



## ACCESS AND RECREATIONAL USE EASEMENT AGREEMENT

THIS ACCESS AND RECREATIONAL USE EASEMENT AGREEMENT ("Agreement") is executed the 28<sup>th</sup> day of March, 2017 as follows:

1. PARTIES. The parties to this Agreement are:

AMSTAR Homes, Inc  
5732 Amber Ridge Drive  
Castle Pines, CO 80108  
702-303-8081  
[president@amstarhomes.com](mailto:president@amstarhomes.com)  
("Amstar")

and

Hidden Mine Ranch Owners Association, Inc.  
P.O. Box 2144  
Crested Butte, CO 81224  
("Hidden Mine");

2. FACTS AND PURPOSES. The following recitals apply to this Agreement:

2.1 Hidden Mine has filed an application in Division 4 Water Court for a storage right in the HMR Reservoir and surface water right in the HMR Reservoir Ditch and Pipeline in Case No. 15CW3037.

2.2 Amstar owns Hidden Mine Ranch Lot 5, ("Amstar Property") over which the HMR Reservoir Ditch and Pipeline and HMR Reservoir is designed to be constructed.

2.3 Hidden Mine wishes to construct a ditch and pipeline, and the HMR Reservoir over and across a portion of the Amstar property as shown in Exhibit A.

2.4 Amstar desires is willing to grant to Hidden Mine a non-exclusive, perpetual easement over and across the real property described in Exhibit A for the purpose of operating, maintaining, and repairing the HMR Ditch and Pipeline and HMR Reservoir, and for recreational access for the Hidden Mine Owners, according to the terms and conditions contained herein. The approximate location and dimensions of said easement and the location of the access road are depicted on the map attached as Exhibit A.

3. GRANT OF DITCH EASEMENT. For valuable consideration, Amstar hereby creates, grants and conveys to Hidden Mine a non-exclusive, perpetual easement over and across the portion of Amstar Property described in Exhibit A for the purpose of operating, maintaining, and repairing the HMR Ditch and Pipeline, and HMR Reservoir, the approximate location and dimensions of which said easement being are depicted on the map attached as Exhibit A, and which is more particularly described as follows (the Ditch Easement):

3.1 An area 50' on each side of the constructed HMR Ditch and Pipeline, and 50' from the high water line of the HMR Reservoir;

3.2 Together with the right to travel over and across the existing roadways identified on the real property described in Exhibit A to access the HMR Ditch and Pipeline and HMR Reservoir; and

3.3 Together with such area as may otherwise be reasonably necessary to access the headgate and the HMR Ditch and Pipeline, the outlet and dam structure of the HMR Reservoir, to the extent access is not afforded by the areas described in Paragraphs 3.1 and 3.2.

4. USE OF EASEMENT. The Parties agree to the following terms concerning the use of the Ditch Easement:

4.1 Subject to the provisions in paragraph 4.2 below, Hidden Mine shall be entitled to access the Ditch Easement described in paragraphs 3.1 and 3.2 above in such manner as may be reasonably necessary for the stated purposes of the Ditch Easement, including, without limitation, access to and use therefor by foot, ATV, horseback, and construction equipment. The members of the Hidden Mine Ranch Owner's Association shall also have a right to access the HMR Ditch and Pipeline as well as the HMR Reservoir for recreational and fishing access.

4.2 Hidden Mine covenants and agrees that in using the Ditch Easement:

4.2.1 It will disturb the land described in paragraphs 3.1 and 3.2 above to the minimum extent possible;

4.2.2 It will close all gates immediately following passage;

4.2.3 It will immediately and fully repair all fences or other structures damaged by it when operating, maintaining and repairing the HMR Ditch and Pipeline;

4.2.4 It will enter onto the Ditch Easement described in paragraphs 3.1 and 3.2 above at reasonable times; and

4.2.5 It will conduct all operation, maintenance and repair activities at its sole cost and expense, and in accordance with sound husbandry practices.

4.2.6 In order to minimize disturbance to the land, it will not attempt to utilize any equipment or vehicles which are larger than reasonably necessary to accomplish the purposes, identified in paragraph 3 above, for which the Ditch Easement is granted.

4.3 Amstar will take no action within the Ditch Easement area that would impair the operation, maintenance or repair of the HMR Ditch and Pipeline for the delivery of water decreed thereto.

4.4 Only for so long as Amstar owns the Amstar Property, in the event Hidden Mine does not maintain and keep the HMR Ditch and Pipeline and HMR Reservoir in good operating condition, Amstar shall provide HMR notice of the deficiencies and a plan for repair. If Hidden Mine does not begin to correct the deficiencies within thirty (30) days, weather permitting, completing deficiencies in fifteen (15) days, upon ten (10) days prior notice from Amstar, Amstar may complete the plan for repair. Hidden Mine shall be responsible for any costs of maintenance and repair determined to be necessary by Amstar for the HMR Ditch and Pipeline and HMR Reservoir. Hidden Mine will promptly or within thirty (30) days, reimburse Amstar for all costs incurred to maintain and/or repair the HMR Ditch and Pipeline, and HMR Reservoir, should Hidden Mine fail to complete its obligations under this paragraph. Upon the sale of the Amstar Property by Amstar, the rights of Amstar under this paragraph 4.4 shall revert to Hidden Mine.



5. As further consideration for the grant of easements herein, Hidden Mine has adopted a rule and regulation under Section 6 of the Declaration of Protective Covenants at Reception No. 579839 that limits the use of the Trail Easement on Lots 6, 8, 10 and 11, Hidden Mine Ranch under the Plat at Reception No. 579840 for pedestrian, bicycle and equestrian use only.

6. NON-EXCLUSIVE EASEMENT. The Ditch Easement is a non-exclusive easement, and Amstar specifically reserves the right of co-use of the Ditch Easement area for any purposes consistent with the grant herein contained.

7. APPURTENANT EASEMENT. The easement herein granted shall be appurtenant to the HMR Ditch and Pipeline Water Right, and to the real property described in Exhibit A.

8. RUNNING OF BENEFITS AND BURDENS. All provisions of this Agreement, including all benefits and burdens, shall run with the lands of the Parties, and are binding upon and shall inure to the benefit of the heirs, assigns, successors and personal representatives of the Parties.

9. BINDING AGREEMENT. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

10. ATTORNEY FEES. If any action is brought in a court of law by either party as to the enforcement, interpretation or construction of this Agreement, the prevailing party in such action shall be awarded reasonable attorney fees as well as all costs incurred in the prosecution or defense of such action.

11. ENTIRE AGREEMENT. This written Agreement contains the entire and only agreement between the parties, and no oral statements or representations not contained in this Agreement shall be of any force and effect between the parties.

12. AMENDMENT AND VALIDITY. No addendum, amendment, change or modification of this Agreement shall be binding between the parties unless in writing and executed by the parties hereto.

13. SEVERABILITY. If any portion of this Agreement, or amendment thereto, shall be held invalid or contrary to law, such portion shall be severable from this Agreement and the remainder of this Agreement shall remain in full force and effect and shall be valid and enforceable between the parties.

14. APPLICABLE LAW. This Agreement is executed in Gunnison County, Colorado, and shall be interpreted, construed and governed by the laws of the State of Colorado.

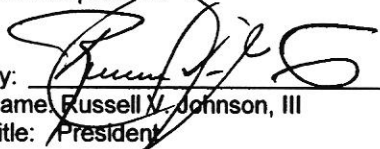
15. JURISDICTION AND VENUE. Jurisdiction and venue of any action as to this Agreement, and the interpretation, enforcement, construction or the determination of the rights and duties of the parties hereto, shall be the District Court of Gunnison County, Colorado. Executed the date first above written.

Executed the day and date first above written.



HIDDEN MINE RANCH OWNERS  
ASSOCIATION, INC., a Colorado non-  
profit corporation

AMSTAR HOMES, INC.,  
a Colorado corporation

By:   
Name: Russell V. Johnson, III  
Title: President


By:   
Name: David R. McEntire  
Title: President

STATE OF OKLAHOMA )  
 ) ss.  
County of OKLAHOMA )

The foregoing instrument was acknowledged before me this 28<sup>TH</sup> day of MARCH, 2017, by Russell V. Johnson, III as President of Hidden Mine Ranch Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.  
My commission expires:



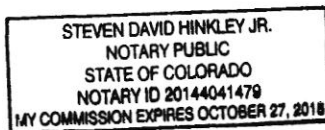
  
Notary Public

STATE OF COLORADO )  
 ) ss.  
County of Douglas )

APR The foregoing instrument was acknowledged before me this 5 day of APRIL, 2017, by David R. McEntire as President of Amstar Homes, Inc., a Colorado corporation.

Witness my hand and official seal.  
My commission expires: 10.27.18

  
Notary Public



# - Existing Easement Exhibit - Lot 5, Hidden Mine Ranch

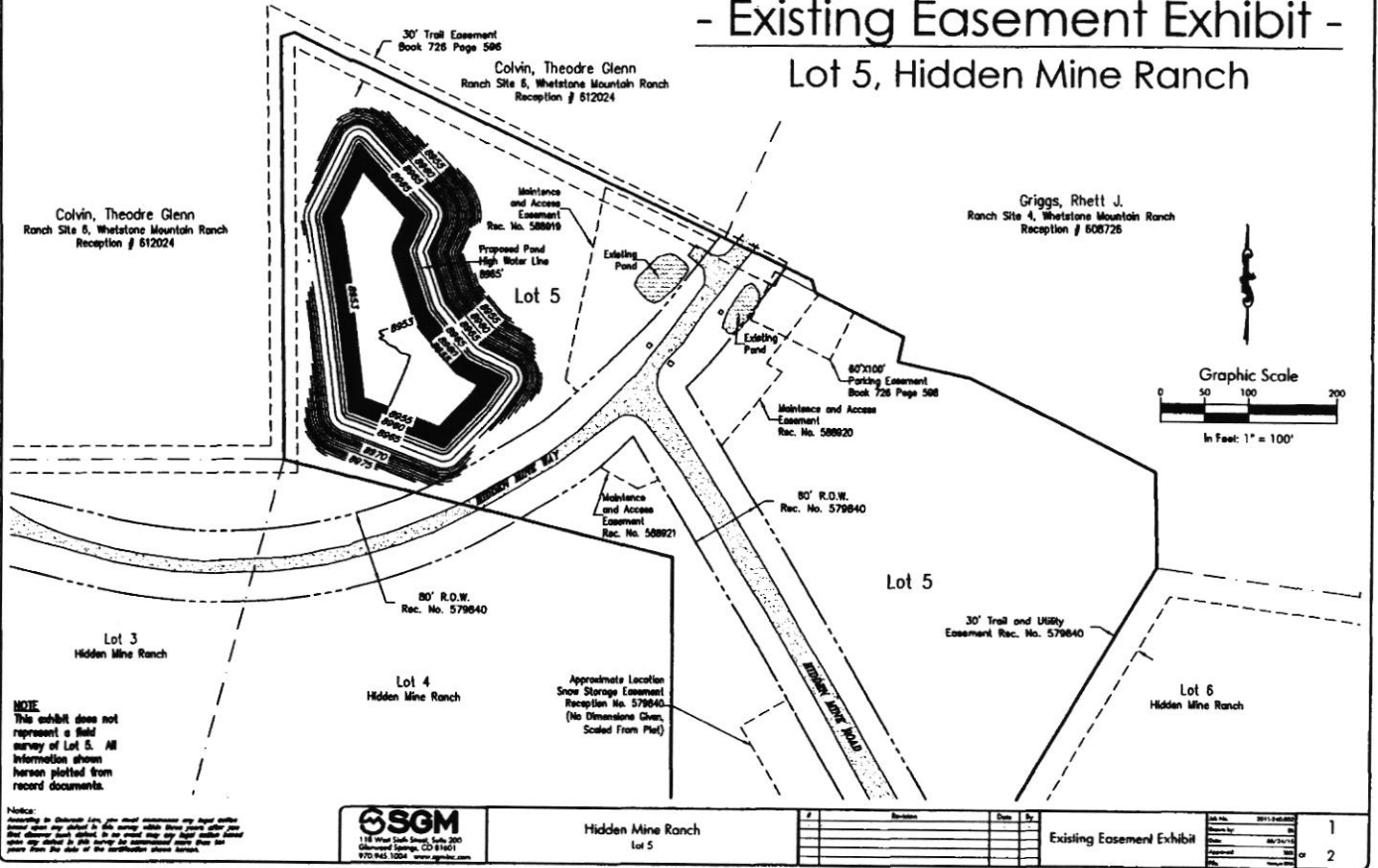


EXHIBIT "A"