) The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative and none of such remedies shall be deemed exclusive;

(d) The failure to enforce any of the covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter;

(e) A breach of the covenants, conditions or restrictions contained in this Declaration shall not affect or impair the lien or charge of any bona fide first mortgage made in good faith and for value on any Lot or the Improvements thereon, provided, however, that any subsequent owner of the Lot shall be bound by said covenants, whether such owner's title was acquired by foreclosure in a trustee's sale or otherwise, but shall not be liable for prior breach.

10.2 **Limited Liability:** Neither Declarants, the Environmental Committee, nor any member, agent or employee of Declarants or the Environmental Committee shall be liable to any party for any action or for failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice.

10.3 **Severability:** Invalidity or unenforceability or any provision of this Declaration or of any Supplemental or Amended Declaration in whole or in part shall not affect the validity or enforceability or any other provision or valid and enforceable part of a provision of this Declaration.

10.4 **No Waiver:** Failure to enforce any provision, restriction, covenant or condition in this Declaration or in any Supplemental or Amended Declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provision.

10.5 **No Public Right or Dedication:** Nothing contained in the Declaration shall be deemed to be a gift or dedication of all or any part of the Subdivision to the public, or for any public use. This will include non-owner use of the Wildlife/Easement Areas, access through the locked gates and or road usage for the non-owner continual use and any other use of the Subdivision's amenities without the Association approval.

10.6 **Constructive Notice and Acceptance:** Every person who owns, occupies or acquires any right, title, estate, or interest in any Lot in the Subdivision does and shall be conclusively deemed to have consented and agreed to every

limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions are contained in the instrument by which such person acquired an interest in the properties, or any portion hereof.

10.7 Reservation of Easements:

(a) No owner of a Lot shall interfere with the established points at which drainage enters and or leaves his Lot;

(b) Declarants further expressly reserve, for themselves and their agents and employees, easements of access, ingress and egress, over the Lots, for the purpose of maintaining, repairing and installing water and other utility lines, drainage structures, septic lines, and laterals if necessary, in accordance with the provisions of this Declaration, and otherwise provided by law.

10.8 Emergency Access: A road to the north of the project with a break-away gate has been dedicated for emergency access only.

10.9 Notices: Any notice permitted or required to be delivered as provided herein, shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the copy of the same has been deposited in the United States mail, postage prepaid, at the mailing address of such person, as listed on the tax roles or other records of the Sanpete County Assessor's or Treasurer's Office. It shall be the responsibility of the Lot owner to contact the Association regarding any address changes.

10.10 Interpretation: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions or interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

IN WITNESS WHEREOF, Declarants have executed this Declaration as of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Thomas E. Crisp

\_\_\_\_\_  
Norma W. Crisp

Interwest Engineering, a Utah corporation, a/k/a Interwest Engineering Corporation

By \_\_\_\_\_  
Edward A. Klarich, President

STATE OF UTAH )  
 )  
:SS  
COUNTY OF \_\_\_\_\_ )

The foregoing Declaration was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2013, by THOMAS E. CRISP and NORMA W. CRISP, who duly acknowledged to me that they executed the same.

My Commission Expires:

NOTARY PUBLIC  
Residing at:

STATE OF UTAH )  
 :ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Declaration was acknowledged before me the \_\_\_\_ day of \_\_\_\_\_, 2013, by EDWARD A. KLARICH, the President of INTERWEST ENGINEERING, a Utah corporation, who duly acknowledged to me that he executed the same, for and in behalf of said corporation.

My Commission Expires:

NOTARY PUBLIC  
Residing at:

IN WITNESS WHEREOF, the undersigned Buyers of Lots have agreed to abide by this Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions for Horseshoe Mountain Ranch Estates.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF UTAH )  
 :ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Declaration was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, who duly acknowledged to me that he/she executed the same.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

SANPETE COUNTY RECORDER  
(TAX IDENTIFICATION NUMBERS)

<u>Lots</u>	<u>Tax ID's</u>
1 – 22	61051 – 61072
<u>Pasture Lot</u>	<u>Tax ID's</u>
P-101	61073
<u>Open Space</u>	<u>Tax ID's</u>
	61090
<u>Limited Common Area (lots P102-P117)</u>	<u>Tax ID's</u>
	61074-61089
<u>Water Storage and Restricted Area</u>	<u>Tax ID's</u>
	61091