

Filed for record the 18th day of May A. D. 1984 at 3:30 o'clock P. M. Joanne M. Reitingen
 Instrument No. 381187 By *Joanne M. Reitingen* DEPT.

DECLARATION OF ADDITIONAL PROTECTIVE COVENANTS RESTRICTING THE USE OF REAL PROPERTY IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER (SW $\frac{1}{4}$ SW $\frac{1}{4}$), SECTION TWENTY-SEVEN (27), TOWNSHIP THIRTEEN (13) SOUTH, RANGE EIGHTY-SIX (86) WEST, SIXTH PRINCIPAL MERIDIAN, COUNTY OF GUNNISON, STATE OF COLORADO.

WHEREAS, the record owners of the following real property located in the County of Gunnison and State of Colorado, to wit:

the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 27,
 Township 13 South, Range 86 West,
 Sixth Principal Meridian,

did on the 16th day of March, 1976, by an instrument recorded in Book 494 at Page 233 of the records of Gunnison County, Colorado, execute and acknowledge certain restrictive covenants effecting the use of said real property, and

WHEREAS, the present record owners of the property desire, pursuant to Section VIII of the above referred 1976 Covenants, to make certain additions as amendments to the 1976 Covenants, and

WHEREAS, said additions reflect restrictions that are deemed necessary to protect the value and enjoyment of said real property,

NOW, THEREFORE, in consideration of the owners mutual desire to protect said real property, Steve Glazer, Denis B. Hall, Anthony Muller, John J. Newberry III, Eric Ross, and Larry Gregg Tanning, for themselves as well as their heirs, executors, successors, administrators, and assigns do hereby covenant, declare, subject, and bind the above described real property to the following conditions and covenants running with the land:

I. Ratification of Previous Covenants. The previously adopted 1976 Covenants are hereby ratified and declared to be in full force and effect to the extent that they do not conflict with any provision set forth hereafter.

II. Land Use. In addition to the one private dwelling permitted in Section I of the 1976 Covenants, the owners of the one acre parcels shall be allowed to use said parcels for any purpose provided said use is approved by the written and acknowledged consent of five (5) out of the six (6) owners of the one acre parcels.

III. Land Owners' Association. There is hereby created, as a Colorado unincorporated association, an entity to be known as the "Wildbird Landowners' Association". This entity shall have any and all powers conferred by Colorado law upon unincorporated associations, as well as any powers hereafter set forth or necessary to effectuate its purposes. The purpose of this association shall be the administration of the joint maintenance obligations set forth in Section I of the 1976 Covenants, as well as any other joint activity or obligation agreed to be five (5) out of six (6) owners of the one acre parcels.

The Wildbird Landowners' Association shall meet at least once yearly to determine and assess joint maintenance obligations and to consider other joint activities. Any action of the Wildbird Landowners' Association must be approved by five (5) out of six (6) members, the six members being the six owners of the one acre parcels.

Any maintenance assessment shall be due and payable within 30 days after the actual or constructive notice of the assessment to the respective owners of the one acre parcels. If said maintenance assessment is not paid within 90 days of notice, the amount of said assessment shall become a lien upon the one acre parcel owned by the member not paying. Said lien shall attach and be enforceable against the property. As the holder of such liens, the Wildbird Landowners' Association shall have full power to sue and otherwise act to enforce such lien.

The Wildbird Landowners' Association shall have the power to sue to enforce any and all covenants affecting the above described real property.

IV. Rights of Refusal Upon Sale. If any owner of a one acre parcel receives a bona fide offer for the purchase of his parcel (and the appurtenant rights thereto to an interest in the undivided 34 acres) there shall be automatically created the following rights of refusal prior to sale:

A right of first refusal shall be granted to the Wildbird Landowners' Association, for a period of 30 days after notice (as hereafter specified) to purchase said parcel upon the same terms and conditions as the bona fide offer. If said right of first refusal is not exercised, a similar right of second refusal shall be granted for a subsequent 30 day period to any one or more members of the Wildbird Landowners' Association in their individual or joint capacities.

Upon receipt of a bona fide offer for the purchase of one of the six parcels, the owner of said parcel shall promptly give written notice to the Wildbird Landowners' Association and the individual owners of the other five one acre parcels, concerning the proposed offer of purchase. This notice shall be provided by hand delivery, certified mail, or by conspicuous posting on the private dwelling on an owner's parcel (if hand delivery or certified mail delivery cannot be perfected within 14 days). The notice shall include the name and address of the prospective buyer, the purchase price, and all of the terms of the offer.

The holders of the sequential first and second rights of refusal, in the order specified above, shall have sequential optional prior purchase rights to the parcel upon the same terms and conditions as contained in the bona fide offer. The first right of refusal shall begin upon the completion of notice to all owners as set forth above. The subsequent right shall begin upon the passage of the above identified time period, provided, however, that the holder of a right of refusal may waive such right, in writing. In the event that such right or rights are so waived, appropriate time periods need not fully run.

In the event that any holder of a right of refusal wishes to exercise the option to purchase, said holder shall notify the prospective seller in writing of such desire. Such purchase shall be upon the same terms and conditions as the bona fide offer. In the event of the exercise of a right of refusal, the seller shall furnish to the purchaser a title insurance commitment covering the subject property. Subject to title being merchantable in the seller, the closing of the sale shall take place within a period of 20 days after receipt of the title insurance commitment.

If the requisite periods for notice and rights of refusal pass without the exercise of such rights, the seller shall be free to consummate the sale to the initial bona fide offeror provided such sale is for a price no lower and upon terms no less favorable than specified in the initial offer and the subsequent notice of proposed sale.

The rights of refusal given hereby shall not be assignable.

V. Rights of Access. The owner of any one acre parcel shall have the right to reasonable and necessary access through, under, over, or across any one acre parcel owned by another owner, or the common areas, for the purpose of utilities, communications, ingress, and egress. Provided, however that no owner of a one acre parcel shall be compelled to provide such access if it will materially interfere with the use of his or her parcel, or if reasonable alternative access is available which will not use or cross his or her one acre parcel.

VI. Actions for Enforcement. In the event that the Wildbird Landowners' Association or other person or entity sues to enforce these or previous covenants, the prevailing party shall be able to collect reasonable attorneys fees. For the purposes of such litigation, the owners hereby consent to the venue of the District Court or County Court of Gunnison County, Colorado. Further, the owners consent to the personal jurisdiction of said courts over them, upon the service of process as provided by Colorado law.

