

204983

**AMENDED DECLARATION OF PROTECTIVE COVENANTS IN LEY SUBDIVISION
CUSTER COUNTY, COLORADO**
(Amended the 3rd day of July, 2006)

WHEREAS, the property owners of certain lots or parcels of land in the Northeast Quarter of Section 35, Township 22 South, Range 73 West of the 6th Principal meridian, Custer County, Colorado according to the plat filed April 6, 1971 in the office of the Clerk and Recorder of Custer County, Colorado, under Reception No. 104870, hereinafter referred to as Ley Subdivision, desire to place certain restrictions on said premises for the use and benefit of themselves and their grantees, in order to establish and maintain such premises as a protected community; and

WHEREAS, the purpose of this document is to amend and substitute for:

- 1) The Declaration of Agreement Establishing Protective Covenants in Ley Subdivision, Custer County, Colorado, recorded in the Records for Custer County, December 26, 1972, at Reception Number 107381, Book 167, Page 285, and,
- 2) The Declaration of Protective Covenants for Ley Subdivision, Custer County, Colorado, recorded in the Records for Custer County, May 2, 1980, at Reception Number 123831, Book 177, Page 939-941.

NOW, THEREFORE, for themselves and their grantees, the Owners hereby publish, acknowledge, declare, and agree with, to and for the benefit of, and binding on, all persons who may hereafter have any legal or equitable interest in any of the said tracts, that they own, and hold said above described tracts subject to the following restrictions, covenants and conditions, all of which shall be deemed to run with the land and to inure to the benefit of and be binding upon the owners at any time of any of the said tracts, their heirs, personal representatives, successors and assigns, to-wit:

PART A. SPECIAL AGREEMENTS

1. EASEMENTS: Easements for installation and maintenance of utilities, drainage facilities, roadways, bridle paths, hiking trails and such other purposes incident to the development of the property are reserved as shown on the recorded plat. Such easements will be kept open and readily accessible for service and maintenance of the utility and drainage facilities.
2. NUISANCES: Nothing shall be done or permitted on any tract which may be or become an annoyance or nuisance to reasonable requirements of the neighborhood. No noxious or offensive activities shall be conducted upon any tract.
3. RUBBISH, GARBAGE, AND REFUSE: Rubbish, garbage or other waste shall be kept and disposed of in an orderly manner so that such materials shall not be visible to nor exposed to the owners of other tracts herein. No tract shall be used for dumping of trash, refuse, or waste. No lot shall be used or maintained as a storage area for unlicensed or unserviceable automobiles, or as a dumping ground for rubbish, trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
4. POLLUTION: There shall be no discharge of chemicals or potentially toxic materials into the environment. Natural streams of bodies of water will not be polluted.
5. PRESERVATION OF THE ENVIRONMENT: There shall be no changes to the natural features of the property (includes existing plant cover, natural drainage, rough and rock strews areas, etc.) except for the purpose of building. Changes which will enhance soil, water and wildlife is permissible. Any changes which would alter the natural environment should be coordinated with the appropriate State or Federal Agency.
6. PRESERVATION OF WILDLIFE: Any changes which will improve the natural wildlife habitat is encouraged. On the other hand, there shall be no disturbance in any way of animals, birds, or fishes which nest, den, or live upon the land or in the streams which are listed as rare or endangered species by the applicable State or Federal Agency. The application of sound wildlife management principles is earnestly solicited.
7. TEMPORARY RESIDENCES: No structure of temporary character, trailer, basement, tent or accessory building shall be used on any tract as a residence, temporarily or permanently, provided, however, for such use

and location during the construction phase of the permanent dwelling and for short periods for vacation camping and vacation use. Once construction has begun on a permanent dwelling, all construction must be completed within twelve (12) months.

8. LIVESTOCK AND POULTRY: No Animals, livestock, or poultry of any kind, shall be raised, bred, or kept on any lot, except horses, dogs, cats, or other pets may be kept provided they are not kept, bred, or maintained for any commercial purpose.
9. NO LOT SHALL BE USED EXCEPT FOR RESIDENTIAL PURPOSES. No building or structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories in height, a private garage for not more than three (3) cars and a neat appearance barn and/or storage building. No building shall be placed on any lot other than one resulting from new construction on the site. Mobile homes are not permitted. No building shall be constructed nearer than fifty (50) feet to any boundary line of said property. No metal fencing shall be constructed or erected within one hundred (100) feet of any subdivision roadway. All fences in the subdivision must be maintained in good repair. . All buildings and structure s shall be subject to the restrictions and architectural control set forth in Parts D and E set forth below.
10. STREET MAINTENANCE: Should a majority of the lot owners determine that repairs or improvements to any of the subdivision roadways are necessary, a contractor if necessary or a public body, acceptable to a majority of the lot owners shall be employed or authorized to perform such repairs or improvements and the actual cost shall be paid by every lot owner in the subdivision based on the number of lots owned in the subdivision.
11. DWELLING SIZE: No dwelling shall be permitted on any lot with an enclosed and heated floor area of the main structure, exclusive of open porches and garages, of less than fifteen hundred (1500) square feet. All dwellings shall be subject to the restrictions and architectural control set forth in Parts D and E set forth below.
12. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one professionally made and approved by the Architectural Control Committee. A sign of not more than five square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction or sales period. These signs must conform to county zoning regulations.
13. DRILLING, MINING: No oil drilling, oil development operations, quarrying or mining operations of any kind shall be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any lot.
14. COVENANT PERIOD: Unless an instrument, signed by a majority of the Owners of the lots has been recorded, agreeing to change or void said covenants in whole or in part, these covenants are to run with the land and shall be binding on all parties and all persons under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.
15. VIOLATIONS: In the event of any violations of these covenants or any attempt to violate the same, any person or persons owning property subject to these covenants may bring an action by law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violations or recover damages for violation.
16. INVALIDATION: Invalidation of any one of these covenants by judgement or court order shall in no way effect any of the provisions which shall remain in full force.
17. COUNTY, STATE, OR FEDERAL REGULATIONS: All County, State, or Federal regulations pertaining to public health, welfare, and land use must be complied with.

PART B. DEFINITIONS AND DESCRIPTIONS OF AREAS.

1. The word " Declaration" means and refers to this Declaration of Covenants and Restrictions.

2. The word "Association" means and refers to Castilian Creek Property Owners Association, Inc., a Colorado non-profit corporation, a copy of whose Articles of Incorporation are recorded herewith, its successor and assigns.
3. The word "Member" means and refers to any person or legal entity entitled to membership in the Castilian Creek Property Owners Association, Inc., its successors or assigns in accordance with its Articles of Incorporation.
4. The word "Lot" means and refers to a numbered lot shown on the plat of Ley Subdivision including lot 42, the former "Recreation Area" or "Common Area" deemed by court action to be a numbered lot, together with any addition to said lot by reason of any vacation of an adjoining roadway.
5. The words "building site" mean: A lot shown on the recorded plat of Ley Subdivision, or one lot and a fractional part of an adjacent lot, or more than one lot, or a plot or parcel of consisting of fractional parts of any two adjacent lots shown on the recorded plat of Ley Subdivision.
6. The word "Owner" means and refers to the owner, whether one or more persons or entities of any lot or building site, but does include any one having such interest only as a security interest.
7. The word "Committee" means and refers to the Architectural Control Committee established pursuant to Part D.

PART C. MEMBERSHIP

Each owner of a lot or building site in Ley Subdivision and each person on becoming an owner of a building site shall automatically become a member in accordance with the Articles of Incorporation of Castilian Creek Property Owners Association, Inc.

PART D. ARCHITECTURAL CONTROL COMMITTEE

1. Membership – The Architectural Control Committee for Ley Subdivision shall be composed of Owners selected by the Board of Directors of Castilian Creek Property Owners Association.
2. A majority of said committee may designate a representative to act for the committee. In the event of the death or resignation of any said members of the Committee, or his refusal or inability to act, the Board of Directors members shall have full authority to designate a successor.
3. In the event that the CASTILIAN CREEK PROPERTY OWNERS ASSOCIATION INC., fails to appoint the members of the Architectural Control Committee, or is dissolved, or declared defunct, members of said committee shall be selected by election by those who would be entitled to membership in said association if operative at a meeting called upon 30 days notice of date, time and place of said meeting to be held in Custer County, Colorado, signed by at least two owners, published for two consecutive publication in a legal newspaper for said Custer County, Colorado.
4. Address – plans and requests for approval submitted to the Committee shall be sent or delivered to:
P.O. Box 626
Westcliffe, Colorado 81252
Or such other address as the Committee may designate.
5. Approval of Plans – All plans and specifications in connection with the construction of any residence, fence, wall, driveway, or other structure and in connection with any exterior remodeling of any residence or other structure or any alteration of any wall, fence, or driveway shall require the approval in writing of the Committee. Before the construction work begins, two complete sets of plans and specifications including the exterior design, the principal exterior materials to be used, the exterior color scheme, the site plan, the location of the building with respect to topography and finished grade elevations, the location of the driveway, plans for proper drainage of the building with respect to other properties, shall be submitted to the Committee for approval. In passing upon such plans, specifications and other requirements, the Committee may take into consideration whether the proposed residence or other structure and the type and quality of materials of which it is to be built are suitable for the building site upon which the structure is to be erected, the harmony thereof with

the surroundings and the effect of the structure as planned on the outlook from adjacent or neighboring property. The Committee shall have the authority to prohibit the use of certain types of exterior walls and finish and to prohibit or restrict construction of certain types of architecture. Furthermore, no building new or old may be moved onto any building site without submitting plans and specifications as though the building were being initially constructed on such site. No structure of any kind which has not received approval by the Committee and which does not fully comply with such approved plans and specifications shall be erected, constructed, placed, or maintained upon any building site. Approval of such plans and specifications shall be returned to the Owner of the building site upon which the proposed work is to be done. One copy shall be retained by the Committee. No changes or deviations in and from such plans and specifications as approved shall be made without the prior written consent of the Committee. The Architectural Control Committee shall not be responsible for any structural defects in such plans or specifications or in any building or structure erected according to such plans and specifications.

6. Procedure – The Architectural Control Committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within sixty (60) days after the plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants herein requiring approval by the Architectural Control Committee shall be deemed to have been fully complied with, provided all other covenants herein have been properly observed.
7. Members of Committee not liable for damages – The Architectural Control Committee shall not be liable for payment of any damages based on any action or failure to act, nor shall any member thereof be liable for payment of any damages based on any action or failure to act as a member of said committee.
8. Guidelines – The Architectural Control Committee has adopted the following guidelines for the Owner's benefit.
 - a) General house design and appearance shall conform to existing homes in the subdivision.
 - b) House plans submission and approval prior to obtaining permits or beginning site construction will include driveway, well, septic, and foundation.
 - c) The minimum roof pitch is 5/12
 - d) The minimum depth of eaves is sixteen (16) inches.
 - e) The approved roofing material is metal "Propanel" or equivalent.
 - f) It is highly recommended that the engineered trusses used for construction should be capable of withstanding 100+ MPH winds and 60#/ft squared snow loads.
 - g) The framed exterior walls in the main dwelling area shall be 2"x6" studs with R-19 insulation minimum.
 - h) The recommended insulation in floors and ceiling is R-30 or equivalent.
 - i) The approved exterior sidings are : log, whole log, cedar, wood, stucco (earth tones). Masonite, T-111 fiberboard siding, vinyl, aluminum and cement fiberboard siding are not approved.
 - j) An engineered septic is highly recommended due to the high seasonal water levels in this area.
 - k) Metal or steel buildings and /or metal siding on buildings are not allowed.
 - l) Mobile homes, modular homes and off site built manufactured homes are not allowed.
 - m) Solar panels are acceptable if integrated into the main home or garage.
 - n) The minimum enclosed and heated floor area of the main structure, excluding open porches and garages, is fifteen hundred (1500) square feet.
 - o) Utility company style street lights are prohibited; outdoor lighting should be kept to a minimum with lights being hooded; use of motion or light-activated lighting is preferred.

PART E. RESTRICTIONS

1. Restriction of Use – No lot or lots may be used for other than residential use without consent of the Architectural Control Committee.
2. Types of Living Quarters Prohibited – No temporary structure, basement, tent, garage, trailer, or mobile home shall be used on any building site at any time as a residence, either temporary or permanent, except as may be necessary during the construction and authorized by the Architectural Control Committee.

3. **Sewage Disposal System** – Each developed building site shall have an individual dual sewage system for disposal of waste fully approved as to design, capacity, location and construction by the State Water Pollution Control Commission or such other public agency as may be empowered to grant such approval. If public sewage facilities become available, each developed building site shall be connected to the public system within one year after the service becomes available. No outside toilet shall be placed on any building site except a temporary unit during the period of construction.

PART F. COVENANT FOR ASSESSMENT

1. Each numbered lot, as described in Part B.4., is subject to assessment.
2. Each Owner by virtue of his ownership (whether or not it shall be so expressed in any deed or other conveyance) is deemed to covenant and agree to pay to the Association annual and special assessments or charges, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a continuing lien upon the property against which each such assessment is made and any improvements placed on such property. Each such assessment, together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due; and, if there is more than one Owner, the obligation shall be joint and several. The personal obligation shall not pass to his successors in title unless expressly assumed by them.
3. **Purpose of Assessment:** The assessments levied by the Association shall be used exclusively for the purpose of paying any expenses incurred by the Association in connection with the road maintenance, in enforcing the restrictions and covenants set forth in this Declaration, and in providing any other services authorized by the Members.
4. **Basis of Assessment:** The amount to be assessed each Owner shall be based upon the number of lots being assessed. All such assessments shall be prorated among all the numbered lots in Ley Subdivision.
5. **Assessment and Payment Dates:** Written notice of assessments shall be sent to every Owner at his address as shown on the records of the Association prior to February 1st of each year; and the assessment shall be payable within 90 days thereafter. Failure of the Board of Directors of the Association to fix any assessment by the assessment date shall not be deemed a waiver, modification or release of the Owner's obligation to pay such assessment when determined. In addition to the annual assessment, the Association may levy a special assessment for unanticipated expenses; and such special assessment shall be payable by Owners within 90 days after written notice of assessment.
6. **Effect of Nonpayment of Assessments; Remedies of the Association:** Any assessment which is not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8) per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Notice of the delinquency may be recorded, and the lien of the Association may be foreclosed in the same manner as a statutory mortgage foreclosure under the statutes of the State of Colorado.
7. **Subordination of the Lien to Mortgages:** The Lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages recorded prior to the recording of the Association's notice of delinquency. Sale or transfer of any lot or building site shall not affect the assessment lien. However, in the event of foreclosure of any mortgage recorded prior to the recording of the Association's notice of delinquency, the granting of the deed after the period of redemption shall extinguish so much of the lien of such assessments as to payments thereof which became due prior to the conveyance to the purchaser in any such proceeding, but shall not relieve any former Owner of his personal liability thereof. No sale or transfer shall relieve such lot or building site from the liability for assessment becoming due after such conveyance or from the lien thereof.
8. **"Mortgage" and "Mortgagee":** Wherever the terms 'mortgage" or 'mortgagee' are used in this Declaration, the same shall be deemed respectively to include the security instrument, whether the same is a contract for deed, mortgage, or deed of trust, and beneficiary of said instrument.

9. **Assessment Certificate:** The Association shall, upon request of any Owner, mortgagee or contract purchaser, issue its certificate executed by an officer of the Association or an agent of the Association certifying whether or not assessment with respect to any lot or building site have been paid or if they are in arrears, or, if in arrears, the total amount owing as of the date of the certificate. For the issuance of any such certificate, the Association shall be entitled to collect a fee not to exceed \$1.00 for each lot or building site covered by the certificate; and such certificate shall be conclusive evidence of the status of assessments on the date of such certificate with respect to such lot or building site.

PART G. TERM AND AMENDMENT

The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any lot or building site subject to this Declaration. For the purpose of this Part G, "Lot" means a full lot as defined in Part B.4. Any amendments must be recorded in the office of the Clerk and Recorder of Custer County, State of Colorado. No part of the Declaration may be amended in such a manner that it will adversely affect the existing rights of any Owner or mortgagee with respect to unpaid assessment or the lien of any mortgage.

PART H. ENFORCEMENT

1. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration.
2. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration at the time of the violation shall in no event be deemed a waiver of the right to do so thereafter.
3. The prevailing party in any action required to enforce these covenants shall receive reimbursement for any and all costs, including reasonable attorneys fees. Any costs which become the liability of an owner shall create a lien against the owner's lot, which may be subject thereafter to the imposition of interest and foreclosure in the same manner as unpaid assessments.

PART I. ZONING

Zoning resolutions, rules and regulations are considered to be a part hereof, and to any extent that these covenants might establish minimum requirements which are less strict than the requirements established by said zoning resolutions, rules and regulations, the latter shall prevail. If any provision of these protective covenants would require or constitute a violation of any present or future zoning laws, ordinances or regulations, such zoning laws, ordinances, or regulations shall be controlling with respect to the provision in question.

PART J. SECTION AND PARAGRAPH HEADINGS

The section and paragraph headings are inserted only as a matter of convenience and for reference and are not to be construed as limiting the meaning of the section or paragraph or used in the interpretation of the section or any part thereof.

PART K. GENDER

The use of any gender shall be applicable to all genders.

PART L. SEVERABILITY

Invalidation of any one of these reservations, restrictions or covenants by judgement or court order shall in no way effect any of the other provisions of this Declaration of Covenants and Restrictions; but all of the remaining reservations, covenants and restrictions shall continue unimpaired and in full force and effect.