

**FIRST AMENDMENT TO  
AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
BIG R COMMERCIAL PARK  
IN GARFIELD COUNTY, COLORADO**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BIG R COMMERCIAL PARK ("**First Amendment**") shall be effective upon recordation and is made as of January 31, 2024 by Big R Lot Owners Association, Inc., a Colorado nonprofit corporation (the "**Association**").

**RECITALS**

A. The Association was organized and exists to manage the affairs of the Big R Commercial Park Subdivision ("**Subdivision**"), a commercial subdivision located in Garfield County, Colorado.

B. The Subdivision is subject to that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions for Big R Commercial Park recorded May 13, 2020, at Reception No. 935330 in Garfield County, Colorado (the "**Restated Declaration**").

C. Pursuant to Article XIV of the Restated Declaration, the owner of Lot 1 of the Subdivision may resubdivide such Lot or condominiumize any buildings within Lot 1 and incorporate within the Association any such Lots or condominiums created.

D. The Owner of Lot 1 desires to subdivide Lot 1 into two separate Lots identified as Lot 1A and 1B on the minor subdivision plat recorded on Dec. 20, 2021, at Reception No. 968501 (the "**Lot 1 Plat**"), to incorporate Lot 1A and Lot 1B within the Association, and to amend the Restated Declaration to include appropriate provisions for the two separate Lots.

E. Section 15.02 of the Restated Declaration provides that the Restated Declaration may be amended by an instrument executed and acknowledged by Owners evidencing the approval of no less than sixty-seven percent (67%) of all votes entitled to be cast in the Association.

F. The Owner consents attached hereto as Exhibit A-1 and the certificate of the Association attached hereto as Exhibit A-2 confirm that the affirmative vote of the requisite percentage of the votes entitled to be cast have been obtained to amend the Restated Declaration by this First Amendment.

G. Capitalized terms not otherwise defined in this First Amendment shall have the meaning set forth in the Restated Declaration.

**NOW, THEREFORE**, in consideration of the recitals and premises contained herein, the Restated Declaration is amended as follows:

1. **Section 4.05 – Voting Rights.** Section 4.05 of the Restated Declaration is deleted in its entirety and replaced with the following:

4.05. **Voting Rights.** Appurtenant to ownership of Lots 3 through 10 is one (1) vote each, Lot 2 is two (2) votes, Lot 1A is one and one-half (1.5) votes, and Lot 1B is two and one-half (2.5) votes. Such votes are for the purpose of all Association matters regardless of whether one or more persons or entities own such Lot. Votes may not be voted in fractions. When more than one person holds an interest in the same Lot, all such Owners shall be members and the vote for each Lot shall be cast as the Owners thereof agree, but in no event shall more votes be cast for each such Lot than as set forth in the Restated Declaration. If the Owners of a Lot do not agree as to the manner in which their vote(s) should be cast when called upon to vote, then they shall be treated as having abstained.

2. **Exhibit C.** Exhibit C to the Restated Declaration is amended to read as set forth below. All references in the Restated Declaration or in this First Amendment to Exhibit C shall mean Exhibit C, as hereby amended.

<b>Lot Number</b>	<b>Allocation</b>
1A	10.725%
1B	17.875%
2	14.28%
3	7.14%
4	7.14%
5	7.14%
6	7.14%
7	7.14%
8	7.14%
9	7.14%
10	7.14%

3. **Section 11.01(a) & (b).** Sections 11.01(a) and 11.01(b) of the Restated Declaration are deleted in their entirety and replaced with the following:

(a) **Individual Wells.** Groundwater wells may be individually owned, permitted, and constructed on each of Lots 1A, 1B, and 2 through 10 (referred to as Big R Wells No. 1 through 10) for water service to the respective Lot in accordance with the following conditions. Currently, Lots 1A and 1B share the Big R Well No. 1, located on Lot 1B, pursuant to a Well Sharing Declaration recorded with the Lot 1 Plat. The well permit for said shared well shall be limited to the withdrawal of up to 25 gallons of water per minute with a maximum of 3.35 acre-feet per year for commercial use inside up to six units, lawn and landscape irrigation of up to 18,000 square feet, and outside vehicle washing. Use of water from the shared well by the Owners of Lots 1A and 1B shall be limited to the withdrawal of up to 25 gallons of water per minute and to those uses authorized above, allocated to each of Lot 1A and Lot 1B as follows: (i) Lot 1A: commercial uses inside two (2) units, irrigation of not more than 6,000 square feet of lawns

and gardens, and outside vehicle washing, with maximum annual water use not to exceed 1.12 acre-feet; (ii) Lot 1B: commercial uses inside four (4) units, irrigation of not more than 12,000 square feet of lawns and gardens, and outside vehicle washing, with maximum annual water use not to exceed 2.23 acre-feet. The Owner of Lot 1A may drill a new well on Lot 1A to serve Lot 1A, in which event: (a) the permit for said well shall be limited to 25 gallons of water per minute for the uses and amount allocated to Lot 1A herein above, and (b) the Owner of Lot 1B shall be required to re-permit or obtain a new permit for the well on Lot 1B that is limited to 25 gallons of water per minute and complies with the uses and amount allocated to Lot 1B herein above.

The permit for Lot 2 shall be limited to the withdrawal of up to 25 gallons of water per minute with a maximum of 2.24 acre-feet per year for commercial use inside up to four units, lawn and landscape irrigation of up to 11,850 square feet, and outside vehicle washing. The permits for Lots 3 through 8 and 10 shall each be limited to the withdrawal of up to 25 gallons of water per minute with a maximum of 0.96 acre-foot per year for commercial use inside one unit, lawn and landscape irrigation of up to 8,000 square feet, and outside vehicle washing. The permit for Lot 9 shall be limited to the withdrawal of up to 25 gallons of water per minute with a maximum of 1.51 acre-feet for commercial use inside one unit, lawn and landscape irrigation of up to 8,000 square feet, and outside vehicle washing for use on Lot 9 and for fire protection/storage use by the Association. The Owners of Lots shall each be entitled to use water from their respective well only for purposes authorized by the well permit and in accordance with the terms and conditions of the well permit; provided, however, that the Association shall be and is entitled to withdraw and use 0.55 acre-foot of water annually from the Big R Well No. 9, located on Lot 9, for fire protection purposes and to supply to the Subdivision fire protection system.

In lieu of individual wells, neighboring Lot Owners may, subject to private agreement between themselves, construct and operate a shared well that may be used to serve both lots. In the event of a shared well, the combined water production and uses of the well shall be limited to the combined amounts and uses for each lot, as set forth above. (For example, if Lots 3 and 4 share a well, the permit for such well shall be limited to withdrawal of up to 50 gallons of water per minute with a maximum of 1.92 acre-feet per year for commercial use inside two units, lawn and landscape irrigation of up to 16,000 square feet, and outside vehicle washing.) For so long as the shared well is permitted for the combined amounts and uses of both lots, the subject lots are prohibited from developing separate, individual wells on each lot.

(b) Ownership, Use, and Maintenance of Well. Subject to the well sharing provisions of part 11.01(a) above, the Owners of the Lots shall each own, appurtenant to their respective Lot, the full interest in their respective well, well permit, pump, and associated facilities for the withdrawal and use of water from each well; provided, however that the Association shall be and is entitled to withdraw and use 0.55 acre-foot of water annually from the Big R Well No. 9, located on Lot 9, for fire protection purposes and to supply to the Subdivision fire protection system. Each Lot owner is responsible to drill and install, at its own expense, the well, power source, meter, and other facilities in and to the well serving such Lot. Each Lot Owner shall be solely responsible, at its sole cost and

expense, to operate, maintain, repair, service, and replace its well, meter, pump, pipelines, and associated facilities and the well permit for such well.

4. **Section 12.01 – Access.** Section 12.01 of the Restated Declaration is deleted in its entirety and replaced with the following:

12.01 Access. The road identified on the Plat as Big R Road (now known as Gemat Circle) has been dedicated as a public right-of-way. The Association obtained two Colorado Department of Transportation Access Permits for the Subdivision. Public access to and from Big R Road is via State Highway 6 & 24 pursuant to Colorado Department of Transportation (“CDOT”) Access Permit No. 318105. Public access to and from Lots 1A and 1B is also currently available via State Highway 6 & 24 pursuant to CDOT Access Permit No. 399019. New permits in compliance with current CDOT regulations and the current State Highway Access Code (2 CCR 601-1) will be required as set forth below.

5. **Section 12.02(c).** Section 12.02(c) of the Restated Declaration is amended as follows:

The definition of Allocated Vehicle Trips in Section 12.02(c) of the Restated Declaration is hereby revised to state as follows:

Lot 1A = 10.725%, Lot 1B = 17.875%, Lot 2 = 14.28%, Lots 3 - 10 = 7.14% each (the “Allocated Vehicle Trips”).

6. **Section 12.02(e).** Section 12.02(e) of the Restated Declaration is deleted in its entirety and replaced with the following:

(e) The Owners of Lots 1A and 1B are responsible, at their sole cost and expense, for any traffic counts, traffic studies, new/revised permits, and any improvements necessary to comply with a new or amended permit providing access only to Lot 1A and Lot 1B, which costs and expenses shall be allocated between Lots 1A and 1B as follows: Lot 1A – 37.5%; Lot 1B – 62.5%.

7. **Section 12.03 – Maintenance of Big R Road.** Section 12.03 of the Restated Declaration is deleted in its entirety and replaced with the following:

12.03 Maintenance of Big R Road. Big R Road has been constructed as a public right-of-way identified on the final plat as Big R Road to Garfield County standards for a minor collector road. Actual average daily trips for a minor collector road cannot exceed 2,500. Lot limitations for actual average daily trips on Big R Road are as follows: Lot 1A-188; Lot 1B-312; Lot 2-400; Lots 3 through 10, inclusive-200 each. Once constructed, the Association has the right to conduct periodic traffic counts to determine that the Lot limitations are observed and to take any action necessary to enforce compliance with the limitations. The Association also shall maintain and repair Big R Road. Maintenance services for which the Association shall be responsible include, without limitation, snow and ice removal, sanding, resurfacing, striping, painting, and similar services, as well as

necessary landscaping. Expenses incurred pursuant to this Article XII shall be allocated as stated on Exhibit C, except as otherwise provided in Section 12.04.

8. **Section 12.04 – Maintenance of Easements.** Section 12.04 of the Restated Declaration is deleted in its entirety and replaced with the following:

12.04 **Maintenance of Easements.** The Association shall maintain and repair as necessary: (i) the Emergency Ingress/Egress as shown on the Plat; (ii) the Lot 1A and Lot 1B Private Access and Utility Easement and Emergency Access Easement created by the Lot 1 Plat (the “**Private Easement**”); and (iii) the Lot 9 well easement. Maintenance services for which the Association shall be responsible shall include, without limitation, snow and ice removal, sanding, resurfacing, striping, painting, and similar services, as well as necessary landscaping. The costs of maintaining the Private Easement shall be allocated only to the Owners of Lot 1A and Lot 1B as a separate assessment, with Lot 1A and 1B to pay such assessment as follows: Lot 1A – 37.5%; Lot 1B – 62.5%.

9. **Article XIV.** Article XIV of the Restated Declaration is deleted in its entirety and replaced with the following:

**ARTICLE XIV**  
**RESERVED RIGHTS FOR LOTS 1A, 1B, AND 2**

The Owner(s) of Lot 1B and Lot 2 shall have the right to resubdivide such Lot or condominiumize any buildings within Lot 1B and/or Lot 2 and to incorporate within the Association any such Lots or condominiums created. The Owner(s) of Lot 1A shall have the right to condominiumize any buildings within Lot 1A and to incorporate within the Association any condominiums created. Any resubdivision or condominiumization shall comply with the terms of the Restated Declaration, as amended, and the subdivision regulations of Garfield County then in effect, in accordance with Article 3 of the Restated Declaration.

10. **Effect of First Amendment.** Only those provisions of the Restated Declaration expressly amended or addressed herein are affected by this First Amendment; all other provisions of the Restated Declaration shall remain unchanged and in full force and effect.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, this First Amendment is approved and adopted pursuant to the Owner consents attached hereto as Exhibit A-1.

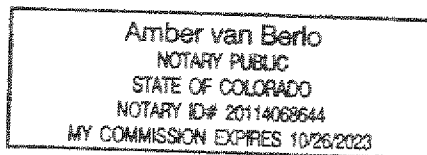
Big R Lot Owners Association, Inc.,  
a Colorado nonprofit corporation

By: [Signature]  
R. Lowell Walter, President

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Garfield    )

The foregoing was acknowledged before me this 16 day of November, 2021, by R. Lowell Walter, as President of Big R Lot Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal. My commission expires: 10/26/2023.



[Signature]  
Notary Public

**LIST OF EXHIBITS**

Exhibit A1 – Consents

Exhibit A2 – Certificate of the Association

**Exhibit A-1**  
**Consents**

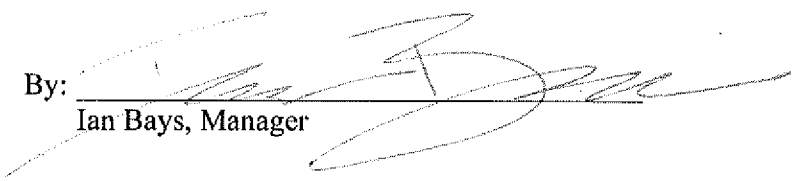
(Attached hereto)



The foregoing First Amendment to Amended and Restated Declaration of Covenants, Conditions and Restrictions for Big R Commercial Park was approved by the following owners of lots in the Big R Commercial Park Subdivision, which owners comprise at least 67 percent of all votes entitled to be cast in the Big R Lot Owners Association:

Owner of Lot 1:

**Rifle Real Estate Solutions I, LLC**

By:   
Ian Bays, Manager

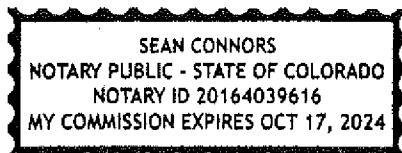
STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF Garfield )

Sworn to and subscribed before me this 7 day of December, 2021 by Ian Bays as Manager of Rifle Real Estate Solutions I, LLC.

My commission expires 10/17/2024.

Witness my hand and official seal.

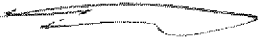
[SEAL]



  
Notary Public

Owner of Lots 2:

**Bebrem, LLC**

By:   
Name: R. Lowell Walter  
Title: President

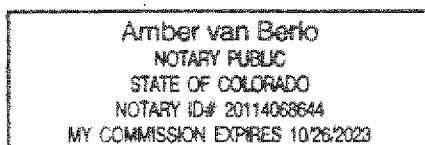
STATE OF COLORADO    )  
  ) ss.  
COUNTY OF Garfield )

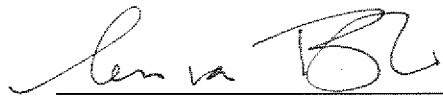
Sworn to and subscribed before me this 16 day of November, 2021 by  
R. Lowell Walter as President of Bebrem, LLC.

My commission expires 10/26/2023.

Witness my hand and official seal.

[SEAL]



  
Notary Public

Owner of Lot 3:

**Rifle Land Works LLC**

By: 

Name: R. Lowell Walter

Title: President

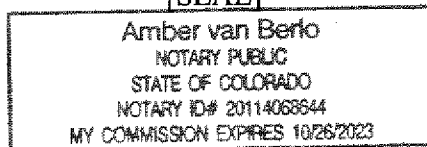
STATE OF COLORADO   )  
  ) ss.  
COUNTY OF Garfield   )

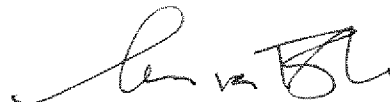
Sworn to and subscribed before me this 16 day of November, 2021 by  
R. Lowell Walter as President of Rifle Land Works LLC.

My commission expires 10/26/2023.

Witness my hand and official seal.

[SEAL]





Notary Public

Owner of Lots 6, 7, and 8:

**Quality Concrete LLC**

By: *Ignacio Mendoza*  
Name: Ignacio Mendoza  
Title: owner

STATE OF COLORADO )  
COUNTY OF Garfield ) ss.

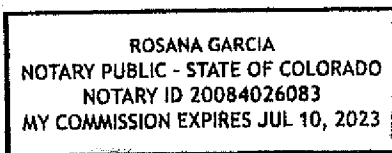
Sworn to and subscribed before me this 28<sup>th</sup> day of October, 2021 by  
Ignacio Mendoza as Owner of Quality Concrete LLC.

My commission expires Jul 10, 2023

Witness my hand and official seal.

[SEAL]

*Rosana Garcia*  
Notary Public



Owners of Lot 10:

Juvencio Gutierrez  
Juvencio Gutierrez

Guillermina Gutierrez  
Guillermina Gutierrez

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF Garfield     )

Sworn to and subscribed before me this 18<sup>th</sup> day of January, 2022<sup>xx</sup> by  
Juvencio Gutierrez and Guillermina Gutierrez.

My commission expires July 8<sup>th</sup> 2025.

Witness my hand and official seal.

[SEAL]

Katie Kellerby  
Notary Public

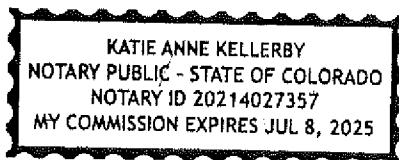


Exhibit A-2

**CERTIFICATION OF THE SECRETARY OF THE ASSOCIATION**

I, Dan Markoya, Secretary of Big R Lot Owners Association, Inc., hereby certify that the requisite number of votes were made in favor of amending the Restated Declaration as follows:

Owners:      FOR: ✓      AGAINST: \_\_\_\_\_

Big R Lot Owners Association, Inc.,  
a Colorado nonprofit corporation

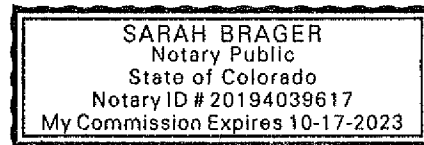
By: [Signature]  
Dan Markoya, Secretary

STATE OF COLORADO    )  
   ) ss.  
COUNTY OF Eagle    )

The foregoing was acknowledged before me this 2<sup>nd</sup> day of December, 2021, by Dan Markoya as Secretary of Big R Lot Owners Association, Inc., a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 10/17/2023.



[Signature]  
Notary Public