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May 13, 2011

**PROPOSED DOCUMENT AMENDMENT
REVIEW AND REPORT
MICHIGAN HILL OWNERS ASSOCIATION, INC.**

STEP 1: DOCUMENTS REVIEWED

In preparation of this report, and the potential amendments to your documents as may be sought, we have reviewed the following documents:

1. Declaration of Protective Covenants Michigan Hill Ranch recorded August 19, 1980 at Reception No. 289111 in Book 314 at Page 482.
2. Articles of Incorporation of Michigan Hill Owners Association, Inc. filed with the Colorado Secretary of State on January 15, 1980.
3. Michigan Hill Owners Association Amended By-Laws (Amended and dated December 1, 2007).

This Report does not include any title research or verification of maps, plats, annexations, amendments, supplements or legal descriptions. Should you wish for this work to be completed, such fees will be billed at our hourly rates and any costs from title companies or other agencies will be billed as an expense.

STEP 2: OVERVIEW OF GOVERNING DOCUMENTS

Declaration: The declaration (a/k/a CC&R's or Covenants) establishes, defines, and limits the property rights of owners and is recorded in the office of the clerk and recorder of the county in which the community is located. The recording ensures the terms of the declaration bind all present and future owners. Ideally, a declaration should contain the following:

- Specification of ownership of community components between the individual owners and association;
- A funding mechanism (such as assessments) for the purposes of maintaining and governing the community;
- Protective standards, restrictions, and obligations in areas ranging from architectural control to prohibitions on various activities;
- A plan for transition of control of the association from the developer to the owners.
- Definition of rights and a clear separation of responsibilities of owners and the association with respect to assessments, maintenance, insurance, common elements/common area, and modifications within the community.

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Articles of Incorporation: The articles of incorporation establish an association's corporate structure, and are filed with the Colorado Secretary of State's office. The articles of incorporation:

- Bring the corporation into existence;
- Define its basic purposes and powers;
- Indicate there must be a board of directors and identify the initial board; and
- Limit the personal liability and directors and officers.

Bylaws: The bylaws establish governing regulations for the administration and management of a community association and provide an "operating manual" for corporate action. Bylaws are not generally recorded with the Clerk and Recorder or filed with the Secretary of State and set forth in detail processes for the association's operations, such as:

- Requirements for membership in the community association;
- Requirements for membership of the board and board meetings;
- Voting rights of members;
- Procedures for electing the board of directors;
- Procedures for the board of directors to elect officers; and
- General powers and duties of the board.

STEP 3: FIND OUT WHAT IS REQUIRED TO AMEND

We are informed that the number of Lots in the Community is currently 275.
Quorum is currently 1/2 of the entire membership (138 Owners).

What are the consent or voting percentages required for amendment?

Articles: No requirement established in the current Articles. Colorado law permits amendments to the Articles with the affirmative vote of a majority of the Members present and voting, in person or by proxy, at a duly constituted meeting of the Members.

Bylaws: (1) For amendments not changing voting rights or procedures: Majority vote of those Members present and represented by proxy at an annual meeting.

(2) For amendments changing voting rights or procedures: Affirmative vote of 2/3 of votes cast at a regularly called general membership meeting.

Declaration: Written consent of a majority of the Owners.

STEP 4: DETERMINE IF AMENDMENT IS NEEDED AND MAKE A WISH LIST

Take a close look at how your Association operates. Do you have the tools you need to enforce covenants? To recover attorney fees? To accumulate funds for replacement and/or improvements? Do your covenants contain use restrictions that are no longer desirable? Are there use restrictions which you would like to add?

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The following bullet points outline the details of your governing documents which we believe you should consider addressing through any proposed amendments. This list can be used as a starting point for you to begin to create your own wish list. If you decide to proceed with proposed amendments, there are a number of options which are mentioned. You should let us know what you like or dislike and what you would wish for if your covenants could say anything you wanted. Keep in mind the approvals required to accomplish amendments (see Step 2 above).

Articles of Incorporation

- Your Articles do not contain a limitation of personal liability allowed by state statute. The Articles should be amended for this reason alone.
- Your Articles of Incorporation do not contain adequate powers and duties of the Board of Directors. We recommend an update and revision of your Articles so that the Association has broad powers on which it may rely, as well as the more specific powers set forth in the Declaration and Bylaws.
- We recommend that you specify a range of the permissible number of Directors in the Articles of Incorporation. A specific number within this range can then be established in the Bylaws.
- References to the original members of the Board of Directors can and should be removed.
- Your Articles do not contain an amendment requirement. Colorado law permits amendments to the Articles to be approved by a majority of the Members present and voting, in person or by proxy, at a duly constituted meeting of the Members. We recommend this requirement be added to your Articles for future amendments.
- Your Articles do not contain a provision regarding dissolution as is presently required by the Colorado Revised Nonprofit Corporation Act.

Bylaws

- Your Bylaws do not contain an indemnification clause which adequately protects the Board to the fullest extent permitted by law. We recommend amending your Bylaws for this reason alone.
- Your election vote provision should be revised to require contested Director elections to be conducted via secret ballot. This is now required by Colorado law.
- If Members remove one or more Directors, Colorado law requires the Members elect Directors to fill the vacancies caused by the removal. This provision should be added to clarify who may replace removed Directors.
- You may wish to expand Director qualifications to require Directors to be current in payment of Assessments and in compliance with all Governing Documents.

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- The Colorado Revised Nonprofit Corporation Act allows for Board action without a meeting of the Board. Your Bylaws should be revised to add such provisions.
- The Colorado Revised Nonprofit Corporation Act also allows directed proxies from one Director to another Director if allowed for in the Bylaws. You should consider adding this authority in your Bylaws since all Directors may not be present at all meetings.
- The powers and duties of the Board should be expanded to give the Board all powers and duties permitted by Colorado law.
- Officer provisions in your Bylaws should be expanded to set forth duties, terms, qualifications, removal, and resignation procedures.
- Your Bylaws require the Design Guidelines to be recorded and to be attached to the Bylaws. We do not recommend recording the Design Guidelines or Bylaws as each time they change they will need to be re-recorded. Further, we do not recommend attaching the Design Guidelines to the Bylaws as they should be able to be changed by the Board/ committee without the need to seek owner approval of the same and to avoid having to attach new versions to the Bylaws each time they are changed.
- Current statutes allow for a minimum of 10 days notice of meetings. You currently have a 30 day notice requirement. This can be lowered if you choose. Additionally, you may wish to set a maximum notice period. You currently do not have a maximum time frame in your Bylaws. Colorado law provides a maximum notice time frame of 50 days. This should be added to your Bylaws.
- Your Bylaws should contain a waiver of notice provision for Member meetings.
- Your Member meeting notice provision should be revised to additionally require physical posting of notice in a conspicuous place within the community. This is now required by Colorado law.
- Your quorum requirement of a majority of the total membership can be kept, lowered or increased if you choose; however, please note that the Members must vote on any amendment to the quorum requirement, pursuant to Colorado law.
- Unless otherwise provided in the Bylaws, the Colorado Revised Nonprofit Corporation Act permits Members to vote by regular mail. You should consider adding this provision to your Bylaws to set forth the statutory procedural requirements for voting by mail.
- Unless otherwise provided in the Bylaws, the Colorado Revised Nonprofit Corporation Act permits Members to conduct business electronically (i.e. conduct meetings via the internet, vote by electronic mail and allow digital signatures to documents). You should consider adding this provision to your Bylaws. However, please be advised that electronic notice cannot replace personal or mail delivery of notice to Owners.

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- Your current Bylaws do not contain any provisions permitting Owners to request a special meeting. This authority should be added to your Bylaws. Colorado law provides for Owners to request special meetings and the procedures for the same, provided the Owner request requirement cannot be higher than 20%.
- The Association has the right to suspend use of the common areas/recreational facilities for violations of the Governing Documents or for nonpayment of Assessments. However, Colorado law requires that prior to imposing a fine for covenant violations the Association must first provide notice and an opportunity for a hearing. These provisions should be added to your Bylaws.
- The Bylaw provisions regarding assessments and the specific use restrictions are more appropriately placed in the Declaration and should be removed from the Bylaws accordingly.
- The amendment requirements in your current Bylaws should be revised and clarified to comply with Colorado law. For instance, under Colorado law, the Board can amend the Bylaws without any Owner approval, except for amendments to quorum and powers and duties of the Board. Additionally, Bylaw amendments can be approved by a majority of the Members present at any duly constituted meeting (vs. having to be an annual meeting) of the Association under Colorado law.

Declaration

- Your current Declaration contains numerous references to the Subdivider (aka, "Declarant") and Subdivider Rights. These references can and should be eliminated.
- Your Declaration establishes an Architectural Control Committee. We recommend that the Committee be renamed the Architectural Review Committee instead, as it conveys a more positive image of the Committee.
- An appeal process for decisions of the Architectural Review Committee may be added.
- A variance provision can be added to build in some flexibility with regard to Architectural approval.
- You should consider adding a provision which specifies that an Architectural Control Committee decision in one instance does not create a precedent in other instances.
- You should add indemnification provisions to your Declaration to protect the Architectural Control Committee and specify that the Architectural Control Committee is not reviewing plans and specifications for compliance with Building Codes or for engineering soundness.
- Your current Declaration contains no provisions regarding insurance. Specific and general insurance provisions should be added to specify insurance obligations of the Owners and the Association.

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- You should consider revising your use restrictions to:
 - * move specific design requirements to the Design Guidelines instead of the Declaration so that they can then be revised by the Board of Directors
 - * establish landscaping restrictions which comply with Colorado law
 - * allow home occupations and permit some flexibility through rules and regulations
 - * bring your sign provision into compliance with CCIOA requirements
 - * bring your parking restrictions into compliance with Colorado law
 - * set forth a satellite dish/antenna provision which complies with FCC regulations
- You should add a provision expressly authorizing rules and regulations and consider expressly authorizing fines for violations of the same.
- The assessment provisions in the Bylaws and your current Declaration should be clarified and expanded to comply with Colorado law and to incorporate beneficial provisions.
- You should consider adding a provision to your Declaration which allows the Association to assess less than all Lots assessments based on benefit (i.e. maintenance which is specific to particular Lot or group of Lots instead of all Lots).
- Your collection rights can be expanded to expressly permit you to bid on a foreclosed lot at the sale. You should also have the right to accelerate and decelerate assessments which remain delinquent for a specified period.
- Your Declaration limits late charges to \$15 a month. We recommend that this limit be removed from the Declaration and instead be set forth in the Rules and Regulations or in a collection policy.
- Your Declaration and Bylaws do not authorize interest on late payments. We recommend this authority be added to your Declaration and that specific amounts be set forth in the Rules and Regulations or in a collection policy.
- Your Declaration does not address the "superlien" priority allowed under CCIOA, which allows the Association to place a priority lien before all other liens for up to six months of assessments. We recommend this authority be added to your Declaration.

STEP 5: SOLICIT COMMUNITY SUPPORT

As the Board determines to seek amendments and then approves the proposed form of the amendments, the Board should solicit and obtain community support. By receiving feedback from Owners early in the process, the Board will know if Members are satisfied with the amendment. Obtaining support also allows the Board to educate Members on the need for the amendment. That way, when the Board distributes consent forms, progress will not be delayed while Members are brought up to speed. Education can be done through informational meetings and printed materials, such as newsletters, flyers, and letters. The size of the Association, the number of on-site Members, and the proposed amendment itself - its length and complexity - will determine the Board's strategy.

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It is not enough to explain to Members why the amendment is needed. Also explain why the support of each Member is needed, particularly if the percentage required to approve the amendment is burdensome. Finally, don't forget to listen to your Members' comments. They may be able to point out issues the Board had not considered.

STEP 6: DEVELOP A STRATEGY

Without a clear strategy, amendments will probably not be approved. The Board's strategy will depend in large measure on the voting procedure required by the Association's documents. Generally there are two procedures: taking a vote at a meeting of the Members, or adopting the amendment by written consent.

If a meeting is required, you must consider legal issues such as notice and quorum requirements, and practical concerns, like the date, time, and location of the meeting. Attendance and participation must be as convenient as possible. The use of proxies will be critical for success. Lessons learned over the years from obtaining quorums for annual meetings will apply here.

STEP 7: MONITOR PROGRESS AND ADAPT TO CHANGES

For associations that only need written consent to amend the documents - not a formal meeting - developing a strategy is not enough. To be successful, the Board must also monitor its progress. What may have sounded reasonable and workable in the planning stage may be failing miserably.

The Board needs to keep current records as to which Members have consented to the amendment and when. It also needs to review all returned consents to make sure the signatures are properly notarized (if required) and match the Membership roster. The Board should set realistic goals and benchmarks to measure progress - for example, obtaining 50 percent of the consents one month after mailing them. It should follow up with all persons involved in obtaining consents and keep the community informed on the status of the process.

Finishing the project in 6 months is a good target. If a strategy is not working, adjust accordingly - lost momentum is nearly impossible to get back. The longer the project takes, the less likely it is to succeed. Don't hesitate to adopt a new plan if your current one is not working.

STEP 8: COURT SANCTIONED AMENDMENT OF THE DECLARATION

You may desire to seek court assistance to obtain approval for amendments to the Declaration. A portion of CCIOA, within C.R.S. §38-33.3-217, permits court sanctioned amendments to declarations. The following steps must be accomplished to take advantage of this statute allowing court sanctioned declaration amendments:

1. All owners must receive at least two notices (by any means consistent with the Colorado Revised Nonprofit Corporation Act) of the proposed amendment;
2. The Association must hold at least one member meeting (called and held in accordance with the Association's governing documents) to discuss the proposed amendment;

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3. At least half of the owners required under the existing Declaration must vote for the proposed amendment;
4. A Petition must be prepared and filed with the court requesting that the court approve the amendment. The Petition is required to include:
 - a. A summary of the procedures and requirements for amending the Declaration that are set forth in the Declaration,
 - b. The proposed amendment to the Declaration, the effect of and reason for the proposed amendment, including a statement of the circumstances that make the amendment necessary or advisable;
 - c. The results of any vote taken with respect to the proposed amendment;
 - d. Any other matters that the association believes will be useful to the court in deciding whether to grant the Petition; and
 - e. As exhibits, copies of:
 - i. The Declaration, as originally recorded, and any recorded amendments to the Declaration;
 - ii. The text of the proposed amendment;
 - iii. Copies of any notices sent pursuant to the requirements of the statute;
 - iv. Minutes from the owner meeting(s) held to discuss the proposed amendments ;
and
 - v. Any other documents that the association believes will be useful to the court in deciding whether to grant the Petition;
5. A hearing is scheduled on the Petition within 45 to 60 days after filing the Petition;
6. A notice of the Petition and notice of the hearing must be sent to owners and the declarant within ten (10) days after the hearing date is set; and
7. The court is required to grant the Petition unless 33% of the owners or the declarant objects to the amendment.

Obviously it is far better to obtain community support for Declaration amendments you may propose rather than looking to a court for assistance. A court sanctioned amendment should be viewed as a last resort rather than a mechanism for adopting controversial provisions which your community does not really want.

STEP 9: CERTIFY AND RECORD THE AMENDMENT

Your months of planning, drafting, community meetings, and door-to-door canvassing have at last paid off. The requisite number of Members have consented to the amendment. It's time to take that well-deserved vacation. Almost.

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Depending on the requirements in your governing documents and state statute, the Board may need to adopt the amendment in the form of a resolution. The president and secretary may need to sign it and certify the validity of its consents. The amendment should be recorded or filed where the Declaration was originally recorded, and the Association's counsel should seek to ensure that the Board has complied with all legal requirements.

Copies of the amendment should be mailed to all Association Members. Failure to follow the requirements set out in the governing documents or statutes may serve as grounds for challenging the validity or enforceability of the amendment at a later date.

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TIMING PROJECTION FOR PROPOSED AMENDMENTS

The following checklist may assist you in setting target dates to accomplish certain tasks:

Month One

- Meetings of the Board of the Association to adopt a resolution to proceed with the amendments and to discuss changes to governing documents.

Months Two-Three

- Draft the initial set of documents.
- Explain the amendments which the Association is undertaking in newsletters/Member meetings.
- Meeting of the Board and/or Committee and an attorney from HindmanSanchez P.C. to review, revise and comment on the proposed documents.
- Revisions to documents may be made within three weeks of receipt of comments. Documents finalized (assuming there is only one set of major revisions).

Months Four-Nine

- Special meeting of the Members to explain amendment process and anticipated changes.
- Make draft documents available to Members for review and comment.
- Finalize documents and distribute to Members.
- Begin to obtain consent of the Members for the amended documents.
- Meeting of the Board of Directors to establish a plan for solicitation of remaining consents, including door to door solicitation of Members and potential scheduling of special meeting of the Members.

Month Ten

- Instigate solicitation plan for obtaining the remaining owner consents.
- File petition seeking court approval of the proposed Amended and Restated Declaration (if using the court petition process).

Month Eleven

- Notices of the petition mailed to all owners and other (if using the court petition process).
- Meetings of the Members/or Board, are needed (if using the court petition process).

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Months Twelve-Thirteen

- Hearing on the petition/ruling of the court (if using the court petition process).

Month Fourteen

- Record Amended and Restated Declaration.
- File Amended and Restated Articles of Incorporation with the Secretary of State.
- Finalize and execute Amended and Restated Bylaws.

Month Fifteen

- Distribute all Amended and Restated documents to all owners.