

**SECOND AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS  
for the  
EL RANCHO FLORIDA SUBDIVISION  
Units #1 and #2 Combined**

**THIS AMENDMENT** to the Amended and Restated Declaration of Protective Covenants for El Rancho Florida Subdivision, Units #1 and #2 Combined, is made and entered into on the date hereinafter set forth by the El Rancho Florida Homeowners Association, Inc.

**RECITALS**

The property described on the Final Plat of El Ranchos Florida, Unit No. 1, recorded April 3, 1975 as Filing No. 390709, and the Final Plat of El Ranchos Florida, Unit No. 2, recorded September 29, 1975 at Filing No. 413389 has been made subject to covenants and restrictions, including, but not necessarily limited to, the following set of covenants, conditions and restrictions ("Prior Declarations") placed of record in the office of the La Plata County Clerk and Recorder's Office:

1. Protective Covenants for the El Rancho Florida Subdivision #1, recorded on January 8, 1975 at Reception No. 389218.
2. Declaration of Protective Covenants for El Rancho Florida Subdivision No. 2 recorded on October 19, 1977 at Reception No. 413978.
3. Amendment to Declaration of Protective Covenants for El Rancho Florida Subdivision No. 2 recorded on December 30, 1983 at Reception No. 493529.
4. Declaration of Protective Covenants for the El Rancho Florida Subdivision (Units #1 and #2 Combined), recorded March 18, 1992 at Reception No. 624393.
5. Amended and Restated Declaration of Protective Covenants for El Rancho Florida Subdivision (Units #1 and #2 Combined), recorded February 12, 2008 at Reception No. 972045.
6. Amendment to the Amended and Restated Declaration of Protective Covenants of El Rancho Florida Subdivision recorded September 22, 2008 at Reception No. 983856.

**WHEREAS**, by a majority vote of Members of El Rancho Florida Homeowners Association, Inc., (hereafter "El Rancho Florida HOA" or "Association") the El Rancho Florida HOA desires to amend and restate the protective covenants imposed on said real property by the Prior Declarations,

**NOW, THEREFORE,** El Rancho Florida Subdivision, Units #1 and #2 Combined, shall be subject to these covenants, conditions and restrictions and shall be held, conveyed, mortgaged, encumbered, leased, rented, occupied, improved and used subject to the following restrictions, covenants, conditions, easements and equitable servitudes. The restrictions set forth in this declaration shall run with El Rancho Florida Subdivision, Units #1 and #2 Combined, shall be binding upon all persons having or acquiring any right, title or interest in El Rancho Florida Subdivision, Units #1 and #2 Combined, or any part thereof, shall inure to the benefit of every portion of El Rancho Florida Subdivision, Units #1 and #2 Combined and any interest therein, shall inure to the benefit of and be binding upon any successor in interest and of each Owner and may be enforced by El Rancho Florida HOA or by any Owner or their successors in interest.

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The El Rancho Florida HOA, being the duly recorded and regulatory body for the El Rancho Florida Subdivision, Units #1 and #2 Combined, desires to:

- Ensure harmonious relationships among its residents,
- Protect and enhance the real property value,
- Conserve the natural beauty,
- Protect the rural character and equine nature of the Subdivision and
- Act for the benefit of all present and successive owners of any or all of said properties.

Therefore, the owners of lots in El Rancho Florida Subdivision, Units #1 and #2 Combined, do hereby declare this combined Subdivision to be subject to the following covenants and restrictions:

#### A. THE HOMEOWNERS ASSOCIATION

A1. Amended and Restated Document. This instrument, entitled Second Amended and Restated Declaration of Protective Covenants for the El Rancho Florida Subdivision, Units #1 and #2 Combined, (hereafter "Covenants"), will be the entire Covenants and Restrictions for El Rancho Florida Subdivision, Units #1 and #2 Combined, hereinafter referred to as the "Subdivision", and will supersede and replace any and all previous Covenants and Restrictions of said Subdivision.

A2. Responsibility and Authority. The Association, through its Board of Directors, will be the primary regulatory body of these Covenants. The Association will have the responsibility to enforce these Covenants and it will have the authority to assess property owners for the cost of maintaining the Association and carrying out its responsibilities. The Board may adopt, amend or delete Rules and Regulations pertaining to the use of lots within the Subdivision. The Board shall give Members a

minimum of two weeks notice of those proposed changes to the Rules and Regulations during which time the Members may review and submit their comments.

A3. General Powers of Duties of El Rancho Florida HOA. The Association shall have and may exercise all the powers and rights and duties of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, and all of the powers and duties provided for C.R.S. §38-33.3-302 of the Colorado Common Ownership Interest Act (herein after referred to as "CCIOA") as may be amended from time to time.

A4. Rights and Obligations. Any person or entity who owns title to any lot in the Subdivision will become a Member of the Association, (hereafter "Member"). Said Member will be governed by these Covenants, the By-Laws, Rules and Regulations, Responsible Governance Policies (CCIOA) and the Articles of Incorporation, and will have the same rights, privileges, obligations and responsibilities as all other Members, including the obligation to pay general and special assessments as designated by these Covenants.

A5. Single Vote. Multiple owners in any Lot will be deemed to be a single Member for voting purposes. Each Member will have only one vote per Lot owned.

A6. Perpetuity. All rights and privileges granted, and all restrictions and responsibilities imposed by these Covenants shall run with the land and attach to said lands and to each Lot or parcel thereof and shall be binding upon all present and successive owners thereof.

## B. AUTHORITY, ASSESSMENTS AND LIENS

B1. Creation of Lien and Personal Obligation of Assessments. Each Lot owner by acceptance of a Deed thereof, whether or not it shall be so expressed in such Deed, is deemed to Covenant and agrees to pay to the Association pursuant to these terms and conditions contained herein the following:

(1) Annual Assessments or dues.

(2) Special Assessments for the operation & maintenance of the Association and for the enforcement of the Covenants, Articles of Incorporation & By-Laws. Such assessments may be levied through approval by a majority vote of the quorum of the members at any annual or special meeting.

Said assessments will be established and collected as herein provided. No owner may waive or otherwise escape liability for the assessments provided herein by non-use of services or abandonment of their lot.

These Assessments together with interest, late fees, administrative costs, and collection costs including reasonable attorney fees, as set forth in the Responsible Governance Policies, will be made a continuing lien upon the property against which such assessments are made. These assessments will also be a personal obligation of

the owner of such property at the time when the assessment falls due. The amount of the assessment lien shall be paid at the time of sale or transfer of the property at closing. The Association may collect the lien in any manner permitted by "CCIOA", C.R.S. §§ 38-1-101, *et. seq.*

B2. Purpose of Assessments. The Assessments levied will be used to enforce these Covenants, fund operation and maintenance needs and to promote the health, safety, and welfare of the residents of the Subdivision.

B3. Amount of Annual Assessment. The annual assessment will be set by the Board of Directors. The annual assessment may be increased each year by the Board but not by more than 10% above the assessment for the previous year. The annual assessment may be increased by more than 10% above the assessment for the previous year and/or a Special Assessment may be levied upon the membership by a vote of the majority of a quorum of the Members who are present at an annual meeting or at a special meeting of the Association.

B4. Uniform Rate of Assessment. The annual assessment will be fixed at a uniform rate for all Lots within the Subdivision. The annual assessments will run from January 1 through December 31 of each year and will be billed annually in March.

B5. Subordination of the Lien to Mortgages. The lien of any Assessments provided herein will be subordinate to the lien of any first mortgage. The sale or transfer of any Lot will not extinguish said lien. No sale or transfer shall relieve the new Lot owner from liability for any assessment thereafter becoming due or for the lien thereof nor shall the previous owner be released from personal liability for the unpaid assessment.

B6. Budget. The Board shall prepare a budget annually, and shall submit the budget to the owners prior to the annual member meeting of the Association in accordance with C.R.S. §38-33.3-303(4).

## C. USE OF LOTS

C1. Definition of Use. All Lots in the Subdivision will be known, described and used as residential for single family dwellings only. A single family is defined as a shared occupancy by persons related to one another by blood, marriage, legal adoption, foster care or a single domestic partnership, or unrelated persons listed as owners on the deed to the property.

C2. Business Use of Lots. No Lot or building in the Subdivision will be used for any commercial or business purposes, except where:

- (1) there are no frequent walk-in customers,
- (2) there are no outside signs,
- (3) there are no noisy activities that may disturb neighbors,

- (4) there are no environmentally harmful or noxious activities,
- (5) there is no frequent heavy traffic.

C3. Division of Existing Lots. No lot will be further subdivided creating a new parcel. The number of lots in the subdivision shall remain at 133.

C4. Lot Boundaries. The lot boundaries between adjacent lots may be changed by written request of the owners of the lots being adjusted and the approval of the Board of Directors. Said change will be recorded with the La Plata County Clerk and Recorder. Any cost associated with the boundary change will be paid solely by the lot owners requesting the change.

#### D. DWELLINGS AND OUT BUILDINGS

D1. Residential Structures. No residential structure will be erected, altered, placed, used or remaining on any building lot other than the one detached single family dwelling, not to exceed 2 ½ stories above-grade floor areas in height. Attached or detached garages or carports are permitted. This will not prohibit the construction, alteration or use of reasonable and necessary outbuildings. All primary residence structures shall be a minimum of 1500 square feet in area. "Square footage" shall be calculated on the exterior dimensions of the building in accordance with the American National Standard for Single-Family Residential Buildings (ANSI Z765-2003), but shall not include the garage, below-grade floor area, decks, or porches.

D2. Building Set-Backs. No structure shall be located on any lot nearer than fifty (50) feet from the front lot line nor nearer than twenty (20) feet from any other lot lines.

D3. Modular Homes. New modular homes may be allowed subject to Board review and approval. All modular homes shall be placed on permanent foundations.

D4. Mobile Homes. Mobile homes are not permitted.

D5. Plan Review. Plans for all construction shall be submitted to the Board for review and approval prior to their submittal to the La Plata County building department.

#### E. EASEMENTS

E1. Easements Defined. The Association reserves easements on each side of all lot lines as described in the plats of the Subdivision of La Plata County, together with a perpetual right of ingress and egress to those easements.

E2. Use of Easements. No dwelling or improvement shall be placed upon any part of said easements. This restriction shall not preclude construction of fences on lot boundaries within or upon the easement, but said fences shall be removed or relocated at the property owner's expense if they obstruct the use of said easement.

E3. Metro District. The El Rancho Florida Metropolitan District possesses access, drainage, utility, river access, common area and waterline easements through the Subdivision. The District may use said easements for purposes of enabling the District to perform its obligatory or permitted duties and functions.

E4. Blanket Emergency Services Easement. There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Subdivision and its Members, a perpetual, non-exclusive blanket Emergency Services Easement over, upon and along and across all roads and driveways within the subdivision, across all common areas, and all other properties and areas within the Subdivision for use in the lawful performance of their duties.

#### F. EL RANCHO FLORIDA METROPOLITAN DISTRICT

The roads within the Subdivision, together with approximately 27 acres of common areas designated on the Subdivision plats are owned by the El Rancho Florida Metropolitan District ("District"). The District provides the domestic water, the road repair and maintenance, and the management of the common areas.

#### G. THE PIONEER DITCH COMPANY

G1. Adjudicated Water. The Subdivision owns 155.06 shares of stock of the Pioneer Ditch Company. The adjudicated water administered by the subdivision amounts to 3.87 cfs with a priority of F-78. Said shares shall be voted by a member of the Subdivision appointed by the Board of Directors at any annual or special meeting of the Pioneer Ditch Company.

G2. Cost Sharing. All costs incurred by the Subdivision related to the Pioneer Ditch shall be equally allocated among all of its irrigation water users. Project water is currently owned by twenty six (26) homeowners and the Metropolitan District (1). The total project water is decreed as 162.2 acre feet. Adjudicated water is currently shared by an additional thirty four (34) homeowners. The allocation of the irrigation costs shall be pro rata between these sixty one (61) irrigation users. If the number of irrigation water users changes, then the pro rata costs shall be adjusted accordingly.

G3. Responsibility of Property Owners. The maintenance and upkeep of the water distribution systems with the exception of the Pioneer Ditch is the sole responsibility of the owners of the property on which that distribution system is located.

No property owner shall restrict the delivery of water to any downstream user. The repair and maintenance of the Pioneer Ditch, its laterals and any of its distribution system is not the responsibility of the Association.

## H. VARIANCE PROCEDURE

H1. Procedure. The Board may grant variances to covenants where there are relevant extenuating circumstances. When a Member applies for a variance, the Member must give notice of the Board meeting at which the variance request will be heard and the nature of the requested variance to Owners of all lots adjacent to the property for which the variance is requested. The notice shall be directed to the address reflected in the Association files. The applicant must provide the Board of Directors with proof of said notice. Notice must be given a minimum of ten (10) business days prior to the Board meeting at which such variance request will be heard.

H2. Variance does not operate as a waiver. If any such variance is granted no violation of the covenants shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not waive any of the terms and provisions of the covenants for any purpose except as to the particular property and particular provision covered by the variance.

## I. MEETINGS

Meetings of the Board of Director and Members shall be held and conducted in the manner set forth in the By Laws for the Association. Notice shall be provided to Members by the internet site of the Association, by e-mail, by mail, by telephone, or in any other manner directed by the Board of Directors.

## J. AMENDMENT PROCEDURE

These Covenants may be changed in whole or in part by a majority vote of the members eligible to vote. A vote shall be taken by written ballot in accordance with C.R.S. §7-127-109.

## K. SEVERABILITY

If one or more of the provisions in these covenants as amended is found by a Court of competent jurisdiction to be invalid, such finding shall not invalidate any of the other provisions of the covenants as amended and all other provisions shall remain in full force and effect.

**PRESIDENT'S CERTIFICATION:** The undersigned, being the President of the El Rancho Florida Homeowners Association, Inc. a Colorado nonprofit corporation, certifies that the foregoing 2nd Amended and Restated Protective Covenants was approved and adopted by a majority vote of the homeowners at a duly held election of the Homeowners Association on December 5, 2014 and in witness thereof, the undersigned has subscribed his name.

Jack Wasserbach /s/  
El Rancho Florida Homeowners Association Inc .,  
a Colorado non -profit corporation.

By: Jack Wasserbach, President