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Sent Via First Class Mail and Email: charlie.spencer@btrlacolorado.com

March 31, 2017

Board of Directors
Bear Trap Ranch Land Owners Association
c/o Charlie Spencer
PO Box 543
Divide, CO 80814

Re: Association Ownership of Roads

Dear Board:

You have asked me to provide advice as attorney for the Bear Trap Ranch Land Owners Association, Inc. (the "Association") regarding the Association's ownership of the private roads. In connection with this opinion, I have reviewed the Association's Articles of Incorporation, filed with the Colorado Secretary of State's office on December 31, 1971 ("Articles of Incorporation"), the Certificate of Good Standing issued March 30, 2017 (the "Certificate"), the Bylaws which were apparently revised and amended in 2014 ("Bylaws"), the Warranty Deed from A. Clark Keith Jr. and Bonnie Lou Keith to Bear Trap Ranch Land Owners Association dated January 25, 1972 and recorded in Book 217 at Page 137 of the real property records of Park County, Colorado ("1972 Deed"), and the Policy 2012-01 Road Works Policy ("Road Works Policy"). The foregoing items are collectively referred to as the "Governing Documents".

ISSUES

1. Do the documents demonstrate that the Association owns the private roads?
2. Does the Board have the power to regulate the maintenance and use of the private roads, including the Road Works Policy?

DISCUSSION

1. The Association is a Colorado nonprofit corporation in good standing with the Colorado Secretary of State.

The Association's Articles of Incorporation were filed with the Colorado Secretary of State on December 31, 1971, and so have been a matter of public record for more than forty years. The Colorado Secretary of State's official records demonstrate that the Association has continued as a nonprofit corporation during that period. The Certificate of Good Standing (copy attached to this letter) shows that the Association is currently a nonprofit corporation in good standing under the laws of the State of Colorado.

2. The Association's Governing Documents demonstrate the Association's ownership and control of the private roads.

Article III of the Articles of Incorporation, as filed with the Colorado Secretary of State, demonstrates that the Association was formed for the purpose "to provide recreation and recreational facilities and to own and maintain roads in or about or in the vicinity of that tract of land in Teller and Park Counties, Colorado, known as Bear Trap Ranch, pursuant to such rules, regulations and requirements as may be set forth in the By-Laws of the corporation" (emphasis added).

A Colorado court should uphold that purpose (as stated in the Articles of Incorporation) as the legal purpose of the Association to own and maintain the roads as the Association's property. The Articles of Incorporation further provide in Article IV that the Association shall have "all the powers" enumerated by the Colorado Revised Nonprofit Corporation Act (the "Nonprofit Act"); those powers are discussed below.

The Bylaws are another Governing Document of the Association; those Bylaws recognize the Association as a Colorado nonprofit corporation, and Section 7 of Article IV states that the Board of Directors has the power to:

"exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of these Bylaws, the Articles of Incorporation or the Declaration".

In particular, Section 8(d) of Article IV of the Bylaws states that the Board of Directors has the authority to:

"[a]rrange for and supervise the maintenance of Common Areas and of the Association roads. All maintenance expenses must be approved by the Board. In an emergency situation, where time is of the essence and in the absence of the Roads Chairman, the Roads Committee may spend up to \$500.00 for repairs for any single incident without prior approval."

Both the Articles of Incorporation and the Bylaws specifically recognize the Association's ownership and control of those private roads.

3. The Board has the power to adopt rules to regulate the private roads, including the Road Works Policy.

Other provisions of the Bylaws authorize the Board of Directors to adopt rules and regulations in connection with its exercise of all powers and authority of the Association. Based upon those provisions of the Bylaws, it is my understanding that the Board has adopted detailed provisions regarding the maintenance of the private roads. Those provisions are contained in the Road Works Policy, which sets forth in some detail regarding the maintenance of those private roads, including volunteer work by members. In my opinion, the Road Works Policy is a reasonable implementation of the powers provided to the Board of Directors acting on behalf of the Association pursuant to the Articles of Incorporation and the Bylaws. The Road Works Policy is rationally related to the Association's concern regarding insurance coverage for injury, damage to the roadways, and coordination of maintenance.

Numerous Colorado cases have upheld the authority of an association acting as a nonprofit corporation to adopt reasonable rules and regulations regarding its corporate property and its operations. For example, in a 1974 case, the Colorado Court of Appeals ruled that the board of directors of a nonprofit association could exercise its discretion and business judgment in regulating and changing the common areas owned by that association. Numerous Colorado nonprofit associations of property owners do provide road maintenance and do regulate the use of those private roads as owned by those associations. The Colorado cases and the Nonprofit Act, as discussed below, do recognize and uphold such ownership and maintenance by those nonprofit corporations.

4. As a Colorado nonprofit corporation, the Association has the statutory power under the Nonprofit Act to own and maintain the private roads.

The Nonprofit Act provides that nonprofit corporations in the State of Colorado have numerous powers, including the following:

“To purchase, receive, lease, and otherwise acquire, and to own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located”

Therefore, the Nonprofit Act recognizes that the Association has statutory power to own and maintain its own roads.

Furthermore, it is my understanding that the Association's ownership of its private roads has been recognized by various governmental officials, such as the property tax assessor, for many years. Such recognition has both legal and evidentiary support for the Association's ownership.

5. The 1972 Deed states that such deed conveys “all right, title, interest, claim and demand” regarding the private streets to the Association.

By its wording, the 1972 Deed states that A. Clark Keith and Bonnie Lou Keith convey the real property “described on Exhibit B attached” to “Bear Trap Ranch Land Owners Association”. That Exhibit B contains very lengthy legal descriptions of the conveyed real property which is labeled as “Sioux Drive, Shoshone Dr., Commanche Dr. (A Road), Bear Trap Ranch”. Therefore, the wording of the 1972 Deed appears to describe the Association’s private roads (however, there may also be some other roads described in other deeds or legal documents). The surveyor’s legal descriptions in Exhibit B are very specific, and the Board could hire a surveyor to stake/locate those specific boundaries and could request that a title insurance company provide an owner’s title insurance policy of its private roads, but such requests would most likely result in substantial costs to the Association. Based upon the 1972 Deed, the legal descriptions in Exhibit B sought to describe the Association’s private roads and the 1972 Deed sought to convey those private roads to the Association.

CONCLUSIONS

1. The Association is a duly incorporated Colorado nonprofit corporation in good standing, as shown by its Articles of Incorporation filed with the Colorado Secretary of State and the Certificate of Good Standing.
2. Pursuant to its Articles of Incorporation, the Association’s purpose was to own and maintain the private roads.
3. The Bylaws further provide that the Board of Directors may adopt policies to regulate those private roads.
4. The Road Works Policy appears to have a rational basis under the Articles of Incorporation and Bylaws. Numerous Colorado cases uphold rules by nonprofit homeowners associations to regulate private roads.
5. The Nonprofit Act provides statutory power for the Association to own, regulate and maintain the private roads.
6. The 1972 Deed states that it conveyed to the Association all “right, title and interest” regarding the real property described in Exhibit B. Exhibit B contains lengthy legal descriptions which appear to be some or all of the Association’s private roads.
7. In conclusion, it is my opinion that the Association, as a Colorado nonprofit corporation, has the power under its Governing Documents and the Nonprofit Act to own, regulate and maintain its private roads; that the Road Works Policy appears to be a reasonable rule for the operation and maintenance of its private roads; and that the 1972 Deed states that it conveys to the Association all right, title and interest to the real property which is described in lengthy legal descriptions on Exhibit B thereto and generally labeled as the private roads.

QUALIFICATIONS

The above opinion is subject to the following qualifications: My opinions are provided as attorney for the Association and do not constitute a guarantee of a particular result or conclusion to be obtained in litigation. Although I believe that my opinions are supported by the Declaration and other legal documents, an attorney cannot guarantee how a court would rule on a particular set of facts or circumstances after reviewing the testimony presented by witnesses, other evidence offered, and any applicable case citations. This letter is intended for submission to and use by the Board of Directors, and it is not intended for use in any other manner by any other person or persons. My opinions are limited, of course, to the facts, laws and matters described above. If the Board of Directors has any questions or desires any substantial legal work beyond this letter, please contact me.

Sincerely,

ANDERSON, DUDE & LEBEL, P.C.

A handwritten signature in black ink, appearing to read "Lenard Rioth". The signature is written in a cursive, flowing style.

Lenard Rioth
Special Counsel

LR:LP

Enclosures