

Declaration of Water Service for Buckhorn Ranch

This Declaration of Water Service For Buckhorn Ranch (Declaration) is executed with an effective date of the _____ of November, 2018, by Buckhorn Ranch Association, Inc., a Colorado nonprofit corporation (Association) and Buckhorn Ranch Water Service Company, LLC (BRWSC), a Colorado limited liability company.

Recitals

- A. The Association oversees governance of Buckhorn Ranch, a common interest community comprised of the property platted as Filing 1 bearing Reception No. 451348, Filing 2A, bearing Reception No. 510420 and Filing 2B bearing Reception No. 541322 (the Subdivision or Property as may be appropriate), which is primarily a residential community per the Declaration of Protective Covenants for Buckhorn Ranch recorded at Reception No. 649955, in the official records of Gunnison County, Colorado, as it may be amended from time to time, and which is located in Crested Butte, Colorado.
- B. The Association purchased the land, water rights, and infrastructure assets of the Upper East River Water Company, LLC (Water Company) from the US Bankruptcy Trustee for the Bankruptcy Estate of Brush Creek Airport, LLC on September 5, 2018. The Water Company formerly provided water service to owners within Buckhorn Ranch, and to the Association, under that certain Water Provider and Easement Agreement recorded at Reception No. 594872, in the official records of Gunnison County, Colorado (Agreement), which Agreement has been terminated by the Association in conjunction with the recording of this Declaration.
- C. The Association has formed Buckhorn Ranch Water Service Company, LLC, which pursuant to conveyance by the Association thereto now owns the following water rights decrees pursuant to which it will provide water to Buckhorn Ranch: Findings of Fact, Conclusions of Law, Judgment and Decree of the Water Court entered June 21, 2000 in the District Court, Water Division No. 4, State of Colorado, Case No. 96CW300 (W-3517, W-3518, W-3519, W-3520, W-3232 and W-3233 (the Water Decree) and recorded at Reception No. 503167, in the official records of Gunnison County, Colorado. The Water Decree authorized the Water Company, and now BRWSC, to supply water to lots and property located within Buckhorn Ranch.
- D. This Declaration replaces the Agreement and provides the terms under which BRWSC will provide water to lots and property located within Buckhorn Ranch.

NOW, THEREFORE, for and in consideration of the foregoing recitals and of the terms, covenants, and conditions of the declaration, the Association and BRWSC declare as follows:

1. Definitions.

- A. "EQR" or "Equivalent Residential Unit" means a standard of measurement used by BRWSC in determining potable water delivery requirements for residential use, based on an anticipated average daily amount of water produced by a family of 3.5 people occupying a single-family residence. The term EQR is more fully defined in paragraphs 3 and 5 below.
- B. "Owner" means an owner of real property, including improvements, within the Subdivision, including single and multiple-family residences and commercial lots.
- C. "Point of Delivery" means that location in the Subdivision to which BRWSC is responsible for delivering water, which is the curb stop or shut-off valve located on an Owner's lot, including multiple-family lots or improvements thereon, or on Association or BRWSC property.
- D. "Potable water" means water which meets the maximum contaminant level standards of the Safe Drinking Water Act, Publ. L. 93-523, as of the date of this Declaration, and all applicable mandatory drinking water standards of the State of Colorado in effect as of the signing of this Declaration.
- E. "Tap fee" means a lump sum payment made by an Owner or Owners to BRWSC within the Subdivision before the earlier of the issuance of building permit by Gunnison County or physically connecting to the Water Facilities, which fee does not include charges for water service set forth below.
- F. "Water Facilities" means all physical improvements reasonably necessary or desirable for delivery of potable water to the Subdivision at the Point of Delivery. Water Facilities are or will be owned, constructed, maintained, and operated by BRWSC and shall include, but are not limited to, wells or other water source facilities, water treatment facilities, storage facilities, pumps and pumping stations, and major transmission lines or water mains, but do not include individual water service lines of Owners running from the Point of Delivery to the Owner's lot, which lines are the sole responsibility of the Owner.
- G. "Water meter" means any flow measurement device installed by BRWSC or an Owner.
2. Tap fees and Connection to Water Facilities. In connection with an Owner's commencement of building either a residential or commercial project within the Subdivision, the Owner must pay a tap fee associated with the Owner's property and use thereof. It is anticipated that each residence, whether single family or multi-family, within the Subdivision shall utilize at least 1 EQR and be allocated 1 EQR for potable water deliveries. Tap fees for residential use shall be calculated on the basis of EQRs for the applicable project. Tap fees for commercial use shall be calculated on a case-by-case basis and will be based on the size, nature, and scope of the proposed project. BRWSC will confirm to the residential EQR model as it is practicable, but calculation of projected water usage for commercial projects may differ from residential projects.

All tap fees must be paid by the Owner to BRWSC as a condition of a Gunnison County building permit.

3. Provision of Water Service. BRWSC will provide potable water to the Point of Delivery; provided, however, that in no event will BRWSC be obligated to provide water: (1) to any property located outside the boundaries of the Subdivision; or (2) in a quarterly volume which, as measured at the water meter for each Lot or property, is greater than the Maximum Allotment of water. The water provided by BRWSC under this Declaration is subject to the provisions of the Water Decree. BRWSC will be the exclusive water supplier to the Subdivision and no Owner may drill a well, or otherwise use surface or groundwater within or without the Subdivision, to supply water to property within the Subdivision without BRWSC's prior written consent. BRWSC will have no obligation to supply water to the Subdivision for water uses that are not authorized by the Water Decree. Each Owner desiring water service from BRWSC shall complete an application prepared by BRWSC, and pay any attendant fees associated therewith. Owners and other water users are responsible for all fees and expenses and for the connection of their service line to BRWSC's major transmission lines, water mains, or Water Facilities.
4. Water Use. Upon the provision of water by BRWSC to the Point of Delivery, each Owner is entitled to use the water for household use and outside irrigation. Outside irrigation shall be subject to rules and regulations adopted and approved by BRWSC, including watering restrictions. Owners' use of the water is further limited by the terms of the Water Decree and any use limitations set forth therein. In conformance with the water usage parameters set forth in the Decree, and in accordance with the tap fee paid, Owners shall be allocated and entitled to use as follows, which on a quarterly basis shall comprise the "Maximum Allotment:"
 - 1 EQR: 220 gallons of water per day of diversions
 - 1.25 EQR: 275 gallons per day of diversions
 - 1.5 EQR: 330 gallons of water per day of diversions
 - 2.0 EQR 440 gallons of water per day of diversions
 - 0.25 EQR: 55 gallons per day of diversions
 - 0.1 EQR 22 gallons per day of diversions

Irrigation: 90 gallons per day of diversions per 1000 square feet during the irrigation season defined below, only during hours as set by BRWSC. Irrigation of up to 1000 square feet of lawn and garden landscaping per single-family residence is permitted only during the allowable Irrigation Season of June 1 – September 30.

5. Basic Water Allotments. BRWSC reserves the right to change the basic water allotments set forth above at any time in its sole discretion for the benefit and protection of the residents and Owners of Buckhorn Ranch, (provided that the changes are applied equally to all residents and Owners). Commercial lots may have different rules, regulations and limits, which rules and regulations shall be determined by BRWSC. Owners' use of BRWSC's water will also be subject to any and all pertinent rules and regulations adopted by BRWSC in the future.
6. Charges for Residential Water Service. In consideration for the provision of water service to the Subdivision and operation and maintenance of the Water Facilities by BRWSC, the Owners will pay to BRWSC a monthly charge in the amounts set forth as follows. The unmetered water rates for water supplied by the BRWSC to the Subdivision will be based on the EQR rate calculated by the East River Regional Sanitation District at the time the sanitary tap fee is paid.

A. Current EQR Schedule.

1 EQR = 3 bedroom or smaller single family or multi-family residential units without an accessory dwelling unit and with single kitchen and 3 or less bathrooms.

1.25 EQR = 4 bedroom or smaller single family or multi-family residential units without an accessory dwelling unit and with single kitchen and 4 bathrooms or less.

0.5 EQR = An accessory dwelling unit containing no more than one kitchen and two bathrooms or less.

0.25 EQR = Lodge, hotel or motel rooms will have a minimum availability fee of .25 EQR per two rooms. Total fees will be based on the usage as determined by actual meter readings.

0.4 EQR = Each additional kitchen.

1 EQR = Each additional bathroom.

An airplane hangar with a connection to the Water Facilities, either directly or indirectly, shall pay a tap fee and additional EQR service fees determined at the time of approval of the hangar construction. BRWSC shall determine the calculations and fees in its sole discretion.

B. Initial Unmetered Rates: The initial unmetered water rates for the

Subdivision are as follows:

1 EQR: \$45.00 per month

1.25 EQR: \$56.25 per month

0.5 EQR: \$22.50 per month

0.25 EQR: \$11.25 per month

Hot Tubs: \$10.00 per month per hot tub

C. Rates Include Irrigation. The rate structure includes outside irrigation unless and until determined otherwise by BRWSC.

D. Rates if Metered. If the Owners or BRWSC install water meters and loops, either on their own accord or by demand of BRWSC, which demand the BRWSC will have the right to make, then the metered rates will be based on a charge per 100 gallons of water used. All quantities will be rounded up to the nearest 100 gallons. The rate per 100 gallons will be determined by prorating the unmetered rate immediately prior to the metering with the daily water use limitations contained in paragraph 3 of this Declaration. For example, if the water rate in effect at the time of metering is \$45 for 1 EQR, which water use is 220 gallons per day, the metered rate for a 30-day month would be \$0.68 per 100 gallons ($\$45 / 220 \times 30 \text{ days} / 100 \text{ gallons}$). There will be a minimum charge if meters are installed even if no water is used which minimum charge will be equal to 1 EQR of the unmetered rate in effect immediately prior to metering (and adjusted in the future for inflation as provided herein) or the rate registered by the meter, whichever is greater.

E. Billing Frequency and Payment. BRWSC may bill the individual water users monthly, bi-monthly, quarterly or semi-annually) as determined by BRWSC in its sole discretion. Payment shall be due within 15 days thereafter.

F. Water Service Rate Escalator. The initial water service rates specified in this Declaration may be adjusted on January 1 of each year. Notwithstanding, BRWSC may increase rates as determined by the actual increases in the cost to operate BRWSC, as well as the level of reserves for future improvements.

7. Capital Improvements. Components of the Water Facilities may be or shall be periodically constructed, improved, or replaced, in the sole discretion of BRWSC or

as required by any governing body. In such an event, the following will apply:

- A. Maintenance of a Capital Improvement Fund. BRWSC will establish reserves in a capital improvement fund which will be used for capital expenditures for the Water Facilities. The capital improvement fund will be under the sole direction and control of BRWSC and will be deposited in an appropriate interest-bearing account. The capital improvement fund will be funded through BRWSC's depositing a maximum of 20% of its gross revenues received from payment of periodic water charges and fees and tap fees. A portion in an amount to be determined by BRWSC of each Owner's water bill shall include an amount to fund the capital improvement fund. BRWSC may cease making deposits to the capital improvement fund when the balance in the account is equal to or greater than \$100,000.00.

 - B. Special Assessments. If in the reasonable discretion of BRWSC, a special assessment is required in order to fund in part or in whole a capital improvement, repair project, or other necessary expense for the Water Facilities or its water rights, BRWSC shall have the authority to levy special assessments on the Owners. BRWSC shall provide the Owners with as much advanced notice as is reasonably practicable before levying such special assessment.

 - C. Capital Expenditures Where Capital Improvement Fund is Insufficient. In the event the capital improvement fund is insufficient to fully pay for a capital expenditure, BRWSC will incur the necessary cost to correct the issue, first using the full balance in the capital improvement fund. Then, any shortfall will be funded by loans, either through borrowing of other means, and the shortfall, including interest at the rate applicable to the BRWSC's borrowing, if any, will be repaid to the BRWSC through a special assessment, raising of water rates, or both. BRWSC must, to the extent circumstances permit, provide prior notice to the Owners so that they and other water users within the Subdivision can properly budget for that expense.
8. Delinquent Payments. Bills are due and payable to BRWSC within 15 days of the date of each billing statement. A late charge of 1.5 percent (1.5%) per month may be assessed by BRWSC for bills not paid within 30 days.
9. Remedies for Delinquent Payments or Other Violations of this Declaration. In the event of non-payment of a bill or other violation of any provision of this Declaration by any person or entity receiving water from BRWSC, in addition to other remedies as set forth herein, BRWSC shall have the following rights and remedies, which are cumulative and not exclusive:
- A. Discontinuance of Service. BRWSC may discontinue service upon providing no less than ten (10) days written notice advising the Owner of the delinquent amount due or the particular section or paragraph of this Declaration violated and advising the Owner that if the amount due is not paid or the default remedied by

the date specified in the notice, then the water service may be discontinued. The notice must also provide the Owner with directions on how to contact BRWSC to resolve the dispute. BRWSC may discontinue service immediately to remedy any emergency situation, and must then endeavor to resume service expeditiously.

B. Lien. BRWSC shall have a perpetual lien against any and all property within the Subdivision for which water service is provided under this Declaration, in the amount of all unpaid charges, which lien may be filed against the property and foreclosed in the manner provided under Colorado law. Unless otherwise provided by law, the lien shall be primary to all liens and encumbrances recorded after the date of this Declaration.

C. Additional Remedies. In addition to the remedies provided above, BRWSC shall have all rights and remedies provided by law.

10. Availability of Service Charges. Availability of service charges may be assessed by BRWSC against a lot or property within the Subdivision only when water mains capable of being tapped by an individual service line are ready for connection within 100 feet of any property line or lot to be assessed, but which service line to the particular property to be assessed is not connected. The availability of service charge will equal 50% of the unmetered charge then in effect for one EQR and, until connection to the water system, all single family, multi-family, and commercial lots will be classified as being 1 EQR for purposes of determining the availability of service charge. Non-payment of availability of service charges shall be the same as non-payment of a water bill entitling BRWSC to all rights and remedies provided herein, including but not limited to denying service and/or a water tap until such time as the availability of service charges are paid in full.

11. Restrictions on Water Use Within the Subdivision. BRWSC's obligations to deliver water to the Subdivision are expressly subject to the following limitations and restrictions:

A. Irrigation. The total quantity of water available within the Subdivision is limited and strictly governed by the Water Decree. Outside irrigation, if not strictly controlled, could consume all of the water legally available to the Subdivision under the Water Decree. Therefore, the irrigation of lawn and garden landscaping must be strictly limited to the minimum areas provided in this Declaration, and BRWSC shall enforce these restrictions. BRWSC retains the right to further curtail irrigation in the event of drought, water shortages, or necessary or required conservation measures, and for other legitimate reasons.

i. Irrigation of Single-Family Lots. Subject to the rights of the BRWSC to curtail irrigation as provided under this Declaration, Owners upon

which single family residences are constructed may irrigate no more than 1000 square feet of lawn and garden area per single family lot and the remainder of the single -family lot must remain in a natural vegetative condition. For those properties with 1000 square feet or more of irrigated lawn which properties were exempted from the above limitation at the time of improvement, such Owners may be charged additionally in the sole discretion of BRWSC.

ii. Irrigation for Commercial Lots. Irrigation for commercial lots shall be limited to the amount of square feet approved at the time the initial tap fee is calculated and paid. All commercial irrigation systems will be metered.

iii. Irrigation Within Multi-Family Lots. Subject to the right of BRWSC to curtail irrigation as provided in this Agreement, irrigation of lawn and garden common areas associated with the multi-family residences within the Subdivision, as designated by the description of M1 on the Plat for Filing 2B, shall be limited as follows: The M1 lots shall have no more than 200 square feet of irrigated lawn and garden area multiplied by the total number of units located within the individual M1 lot at issue. In the event of an amendment to the M1 Filing on the Plat for Filing 2B, then the square feet or irrigated area per unit specified herein will apply as closely as possible to the newly designated multi-family filing that corresponds with the formerly designated filing.

iv. Irrigation of Association Common Areas. Irrigation of Association maintained common areas within the Subdivision shall not exceed a total of 120,000 square feet (approximately 2.75 acres) of irrigated lawn and garden landscaping. The Association and BRWSC may determine the location and distribution of irrigated landscaping of common areas and open space so long as the total square feet of irrigated area provided in this paragraph is not exceeded.

v. Timing of Allowable Irrigation. No Owner, the Association, nor any person within the Subdivision may irrigate lawn and garden areas except between June 1 and September 30 of each year (Irrigation Season). Irrigation shall take place only between the hours of 5am - 10am and 5pm - 10pm during the Irrigation Season or at and during such other times as BRWSC may, in its reasonable discretion, determine. BRWSC may impose additional restrictions on irrigation. BRWSC will encourage all owners to engage in irrigation water conservation

measures, including planting low water consuming plants and lawns, and only irrigating lawn and garden areas as necessary.

12. Other Water Uses. No indoor or outdoor swimming pools are permitted in the Subdivision. Hot tubs are permitted on single family residential lots, and shall be subject to applicable EQR and water rates. In the M1 Filing, one hot tub per four units is permitted, which hot tub shall be subject to the applicable EQR and water rates.
13. Commercial Water Uses. BRWSC shall not be obligated to provide water for any commercial use within the Subdivision. For purposes of this Declaration, “commercial uses of water” shall include all uses designated as commercial by the Colorado Division of Water Resources, including, but not limited to, hotels, motels, lodges, restaurants, bars, and retail stores, and as approved by BRWSC. In the event a person seeks to develop a commercial use within the Subdivision, along with approval from the Association and any other governing body, he or she must make a written application to BRWSC identifying the proposed use, including estimates of the maximum amount of proposed water usage. BRWSC may accept or reject all such applications for commercial water uses in its reasonable discretion. If it permits a commercial water use, then such water use shall be metered. Conditions upon the amounts of water that may be delivered by BRWSC to supply commercial uses within the Subdivision, the rate to be charged for the water, tap fee rates, the extent of allowable irrigation, and all other conditions relevant to supply of commercial water will be determined at the time application is made to BRWSC and will be based on the size, nature, and scope of the proposed project. BRWSC will conform to the residential EQR model as is practicable, but calculations of projected water usage for commercial projects may differ from residential projects. In the event a commercial use is allowed, the Owner and BRWSC will enter into a written agreement setting forth the terms and conditions governing the supply of water to the land the commercial use, which document will be recorded and will be a covenant running with and binding the commercial property or lot. BRWSC shall have no obligation to supply water for commercial uses unless a written agreement is entered into as provided in this paragraph.

14. Service Line Construction and Tap Fees.

A. Tap Fees. BRWSC imposes a one-time fee for connection to the water distribution system called a “tap fee”. The following is the initial base tap fee schedule for residential lots, both single and multi-family projects:

1 EQR:	\$15,000.00
1.25 EQR:	\$18,750.00
0.5 EQR:	\$7,500.00
0.3 EQR:	\$4,500.00
0.25 EQR:	\$3,750.00

0.1 EQR: \$1,500.00

Hot tubs are equivalent to 0.1 EQR

i. With the exception of tap fees for lodge and similar short-term rental rooms which are included in the above schedule, tap fees for any other commercial uses which may be approved by BRWSC will be determined at the time of approval of said use in accordance with the terms of this Declaration.

ii. For any use without an EQR rate specified in this Declaration, then a determination will be made as to the amount of water used by the specific use as a percentage of an EQR and a tap fee may be assessed by BRWSC in the amount of that percentage to the tap fee rate for 1 EQR then in effect. BRWSC reserves the right to meter any water usage at any time and change the per gallon rates.

B. Association Tap Fees Waived. No tap fees will be charged to the Association for irrigation water taps for irrigation of common areas; however, all taps must be installed in accordance with the requirements of this Declaration.

C. Periodic Adjustments of Tap Fees. The tap fees may be adjusted on January 1 of each year commensurate with the increased expenses to operate BRWSC.

D. Procedures for Connection to BRWSC Water Mains. Service line connections to BRWSC's major transmission lines or water mains may be made only with BRWSC's prior written approval which written approval must be obtained in accordance with the provisions of this paragraph. All Owners desiring to connect a service line to BRWSC's water main shall provide BRWSC with a written application, payment of the tap fee, and design drawings for the residential or commercial project and specifications. All proposed service connections shall conform to all applicable state and local regulations for water service lines. The person or entity desiring a new connection must pay for any and all BRWSC charges for professional review, including but not limited to engineering and legal fees, of the proposed connection.

E. Minimum Additional Standards. Water service lines shall be located so as to take the most direct route from the water main to the improvement (preferably perpendicular to the main). All water service lines shall have a minimum cover of seven (7) feet. The service line shall be laid at uniform grade and in a straight-line alignment. The service line shall consist of type "K" copper, and at a minimum, shall be equipped with shut off valves located at the property lines and pressure reducing valves. All new water service connections must include an approved water meter yoke. All water service connections must be done by a licensed and insured plumber or contractor under the

direct supervision of a licensed plumber. Proof of insurance shall be provided to BRWSC prior to the commencement of the work.

F. Inspections. All work shall be inspected by BRWSC's representative who has authority to halt construction when, in his or her opinion, the specifications or property construction practices are not being complied or followed. BRWSC's representative may order further construction to cease until all deficiencies are corrected. No service line shall be covered by backfill without BRWSC's prior written approval. The person making the installation shall be required to remove all topsoil or any other covering placed over the line to be inspected at his or her own expense.

G. Timing of Connection. Unless otherwise agreed by BRWSC in writing, all taps must be completed by October 15 and no taps can be started prior to April 15.

15. Increased Treatment/Testing Schedule. In the event that, during the term of this Declaration, any statute, ordinance, regulation, or order of any federal, state, or local government or its agencies is duly enacted, promulgated, or issued which requires BRWSC to treat/test water delivered to the Subdivision or which requires BRWSC to otherwise modify or supplement its existing treatment/testing methods or the Water Facilities, BRWSC agrees to use its best efforts without unreasonable delay to provide the additional or modified treatment/testing. BRWSC may recoup additional monies spent for this purpose by increasing water rates, or by special assessment, as it deems necessary in its discretion.
16. Water Rights. In the event that BRWSC's water rights, which are the legal source of the water delivered under this Declaration, ever, during the term of this Declaration, be or become partially or wholly inadequate or insufficient, physically or legally, to supply water to the Subdivision in sufficient quantity or quality, BRWSC agrees to employ its best efforts to secure such additional sources of water, water rights, and/or the necessary water court or administrative approvals to permit continual delivery of a potable water supply to the Subdivision as set forth herein; provided, however, that BRWSC may recoup additional monies spent for this purpose by increasing water rates, or by special assessment, as it deems necessary. BRWSC shall have no liability to the Owners, water users, or any third party for losses or damages, whether direct, indirect, or consequential, that Owners or water users may incur which are caused by or result from the failure to deliver water to the Subdivision due to the legal or physical inadequacy or insufficiency of BRWSC's water supply.
17. BRWSC Maintenance/Repair Obligations; Right of Entry. Except as expressly provided to the contrary in this Declaration, BRWSC shall, at its sole expense, inspect, maintain, operate, repair and improve the Water Facilities owned by it in accordance with accepted engineering practices. BRWSC, its authorized agents, employees, and representatives shall have the right to enter upon any property or lot within the Subdivision at any time upon reasonable notice to the Owner for the purpose of inspecting, maintaining, repairing and replacing the Water Facilities which now or hereafter are located in the Subdivision, as well as for the purpose of inspecting,

maintaining, repairing or replacing, in an emergency situation or as it deems necessary, any individual water service lines, service connections or other related facilities located in the Subdivision and which are the obligation of BRWSC. Should BRWSC undertake any such emergency or discretionary services on behalf of the Subdivision, BRWSC shall be wholly responsible for any and all costs related thereto. BRWSC may bill individual Owners to the extent the work is for private water service lines, which shall be paid to BRWSC pursuant to the payment terms in paragraph 6 above.

18. Owner Maintenance/Repair Obligations. With respect to residential or commercial water service lines, the Owner thereof shall be solely responsible for the operation, maintenance, repair and replacement of those portions of the water service lines and related facilities located in and emanating from the improvement or commercial building up to the Point of Delivery. The Owners shall be responsible for maintaining in good working condition any water meter located upon the Owner's lot or property. Leaks, stoppage, breaks or any other problematic conditions in or with individual water service lines or related facilities shall be repaired or otherwise remedied within 72 hours after discovery of said condition by the Owner or notification by BRWSC of the condition or, if the nature of the condition is such that the repairs cannot be accomplished within such 72-hour period, such longer period as is reasonably necessary to complete such repairs. If, in the discretion of BRWSC, satisfactory progress has not been made by the Owner in repairing such problematic condition within this time period, BRWSC may, but shall not be required to, take appropriate steps to repair the problem, in which case BRWSC shall be entitled those cost recovery and legal remedy rights set forth in paragraph 6 and 9 above.

19. Prohibited Acts and Discharges. No Owner shall uncover, use, alter, disturb or make any connection to or opening into any BRWSC water main or appurtenance without first obtaining written approval from BRWSC. Owners shall not discharge, or cause to be discharged, any storm water, surface water, ground water, roof runoff, or subsurface drainage into the Water Facilities. Owners shall not discharge, or cause to be discharged, into any water main, sewer main, or water or sewer service line any prohibited sewage or any harmful waters or wastes, whether liquid, solid, or gas, which would interfere with the provision of water services to the Subdivision or be capable of causing obstruction to flow, or which would damage or constitute a hazard to the Water Facilities, sewer facilities, the Association, BRWSC, or Subdivision residents or Owners. Such prohibited discharges shall specifically include, but not be limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, sulfides, metals, motor oils, greases, paints, paint thinner, turpentine, acetone, muriatic acid, radioactive material, any substances which now or hereafter are determined to be hazardous by any federal, state or local government or agency and any substance which cannot be safely treated or disposed of as residential domestic waste water or effluent in accordance with sound sanitation engineering practices and/or federal, state and local laws, regulations, requirements and standards. BRWSC reserves the right to specify additional prohibited acts, prohibited discharges, or affirmative duties of Subdivision residents (including Owners) as it deems appropriate and

may establish and levy fines and penalties for violations of any specified prohibited acts, prohibited discharges, or affirmative duties of Owners or residents.

20. Notice of Declaration. BRWSC shall inform and provide notice to all prospective lessees, purchasers and lenders of the Property of the terms and provisions of this Declaration. Notice may be provided by recordation in the Gunnison County records, and by other means BRWSC deems appropriate.
21. Duty of Care. BRWSC shall exercise reasonable care and make good faith efforts to furnish potable water service to the Subdivision. BRWSC shall not be liable for any loss or damage, whether direct, indirect, or consequential, for any failure or interruption of water service to the Subdivision, except in those circumstances where BRWSC fails to exercise reasonable care.
22. Indemnification. BRWSC shall not be liable for any maintenance, repair, replacement or any other loss or damage, whether direct, indirect or consequential, caused by or resulting from prohibited and/or negligent acts or omissions by any Owner or Owners' lessees, guests, residents, agents or representatives, including but not limited to the discharge into the Water Facilities or sewer lines of any oils, chemicals, wastes or other substance now or hereafter prohibited by BRWSC. The Owners, their tenants, lessees, guests, invitees, agents, representatives, successors and assigns shall indemnify and hold harmless BRWSC, its member, managers, directors, officers, agents, representatives, successors and assigns, from all losses, damages or expenses, including but not limited to expenses related to maintenance, repair, replacement, cleanup or litigation (including reasonable attorneys' fees) incurred as a result of any act, omission or occurrence described herein.
23. Title and Ownership. BRWSC represents that it has full right and authority to furnish water services in accordance with the terms herein. Nothing within this Declaration shall be construed as granting, relinquishing, or otherwise conveying any right, title, or interest in the Water Facilities to any Owner or third party. All water service furnished under this Declaration is for the sole use of the Owners, their guests and lessees. However, said right of water usage shall not include any right to make a succession of uses of such water and upon completion of the primary use by the Owners all right, title, and interest in and to the water furnished under this Declaration shall revert automatically and completely to BRWSC. Nothing contained herein shall be deemed as imposing on BRWSC any obligation or duty to collect or purify water following delivery to the Point of Delivery.
24. Default; Notice to Cure. In the event that any party to this Declaration shall fail to keep or perform any covenant, term, or condition required to be kept or performed by such party according to the terms and provision of this Declaration, with the exception of non-payment of any fees, rates, charges or assessments levied hereunder, the non-defaulting party shall be entitled to give the defaulting party

written notice specifying the particular default(s). The defaulting party shall have such time as provided in said notice, which period of time shall in no event be more than twenty (20) days, in which to cure such default(s). During the period of time provided to cure defaults, neither party shall initiate against the other party legal proceedings for breach of this Declaration.

25. Waiver. No waiver by BRWSC of any violation of any of the provisions herein contained shall constitute a waiver of any other violation of any of the provisions herein contained. BRWSC's acceptance of payments hereunder after the occurrence of a default shall not be construed as a waiver of such default unless the BRWSC so notifies Owner in writing. Forbearance by BRWSC to enforce one or more of the remedies herein provided upon a default shall not be deemed or construed to constitute a waiver of such default. The receipt by BRWSC of any payment required under this Declaration with knowledge of violation of any provisions contained in the Declaration shall not constitute a waiver of any other violation of any of the provisions contained herein. ~~Owner shall pay all costs, expenses, and reasonable attorneys' fees incurred by BRWSC in pursuing the BRWSC's rights or remedies hereunder or as otherwise provided by law.~~
26. Termination. This Declaration shall remain in full force and effect until termination hereof, executed in writing by BRWSC and the Association, which termination shall be recorded in the official records of Gunnison County, Colorado. In that event, BRWSC or a successor entity to the Water Facilities must replace this Declaration with an appropriate document to govern water service to the Subdivision.
27. Notice. Notice under this Declaration shall mean personal service or service by registered or certified mail, United States mail, postage prepaid, at the following addresses.
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|-----------------------------------|---|
| Buckhorn Ranch Association, Inc | Buckhorn Ranch Water Service Company, LLC |
| c/o Toad Property Management, LLC | c/o Toad Property Management, LLC |
| PO Box 3501 | PO Box 3501 |
| Crested Butte, CO 81224 | Crested Butte, CO 81224 |
28. Specific Performance. The Association's rights hereunder shall be specifically enforceable in any court of competent jurisdiction.
29. Venue and Jurisdiction. This Declaration shall be interpreted, enforced and governed under the laws of the State of Colorado with venue lying Gunnison County. Each Party submits to the jurisdiction of the Gunnison County Combined Courts.

30. Force Majeure; Cure. It is expressly agreed that the rights and obligations of the parties under this Declaration shall be suspended whenever a party is unable to perform for reasons beyond its control or as a result of an act of God or an act of a third party.
31. Service Interruption. BRWSC hereby reserves the right, upon reasonable advance notice to the Owners and without liability, to temporarily suspend or curtail the provision of water and/or sewer service to the Property, for reasonable periods of time, for maintenance, reconstruction or other reasonable circumstances.
32. Benefit. This Declaration shall be recorded in the official records of Gunnison County, Colorado, and shall extend to, be binding upon, and inure to the benefit of the Association, BRWSC and the Owners, and the heirs, successors, and assigns of them. Nothing in this Declaration is intended to confer on any third person or entity any benefits, rights, or remedies.
33. Integrated Agreement. This Declaration supersedes and controls all prior written and oral agreements, understanding and representations of the affected parties regarding the provision of water service to the Subdivision.
34. Attorneys' Fees. In the event that any dispute arises between BRWSC, the Association and any party under this Declaration, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees from the other party or parties.
35. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Association and BRWSC have executed this Declaration on the date first set forth above.

BUCKHORN RANCH ASSOCIATION, INC., a Colorado nonprofit corporation

By: _____

David Brennan, Vice-President

BUCKHORN RANCH WATER SERVICE COMPANY, LLC,
a Colorado limited liability company

By: _____

Frank Woodruff, President, Board of Managers, Manager

[illegible]

The foregoing Declaration was acknowledged before me this ____ day of _____, 2018, by David Brennan, Vice-President, Buckhorn Ranch Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

(SEAL)

Notary Public
My commission expires:

[illegible]

The foregoing Declaration was acknowledged before me this ____ day of _____, 2018, by Frank Woodruff, President, Board of Managers, Manager, Buckhorn Ranch Water Service Company, LLC, a Colorado limited liability company.

Witness my hand and official seal.

(SEAL)

Notary Public
My commission expires: