

20 PAUL BOURGAIN

BK 3740 PG 813

2214416 BK 3740 PG 813-832
09/20/2004 09:58 AM
Janice Ward CLK&REC Mesa County, CO
RecFee \$100.00 SurChg \$1.00

*Comment
9/2*

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
RUBY CANYON ESTATES SOUTH**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR RUBY CANYON ESTATES SOUTH SUBDIVISION ("Declaration") is made and entered into this 26th day of August, 2004, by MACK MESA, LLC, a Colorado limited liability company, hereinafter referred to as the "Declarant."

RECITALS

Section 1. Declarant is the owner of certain real property situated in Mesa County, Colorado, known as Ruby Canyon Estates South, all as more specifically described on Exhibit "A" attached hereto and by this reference incorporated herein.

Section 2. Declarant desires to subject and place upon the Property described on Exhibit "A" certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein pursuant to the provisions of the Colorado Common Interest Ownership Act, as amended, ("Common Interest Act") for the purpose of creating a planned community and protecting the value and desirability of the said Property and for the purpose of furthering a plan for the improvements, sale and ownership of said Property.

NOW, THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which shall run with the above-described Property and be binding on all parties having any right, title or interest in the above-described Property or any part thereof, their heirs, personal representatives, successors and assigns and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean and refer to Ruby Canyon Estates South Homeowners Association, Inc., a Colorado non-profit corporation, its successors and assigns. The Association shall act by and through its Board of directors and officers. The fiscal year of the Association shall end on December 31 of each calendar year.

Section 2. "Architectural Control Committee" shall mean and refer to the committee as defined in Section 1 of Article VI hereof.

Section 3. "Declarant" shall mean and refer to MACK MESA, LLC, a Colorado limited liability company, its successors and assigns, if such successors or assigns should acquire more

than one (1) unimproved Lot from the Declarant for the purpose of development and resale, and said person or entity shall first be designated by MACK MESA, LLC, as a Declarant for said purposes by a written instrument duly recorded in the real property records of Mesa County, Colorado.

Section 4. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of Ruby Canyon Estates South, as the same may be amended from time to time.

Section 5. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any first mortgage or any successor to the interest of any such person under such first mortgage.

Section 6. "Lot" shall mean and refer to Lots 1 through 38, inclusive, shown upon any recorded subdivision of the Property or any portion thereof, as the same may be amended from time to time, together with all appurtenances and improvements now or hereafter thereon, with the exception of the Common Area as defined herein.

Section 7. "Dwelling" shall mean and refer to any residential improvement constructed within Ruby Canyon Estates South on Lots 1 through 38, inclusive.

Section 8. "Common Area" shall mean and refer to an irrigation system, delivery and maintenance, riding paths and open space shown upon any recorded subdivision of the Property exclusive of Lots 1 through 38, inclusive, and Rubi Canon Reservoir as defined herein.

Section 9. "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder and Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 10. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Lot, which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 11. "Property" shall mean and refer to that certain real property described in Exhibit "A" to this Declaration, together with such additions thereto, if any, as may hereafter be brought within the jurisdiction of the Association.

ARTICLE II PROPERTY RIGHTS

Section 1. Owners' Right of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owner shall have a non-exclusive right to enjoy and use the Common Area, the irrigation system and easements located upon the Property and such right shall be appurtenant to and shall pass with the title to every Lot. Common and open Area shall be owned and maintained by the Ruby Canyon South Homeowners Association, Inc., and shall not be re-subdivided or allowed to be used as residential home sites.

Section 2. Extent of Owners' Right. The right of enjoyment created hereby shall be subject to the following:

- a. The right of Ruby Canyon South Homeowners Association, Inc. (the "Association") to promulgate and publish rules and regulations with which each Member shall strictly comply.
- b. The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any assessment against the Member's Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations.
- c. The right of the Association to close or limit the use of the Common Area and easements while maintaining, repairing or making replacements thereto or in the event a Member has had his voting right suspended.
- d. The right of the Association to install, maintain and repair subdivision signage located within multipurpose easements.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of use to the members of his family, his tenants or contract purchasers who reside on his Lot.

Section 4. Use of Common Area.

- a. Any Owner may share his right of enjoyment to the Common Area with the members of his family, his licensees and invitees or may delegate it to his tenants or contract purchasers provided they all reside on the Property.
- b. No use shall be made of the Common Area that will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Common Area.
- c. No Owner shall engage in any activity that will temporarily or permanently deny free access to any part of the Common Area to all Members or shall any Owner place any structure or fence, except those installed by Declarant, whatsoever upon the Common Area.
- d. The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of directors of the Association.

Section 5. Rubi Canon Reservoir. Owners of Lots within the subdivision will have non-exclusive right of reservoir water for irrigation purposes of Lots and Common Areas of the Property. In addition, Owners of Lots shall enjoy the non-exclusive amenity of utilization of the reservoir for recreational purposes, subject to the standards, restrictions, supervision and enforcement by the Association. The Board of directors of the Association and Declarant shall

See First Amendment
for update of Section 5

initially establish guidelines and procedures with respect to the recreational utilization of the reservoir by the Lot Owners and shall biennially review, amend or modify said procedures. The ultimate determination as to the initial and amended guidelines and procedures shall rest solely upon Declarant. The Association Board of directors is acting in an advisory capacity only. Safety considerations and preservation of the reservoir as a natural state amenity are a first concern in this determination. Declarant may terminate the recreational utilization of the reservoir by Lot Owners at any time in Declarant's sole discretion without any compensation whatsoever to Lot Owners or the Association. Anything to the contrary notwithstanding, the ownership and control of Rubi Canon Reservoir shall remain and is vested in Declarant. Declarant shall own and control the reservoir and the water within the reservoir. Further, Declarant shall have the right to enlarge the reservoir within the area listed as open space on the plat. Declarant may use the water for hydroelectric generation or may convey the right to use the water for such purpose to another entity of Declarant's choice. Also, Declarant shall at all times have the right to restrict the use of certain areas of the reservoir.

Section 6. Insurance. The Association shall provide, at the sole expense of the Association, a commercial liability insurance policy for the protection of the Association and Declarant from claims and demands related to the Rubi Canon Reservoir and Common Area (open spaces.)

Section 7. Ownership of Tract A. Rubi Canon Reservoir is defined by and encompasses all of Tract A (open space) as depicted on the plat of Ruby Canyon Estates South Filing One recorded in the Mesa County (Colorado) Clerk and Recorder's Office. Ownership of Tract A, inclusive of Rubi Canon Reservoir, shall remain in title to Declarant. Declarant shall at all times have access to Tract A along and across the Property as reasonably required by Declarant. However, such access shall not include access along or across any Lot to which Declarant is not the Owner.

Section 8. Maintenance of Tract A. Maintenance of Tract A, inclusive of Rubi Canon Reservoir, is the responsibility of Declarant. However, the Association shall be required to contribute an annual fee subject to annual assessment in addition to other assessments of the Association for the maintenance required for Tract A. Declarant and the Board of directors shall establish this maintenance fee each year prior to the annual meeting of the Association.

Section 9. Trail Systems. Trail systems as defined on the plat of Ruby Canyon Estates South Filing One as Tract B and Tract C are to be conveyed to the Association and shall be maintained by the Association.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS: THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot that is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall be entitled to one (1) vote, and the vote for such Lot shall be exercised by the Owner or Owners as they determine.

See First Amendment
for update of Section 2

Section 2. Directors of the Association. The affairs of this Association shall be managed by a board of five (5) directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 3 below, the Board shall be managed by at least five (5) directors. The directors shall be Owners of a Lot within Ruby Canyon Estates South, and one (1) director shall be appointed by the Declarant.

Section 3. Management of the Association. From date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the first to occur of sixty (60) days after conveyance of two-thirds (2/3) of the Lots to Owners other than Declarant, three (3) years after the last conveyance of a Lot by Declarant in the ordinary course of business or five (5) years after the first sale of a Lot to an Owner other than Declarant. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event, Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association any property of the Owners and the Association held or controlled by Declarant, including without limitation those items specified in Section 303(9) of the Common Interest Act.

Section 4. Officers of the Association. The officers of this Association shall be as set forth in the Bylaws of the Association.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments as hereinafter provided. The annual assessments, together with interest, late charges, costs and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) on demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney fees. The Board of directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one (1) of the Board of directors or by the managing agent of the Association and may be recorded in the records of the Mesa County (Colorado) Clerk and

Recorder's Office. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for recording any notice of lien shall be added to the assessment for the Lot against which it is recorded and collected as part thereof. Each assessment, together with interest, late charges, costs and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass from them. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property and, to the extent not performed by any applicable governmental entity, for the maintenance and construction of the Common Area/open space and the pressurized irrigation water system serving the Property.

Section 3. Rate of Assessment. Annual assessments shall be fixed by the Board of directors of the Association at a uniform rate for all Lots (within the subdivision), shall be allocated to each Lot within the subdivision and shall be in an amount sufficient to meet the expected needs of the Association, including, but not by way of limitation, insurance payment, maintenance of Common Area and the needs and expenses of the irrigation pressure system. Each Lot shall bear its equal expense in connection with the irrigation pressure system regardless of whether the Owner or Owners of a Lot or Lots make use of the system. The assessments shall be due and payable with such frequency and on such dates as determined by the Board, but not more frequently than monthly. Any Owner purchasing a Lot between installment due dates shall pay a prorated share of the remaining installment due.

Section 4. Reserve Accounts. The Association shall have the right to maintain adequate reserve fund accounts out of the annual assessments for the repair and replacement of those elements of Association property that must be repaired or replaced on a periodic basis.

Section 5. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of eighteen (18) percent per annum, or at such lesser rate as may be set from time to time by the Association, and the Association may also assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

Section 6. Lien for Assessments.

a. Under the Common Interest Act, the Association has a statutory lien on a Lot for any assessments levied against that Lot and for fines imposed against its Owner from the time each assessment or fine becomes due. In addition, fees, charges, late charges, attorney fees, fines and interest charged pursuant to this Declaration or the Common Interest Act are enforceable as assessments. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

b. The statutory lien for assessments is prior to all other liens and encumbrances on a Lot except: (i) liens and encumbrances recorded before the recordation of this Declaration; (ii) a lien of a First Mortgagee which was recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Lot. Notwithstanding the foregoing, the statutory lien for assessments is also prior to the lien of a First Mortgagee to the extent of an amount equal to the assessments based on a periodic budget adopted by the Association which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution of an action to enforce the statutory lien.

c. The recording of this Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien or assessment is required, however, a claim may be recorded at the Association's option, in which event costs and attorney fees incurred in connection with the preparation and recording of such claim shall be assessed against the Owner's Lot as a default assessment.

**ARTICLE V
EXTERIOR MAINTENANCE**

Section 1. General. Except as otherwise provided herein, the maintenance and repair of each Lot, including but not limited to landscaping, the interior and exterior of the residence, improvements constructed thereon and any fence on the boundary line of a Lot shall be the responsibility of the Owner(s) thereof.

Section 2. Owner's Negligence. Notwithstanding anything to the contrary contained in this Article V, in the event that the need for maintenance or repair of the Association property is caused by the willful or negligent act or omission of any Owner or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owners Lot as provided in Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided

that any such determination that assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

**ARTICLE VI
ARCHITECTURAL CONTROL COMMITTEE**

Section 1. Composition of Committee. The Architectural Control Committee ("ACCO") shall consist of three (3) or more persons appointed by the Board of directors of the Association; provided, however, that until Declarant has conveyed all Lots to Owners other than the Declarant, or until three (3) years after the date of recording of this Declaration in the records of the Mesa County (Colorado) Clerk and Recorder's Office, whichever occurs earliest, Declarant shall appoint the Architectural Control Committee. A majority of the ACCO may, from time to time, designate a representative to act for it. The power of the Declarant to "appoint" as provided herein shall include without limitation the power to: initially constitute the membership of the Architectural Control Committee, appoint member(s) to the Architectural Control Committee upon the occurrence of any vacancy therein, remove any member of the Architectural Control Committee, with or without cause, at any time, and appoint the successor thereof; and each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Declarant. All improvements within the Property constructed by Declarant during the period in which it appoints the Architectural Control Committee shall be deemed approved by the Committee without the issuance of any writing evidencing such approval. The ACCO shall have the right to adopt Architectural Control Guidelines from time to time to assist Owners in applying for ACCO approval.

Section 2. Prior Approval. No buildings or exterior improvements of any kind shall be constructed, remodeled or altered in any fashion on any lands within the subdivision or may any vegetation be altered or destroyed or any landscaping performed unless two (2) complete sets of plans and specifications for such construction, alteration or landscaping are submitted to and approved by the ACCO prior to the commencement of such work. The ACCO shall at all times encourage and persuade Xeriscape landscaping. All applications shall be submitted to the ACCO in writing. If the ACCO fails to take any action within thirty (30) days after complete architectural plans and specifications for such work have been submitted to it, then all of such submitted plans and specifications shall be deemed to be approved. The ACCO may adopt rules and regulations for processing of such applications, including a reasonable processing fee.

Section 3. Noxious Weeds. Russian Napweed and Tamarisk have been identified within the subdivision. The napweed is particularly noxious. However, the napweed can be controlled by proper spraying and tamarisk can be removed and treated so as to not reappear. The Division of Pest Management in the Mesa County Tri-River Area Extension can advised how these weeds may be controlled.

Section 4. Septic Systems. Soils on the site of Ruby Estates South have limitations for septic systems. Consequently, geotechnical investigations should be conducted prior to the design of septic systems and final plans therefor approved by the Mesa County Health Department. Notwithstanding the construction of a septic system pursuant hereto, the Owner(s)

of each Lot within the subdivision shall be required to connect onto a sewer system when the same becomes available, at the cost and expense of the Owner. The ACCO shall determine when such connection will be required, and the Owner shall comply as directed.

Section 5. Plans. Plans and specifications submitted hereunder shall show the nature, kind, shape, height, materials, floor plans, location, exterior color scheme, alterations, grading, drainage, erosion control and all other matters necessary for the ACCO to properly consider and make a determination thereon. Submittals shall include a minimum of:

- a. One (1) inch = 101 scale site plan showing property boundaries, setbacks, no-build zones, if applicable, principal and accessory buildings, driveway location and width, surface drainage and fencing.
- b. Building elevations [four (4) views] and floor plans.
- c. Engineered foundation plans by a licensed engineer.
- d. Samples of roof and external materials along with field, trim and accent colors for principal and accessory buildings.
- e. Landscape plans shall be in a one (1) inch = 1 01 scale and shall include plant quantity and types, fencing, drainage, irrigation and other site improvements. The ACCO shall disapprove any plans and specifications submitted to it that are not sufficient for it to exercise the judgment required of it by these covenants.

Section 6. Variance. Where circumstances such as topography, location of trees, brush, rock outcroppings, area aesthetic considerations or other matters require or allow, the ACCO may, by two-thirds (2/3) vote, allow reasonable variances as to any of these covenants, including required sizes of structures, setback or side yard requirements, on such terms and conditions as it shall require. Opinions of adjoining property Owners shall be considered in any such decisions. A variance as permitted within this section must meet and be in conformance with Mesa County AFT zoning requirements and is subject to the Mesa County Land Development Code, as amended, and all approvals required thereunder.

Section 7. Best Judgment. The ACCO shall exercise its best judgment to see that all improvements, structures, landscaping and all alterations on the land within the subdivision conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siding, height, topography, grade, drainage, erosion control and finished ground elevations.

Section 8. Time. After approval of any plan by the ACCO, the same shall be completed with due diligence in conformity with conditions of approval, if any. Failure to adhere to any term of approval shall operate automatically to revoke the approval, and the ACCO may require the Property to be restored as nearly as possible to its previous state. The time for completion of any such work may be extended by the ACCO.

Section 9. Liability. The ACCO, the Declarant or any Owner shall not be liable in damages to any person, corporation or association submitting any plans and specifications or to any Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove any such plans and specifications. Any Owner submitting or causing to be submitted any plans and specifications to the ACCO agrees and covenants that he will not bring any action or suit to recover damages against the ACCO, the Declarant or any Owner collectively, its members individually or its advisors, employees or agents.

Section 10. Procedures. The ACCO shall approve or disapprove all requests for architectural control approval within thirty (30) days after the complete submission of copies of all plans, specifications and other materials that the ACCO may require in conjunction therewith. In the event that the ACCO fails to approve or disapprove any request within thirty (30) days after the complete submission of all plans, specifications, materials and other information with respect thereto, approval shall not be required, and this Article shall be deemed to have been fully complied with.

Section 11. Vote and Appeal. A majority vote of the ACCO is required to approve a request for architectural approval pursuant to this Article. An Owner may appeal the decision of the ACCO to the Board of directors if the Board is composed of different members than the ACCO, and, in such event, the decision of the Board shall be final.

Section 12. Records. The ACCO shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 13. Variances. The ACCO may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Article. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not mitigate against the general intent and purpose hereof. A variance as permitted within this section must meet and be in conformance with Mesa County AFT zoning requirements and is subject to the Mesa County Land Development Code, as amended, and all approvals required thereunder.

Section 14. Waivers. The approval or consent of the ACCO to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the ACCO as to any application or other matters whatsoever subsequently or additionally submitted for approval or consent hereunder.

Section 15. Right to Farm and Ranch Policy. With respect to properties adjacent to the Subdivision, Declarant endorses and adopts the Right to Farm and Ranch Policy presently adopted by Mesa County as part of its Land Development Code.

**ARTICLE VII
ALLOWED USES**

Section 1. General. All of said Lots shall be used only for residential purposes. Only detached, single-family Dwellings may be constructed on any Lot, and only one (1) per Lot. Every Dwelling shall have a private garage for no less than two (2) cars. Subject to ACCO approval, a caretaker or "mother-in-law" unit attached to the primary Dwelling shall be allowed if authorized under the then-existing zoning for the Property.

Section 2. Driveway. Each driveway shall have a driveway surface constructed sufficient to provide year-round access by emergency vehicles.

Section 3. Minimize Size. Each Dwelling shall have minimum dwelling space in the first floor, exclusive of open porches, patios, basements and garages, of not less than two thousand four hundred (2,400) square feet for ranch style and two thousand (2,000) square feet for multi-story Dwellings.

Section 4. Accessory Buildings. Detached accessory and storage buildings, barns and corrals must be approved by the ACCO. Construction of accessory or storage buildings and barns shall be similar to that of the principal Dwelling in color and style.

Section 5. Temporary Structures. No structure of a temporary nature, such as a tent, garage, trailer house, barn or other outbuilding or basement shall be used on any Lot at any time as a residence, either temporarily or permanently. All structures shall be of new construction built on-site. No mobile, modular or manufactured housing shall be allowed.

Section 6. Re-Subdivision. No Lot shall be re-subdivided except for lot line adjustments where no additional Lots are created.

Section 7. Trash. No Lot shall be used or maintained as a dumping ground for rubbish or storage area for junk. Trash, garbage or other waste must be kept in sanitary containers. All equipment for the storage or disposal of refuse shall be kept in a clean and sanitary condition. No noxious or offensive activity shall be carried on upon any Lot or shall anything be done or placed on any Property which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others or which may constitute a health hazard.

Section 8. Advertising. No signs, advertising devices or billboards shall be displayed within the subdivision unless written approval thereof is granted by ACCO, with the exception of one (1) "for sale" sign per Lot, which shall not be larger than eighteen (18) inches by twenty-four (24) inches, and except for signs used by the Declarant for subdivision advertisement and signs used by builders to advertise during the building and sale period.

Section 9. Screening. All clotheslines, implements, recreational vehicles, motor homes, boats, equipment, service yards, wood piles, storage piles or similar storage items shall be kept screened by adequate vegetation or fencing to conceal them from public and adjoining property

Section 3 amended
in First and again in
Second Amendment

See Third Amendment
for update of Section 9

or shall be stored wholly within the enclosed garage or accessory building located on the Lot. All screening plans shall be submitted to the ACCO for approval prior to construction.

Section 10. Roofs. Permitted roof coverings shall include: shake, cedar or cypress shake material, a minimum of twenty-five (25) years premium asphalt shingles, wood shingles, tile, slate or built-up roof materials where approved by the ACCO. Hipped roof style and character are encouraged along with a harmonic and integrated roofscape.

Section 11. Exterior Materials and Colors. Stains and paints shall be colors of subdued earth tones. No bright or garish colors, including white, shall be permitted on the exterior of any structure except that white is permitted for exterior door and window treatment. All exterior walls shall contain at least forty (40) percent brick, stone or stucco, exclusive of exterior windows and roof area. This will be measured on each exterior wall and not determined by an average of all walls.

Section 12. Height Restriction. For those Lots with height restrictions noted on the site plan, building height shall be measured from the finished primary entry floor level to the highest point of the structure except that chimneys, flues, vents or similar structures may extend two (2) feet above the maximum height. All Lot building pads shall not exceed three (3) feet above the highest point of the Lot grade existing prior to construction within the building foundation unless approved by the ACCO.

Section 13. Antennas. No towers or antennas shall be erected on any Lot that are higher than three (3) feet above the roofline of the highest structure on the Lot. Satellite reception dishes shall be allowed that are less than twenty-four (24) inches in diameter .

Section 14. Tanks. Propane tanks shall be buried underground. No elevated tanks of any kind shall be permitted.

Section 15. Lighting. All exterior lights and light standards shall be subject to approval by the ACCO for harmonious development and prevention of lighting nuisances. The preferred standard shall be opaque or diffused lenses and/or shades at thirty (30) degrees to the horizon.

Section 16. Recreational Vehicles. No snowmobiles, ATVs, go-carts, motorcycles or similar recreational vehicles shall be operated in the subdivision except that motorcycles may be utilized for transportation to public roads.

Section 17. Hazardous Activities. No activities shall be conducted on any Property and no improvements constructed on any Property that are or might be unsafe or hazardous to any person or Property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property; and no open fires shall be lighted or permitted on any Property (including burning of trash or rubbish) except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed fireplace and except for ditch or pasture burning in accordance with County requirements and restrictions.

See Second Amendment
for update of Section 11

Section 18. Utilities. All utilities shall be buried underground from their primary source adjacent to the Lot line at the Owner's sole expense.

Section 19. Wildlife. No hunting, shooting, trapping or otherwise killing or harming of wildlife shall be permitted in the subdivision, it being the intent hereof to conserve and protect all wildlife to the fullest extent possible. Wildlife is abundant within the subdivision, and fencing can impair the continuance of the presence of wildlife. Fences are available which have been field-tested. The Colorado Division of Wildlife, 711 Independent Avenue, Grand Junction, Colorado 81505, will provide information to any Owner or Owners.

Section 20. Drainage. No modifications or alterations shall be made in such manner that will obstruct, divert or otherwise alter the natural water drainage courses and patterns within the no-build zones as depicted on the recorded site plan, and no landscaping or changes to the existing terrain shall be made that shall obstruct, divert or otherwise alter such drainage. The ACCO shall strictly adhere to the prohibition of improvement and alteration of drainage courses and patterns within the no-build zones, and no variance to this requirement shall be granted.

Section 21. Landscaping. ACCO shall review for approval all landscaping and site plans. Irrigated areas on each Lot shall be limited to twenty thousand (20,000) square feet surrounding or near the Dwelling in order to protect and preserve the rural, pastoral and natural character of the Property. Xeriscape planting is encouraged together with natural grasses and vegetation.

Section 22. Fencing.

a. **Residential Fencing.** No fence of any kind shall be taller than six (6) feet with the exception of tennis court fencing, which shall require prior approval by the ACCO. Welded wire and open-wire, rectangular field fencing shall be permitted. Chain-link fencing shall be allowed for pet containment and tennis courts only if screened from the view of adjacent roadways and adjoining properties by vegetation or other material approved by the ACCO. All privacy and screening fences, including ornamental types and shall be within one hundred (100) feet of the foundation of the principal Dwelling, unless specific written permission is given by the ACCO for a variance. In determining whether permission should be given, the ACCO shall consider the topography, vegetation and desires of the neighborhood.

b. **Boundary, Intermediate and Common Area Fencing.** Boundary, intermediate and Common Area fencing shall be subject to prior written approval of the ACCO.

Section 23. Mining. No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 24. Noise and Odor. No sound shall be emitted on any Property that is unreasonably loud or annoying, and no odor shall be emitted on any Property that is noxious or offensive to others.

Section 25. Nuisance. No noxious or offensive trade or activity shall be carried on with any Lot or shall anything be done thereon that may be or become an annoyance or nuisance to the neighborhood. No Lot may be called for commercial purposes except for home occupations. "Home occupations" as used herein shall be defined as the term is defined in the regulations of Mesa County, Colorado, in effect on this date.

Section 26. Animals and Livestock. Livestock is limited to horses, cows and sheep and not more than a total of two (2) livestock [two (2) horses, two (2) cows or two (2) sheep or two (2) total livestock combinations] are permitted per Lot. All livestock must be maintained in a fenced area or otherwise limited to each Owner's Lot. No other farm animals are permitted. Each Lot Owner shall exercise good stewardship with respect to livestock and pets.

Section 27. Home Address Numbering. All Dwellings shall position address numbers to be plainly visible and legible from the street or road fronting the Property. Numbers shall contrast with their background and be no less than three (3) inches in height.

See Third Amendment
for addition of Section 28

ARTICLE VIII FIRST MORTGAGES

Section 1. Owner and First Mortgagee Approval. The Association shall not, unless it has obtained the prior written consent of at least sixty-seven (67) percent of the Owners and sixty-seven (67) percent of the First Mortgagees [based upon one (1) vote for each first mortgage owned]:

- a. By act or omission, change, waive or abandon any scheme of restrictions or enforcement thereof as set forth in this Declaration regarding the design or maintenance of the Lots or improvements thereon.
- b. Change the method of determining the obligations, assessments, dues or other charges, which may be levied against an Owner.
- c. Add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, which establish, provide for, govern or regulate any of the following, provided that any First Mortgagee who receives a written request to approve any additions or amendments to any such documents and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of such a request shall be deemed to have approved such request and provided that such additions or amendment shall not be considered material if they are for the purpose of correcting technical errors or for clarification only the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Property or the improvements thereon:
 - i. Voting;
 - ii. Assessments, assessment liens or subordination of such liens;

- iii. Insurance, including but not limited to fidelity bonds;
- iv. Rights to use of the irrigation distribution system;
- v. Responsibility for maintenance and repair of any portion of the irrigation distribution system;
- vi. Contraction of the Property or withdrawal of property from the Property;
- vii. Convertibility of Lots or Dwellings constructed thereon;
- viii. Leasing of Lots or Dwellings constructed thereon; and
- ix. Any provisions which are for the express benefit of First Mortgagees or insurers or guarantors of first mortgages.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the first mortgage and the residence address of Property, which is subject to such first mortgage, each such First Mortgagee or insurer or guarantor of such a first mortgage shall be entitled to timely written notice of:

a. Any condemnation loss or casualty loss, which affects a material portion of the Property or any Lot subject to a first mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor of a first mortgage.

b. Any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a first mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days.

c. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

d. Any proposed action, which would require the consent of a specified percentage of First Mortgagees as provided in this Article VIII.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as

amended, shall be by any proceeding at law or in equity against any person or persons, including without limitation the Association, violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and/or prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of the aforesaid documents in any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any of the covenants, restrictions or other provisions contained in this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. Easements. Easements for the installation and maintenance of utilities, irrigation and drainage facilities are reserved as shown on the recorded plat of the Property. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channels in the easements. Declarant hereby reserves the right to enter upon the Property to correct any flow of water and to establish and re-establish drainage channels.

Section 4. Conflict of Provisions. In case of any conflict between this Declaration, the Articles of Incorporation or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 5. Duration, Revocation, and Amendment.

a. Each and every provision of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date of recording of this Declaration after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as provided in Article VII hereof and in subsections (b) and (c) of this Section 5, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by any instrument approved in writing by not less than sixty-seven (67) percent of the Members. Such amendment shall be effective when duly recorded in Mesa County Colorado.

b. If Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any agencies, Declarant shall have and is hereby specifically granted the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of

Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's control or the Association.

c. Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration, Articles of Incorporation or Bylaws of the Association at any time prior to the termination of Declarant's control of the Association for the purposes of correcting spelling, grammar, dates, typographical errors or as may otherwise be necessary to clarify the meaning of any provisions of any such document.

d. All other amendments, if any, shall require the written consent of fifty-five (55) percent of the membership and a recorded amendment duly executed and notarized by such members.

e. The absolute rights of Declarant as identified in Article II, Section 6, "Rubi Canon Reservoir," are not subject to duration terms, revocation or amendment as otherwise identified within this Declaration. Rather, the ownership and control of Rubi Canon Reservoir is acknowledged as being fully vested in Declarant and Declarant's successors and assigns.

Section 6. Registration by Owner of Mailing Address. Each Owner shall register his mailing address with the Association, and except for statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. However, if any Owner fails to so notify the Association of a registered address, then any notice or demand may be sent to such Owner at the address displayed upon the improvements of such Owner's Lot, if any there be. All notices, demands, or other notices intended to be served upon the Board of directors of the Association or the Association shall be sent by, certified mail, postage prepaid, to Mack Mesa, LLC, c/o Mr. Jeffrey K. Williams, P.O. Box 2404, Grand Junction, Colorado 81502, until such address is changed by the Association.

Section 7. Expansion.

a. **Supplemental Declarations and Supplemental Plats.** Such expansion may be accomplished by the recording by Declarant in the Mesa County, Colorado, Clerk and Recorder's Office one (1) or more supplemental declarations setting forth the lots and other real property, if any, to be included in the expansion, together with any covenants, conditions, restrictions and easements particular to such property. The expansion may be accomplished in stages by successive supplements or in one (1) supplemental expansion.

b. **Expansion of Definitions.** In the event of such expansion, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property subject to this Declaration as so expanded. For example, "Lot" shall mean the Lot described in Section 6 of Article I plus any additional lots added by a supplemental declaration or declarations, and reference to this Declaration shall mean this Declaration as supplemented. All conveyances of Lots shall be effective to transfer rights in the Property as expanded. The

recordation in the real property records of Mesa County, Colorado, of a supplemental parcel map or maps incident to any expansion shall operate automatically to grant, transfer and convey to the Association any new Common Area added to the Property as the result of such expansion. The allocation for assessments shall be amended pro rata to reflect the increase in the number of lots added to the Declaration.

c. Declaration Operative to New Lots. The new lots shall be subject to all of the terms and conditions of this Declaration and of any supplemental declaration upon placing the supplemental parcel map(s) depicting the expansion property and supplemental declaration(s) of public record in the real property records of Mesa County, Colorado.

d. No Objection to Expansion. No Member of the Association shall have any right to the exercise of the developmental right set forth above including but not limited to the inclusion of a maximum of thirty-eight (38) Dwellings.

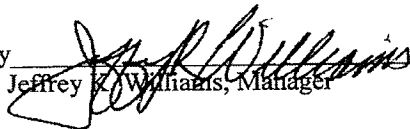
Section 8. Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns for access, ingress and egress over, in, upon, under and across the Common Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's or its designees' construction on the Property; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment or access by any Owner, an Owner's family members, guests or invitees to or of that Owner's Lot. Declarant, for itself and its successors and assigns, hereby retains a right to store construction materials on Lots owned by Declarant and to make such other use thereof as may be reasonably necessary or incidental for the purpose of completion or improvement of the Property, the performance of Declarant's obligations hereunder and the sale of the Lots. Any special Declarant rights created or reserved under this Article or elsewhere in this Declaration for the benefit of Declarant may be transferred to any person by an instrument describing the rights transferred and recorded in the records of the Mesa County, Colorado, Clerk and Recorder's Office. The rights of Declarant reserved in this Section 7 shall expire five (5) years after the recording of this Declaration. Such instrument shall be executed by Declarant and its transferee. Any rights granted to Declarant under this Declaration shall expire on the date that is ten (10) years from the recording date of this Declaration, unless otherwise provided herein.

**ARTICLE X
COVENANTS DISCLAIMER**

This Declaration has not been reviewed or approved by Mesa County or any governmental or quasi-governmental entity. Therefore, all alterations of the Property must comply with applicable zoning, code and conditions of approval by the governing municipality.

IN WITNESS WHEREOF, Declarant has hereunto set its hand and seal as of the day and year first above written.

MACK MESA, LLC

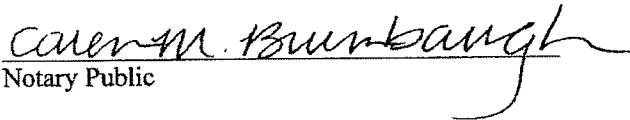
By 
Jeffrey K. Williams, Manager

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 26th day of August, 2004, by JEFFREY K. WILLIAMS, Manager of MACK MESA, LLC, a Colorado limited liability company.

WITNESS my hand and official seal.

My commission expires: 3/3/06.


Notary Public

1/3

3 PAGE DOCUMENT

**FIRST AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RUBY CANYON ESTATES – SOUTH**

**THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF RUBY CANYON ESTATES – SOUTH** is made
and entered into on the date hereinafter set forth by MACK MESA, LLC, a Colorado
limited liability company, hereinafter referred to as “Declarant.”

WITNESSETH:

WHEREAS, the Declarant executed a Declaration of Covenants, Conditions and
Restrictions for Ruby Canyon Estates - South on the 26th day of August, 2004 and
recorded on the 20th day of September, 2004, in Book 3740 at Page 813 in the records of
the Mesa County Clerk and Recorder’s Office;

WHEREAS, Article IX, Section 5(d), of the Declaration of Covenants, Conditions
and Restrictions for Ruby Canyon Estates - South provides that Declarant, as an owner of
more than fifty-five (55) percent of the Lots of the subdivision, may amend the
Declaration of Covenants, Conditions and Restrictions of Ruby Canyon Estates –South
by executing and recording an instrument setting forth the amendment; and

WHEREAS, Declarant desires to amend the Declaration of Covenants, Conditions
and Restrictions of Ruby Canyon Estates – South.

NOW, THEREFOR, in consideration of the recitals and premises contained
herein, The Declaration of Covenants, Conditions and Restrictions of Ruby Canyon
Estates – South is amended as follows:

1. Section 1, “Owners’ Right of Enjoyment,” of Article II, “Property Rights,” is
deleted in its entirety and fully amended to read as follows:

Section 1. Owners’ Right of Enjoyment. Subject to the provisions of Section 2
of this Article, every Owner shall have the non-exclusive right to enjoy and use the
Common Area, the irrigation system and easements located upon the property, and
such right shall be appurtenant to and shall pass with the title to every Lot. Common
and open area, with the singular exception of Tract A, shall be owned and maintained
by Ruby Canyon South Homeowners Association, Inc., and shall not be re-subdivided
or allowed to be used as residential home sites.

2. Section 5, “Rubi Canon Reservoir,” of Article II. “Property Rights,” is deleted in
its entirety and fully amended to read as follows:

Recorded by Meridian Land Title, LLC, RefNo. 1481

Section 5, "Rubi Canon Reservoir". Owners of Lots within the subdivision will have the non-exclusive right of reservoir water for irrigation purposes of Lots and Common Areas of the property. In addition; Owners of Lots shall enjoy the non-exclusive amenity of utilization of the reservoir for recreational purposes, subject to the standards, restrictions, supervision and enforcement of the Association. The Board of directors of the Association and the Declarant shall establish guidelines and procedures with respect to the recreational utilization of the reservoir by the Lot Owners and shall biennially review, amend or modify said procedures. The ultimate determination as to the initial and amended guidelines and procedures shall rest solely upon Declarant. The Association Board of directors is acting in an advisory capacity only. Safety considerations and preservation of the reservoir as a natural state amenity are a first concern in this determination. Declarant may suspend the recreational utilization of the reservoir by Lot Owners at any time in Declarant's sole discretion for repairs, maintenance, construction, wildlife preservation, safety or any other reasons determined by Declarant. Declarant shall not terminate full recreational use of the reservoir permanently or suspend recreational use for unreasonable periods of time. Declarant may terminate use of portions of the reservoir for safety or regulatory purposes. Suspension or termination by Declarant of recreational use of the reservoir by Lot Owners for purposes identified herein shall not result in any compensation to Lot Owners or the Association or right to set off by Lot Owners or the Association whatsoever. Anything to the contrary notwithstanding, the ownership and control of Rubi Canon Reservoir shall remain and is vested in Declarant. Declarant shall own and control the reservoir and the water within the reservoir. Further, Declarant shall have the right to enlarge the reservoir within the area listed as open space on the plat. Declarant may use the water for hydroelectric generation or may convey the right to use the water for such purposes to another entity of Declarant's choice. Also, Declarant shall at all times have the right to restrict the use of certain areas of the reservoir.

3. Section 2, "Directors of the Association," of Article III, "Membership and Voting Rights: The Association," is deleted in its entirety and fully amended to read as follows:

Section 2. "Directors of the Association". The affairs of the Association shall be managed by a board of three (3) directors (the "Board") initially. When Declarant relinquishes control of the Board to the Owners pursuant to Section 3 below, the Board shall be managed by at least five (5) directors. The directors shall be Owners of a Lot within Ruby Canyon Estates -South, and one (1) director shall be appointed by Declarant.

4. Section 3, "Minimum Size," of Article VII, "Allowed Uses," is deleted in its entirety and fully amended to read as follows:

Section 3. "Minimum Size". Each dwelling shall have a minimum dwelling space exclusive of open porches, patios, basements and garages, of not less than one thousand seven hundred fifty (1,750) square feet for single story dwellings and two thousand fifty (2,050) square feet for multi-story dwellings.

2 PAGE DOCUMENT

**SECOND AMENDMENT
TO THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
RUBY CANYON ESTATES – SOUTH**

THIS SECOND AMENDMENT TO THE DELARATION OF COVENANTS, CONDITIONS AND RESTRICTION OF RUBY CANYON ESTATES – SOUTH is made and entered into on the date hereinafter set forth by RUBY CANYON ESTATES HOMEOWNERS ASSOCIATION, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Ruby Canyon Estates – South was executed on the 26th day of August, 2004 and recorded on the 20th day of September, 2004, in Book 3740 at Page 813 in the records of the Mesa County Clerk and Recorder's Office;

WHEREAS, the First Amendment to the Declaration of Covenants, Conditions and Restrictions of Ruby Canyon Estates – South was executed on the 28th day of March, 2005 and recorded on the 7th day of April, 2005, in Book 3871 at Page 306 in the records of Mesa County Clerk and Recorder's Office;

WHEREAS, the Ruby Canyon Estates- South Homeowners Association, per Article 1.11 Action by Written Ballot of the Bylaws has solicited the vote by written ballot in accordance with said bylaws;

WHEREAS, the Ruby Canyon Estates – South Homeowners Association, per Article 1.6 Quorum and Voting has received votes from over 20% of the eligible voters and the vote has been cast to adopt the changes as presented in this Second Amendment;

NOW, THEREFOR, in consideration of the recitals and premises contained herein, the Declaration of Covenants, Conditions and Restrictions of Ruby Canyon Estates – South Homeowners Association is amended as follows:

1. Section 3, Minimum Size, "of Article VII, "Allowed Uses," is amended to read as follows:

Section 3. "Minimum Size." Each Dwelling shall have a minimum dwelling space exclusive of open porches, patios, basements and garages, of not less than two thousand four hundred (2,400) square feet for single story dwellings and two thousand fifty (2,050) square feet for multi-story dwellings.

2. Article VII. Section 11. "Exterior Materials and Colors. Stains and paints shall be colors of subdued earth tones. No bright or garish colors, including white, shall be permitted on the

exterior of any structure except that white is permitted for exterior door and window treatment. All exterior walls shall contain at least forty (40) percent brick, stone or stucco, exclusive of exterior windows and roof area. This will be measured on each exterior wall and not determined by average of all walls.

IN WITNESS WHEREOF, the undersigned representative for the Declarant has hereunto set its hand and seal as of the date and year hereinafter written.

Ruby Canyon Estates – South Homeowners Association

By: *Mike Motiff*
Mike Motiff, President

STATE OF COLORADO)
)ss
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 25th day of March, 2013, by Mike Motiff, President of Ruby Canyon Estates – South Homeowners Association.

WITNESS my hand and official seal.

My commission expires 08/25/15.

ANN ELIZABETH SLEVIN
NOTARY PUBLIC
STATE OF COLORADO

MY COMMISSION EXPIRES 08-25-15

Ann Elizabeth Slevin
Notary Public

**THIRD AMENDMENT
TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF RUBY CANYON ESTATES SOUTH**

This THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF RUBY CANYON ESTATES SOUTH ("Third Amendment") is made as of March 2, 2021, by the undersigned, being the owners of at least 67% of the lots in the RUBY CANYON ESTATES SOUTH SUBDIVISION.

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Ruby Canyon Estates South was executed on the 26th day of August, 2004 and recorded on the 20th day of September, 2004, in Book 3740 at Page 813 in the records of the Mesa County Clerk and Recorder's Office;

WHEREAS, the First Amendment to the Declaration of Covenants, Conditions and Restrictions of Ruby Canyon Estates South was executed on the 28th day of March, 2005 and recorded on the 7th day of April, 2005, in Book 3871 at Page 306 in the records of the Mesa County Clerk and Recorder's Office;

WHEREAS, the Second Amendment to the Declaration of Covenants, Conditions and Restrictions of Ruby Canyon Estates South was executed on the 25th day of March, 2013 and recorded on the 27th day of March, 2013, in Book 5450 at Page 252 in the records of the Mesa County Clerk and Recorder's Office;

NOW, THERFOR, in consideration of the recitals and premises contained herein, THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF RUBY CANYON ESTATES SOUTH is amended as follows:

1. Article VII, Section 9 is amended to read as follows:

Section 9. Screening. All clotheslines, implements, equipment, service yards, wood piles, storage piles or similar storage items shall be kept screened by adequate vegetation or fencing to conceal them from public and adjoining property or shall be wholly within the enclosed garage or accessory building located on the Lot. All screening plans shall be submitted to the ACCO For approval prior to construction. Two recreational vehicles, motor homes, utility trailer or boats per

lot may be unscreened or unfenced. All vehicles must be licensed and road-worthy. The ACCO reserves the right to periodically review and enforce compliance on this matter.

2. The following will be added as Article VII, Section 28:

Section 28. Irrigation Schedule. The Board of Directors shall have discretion to implement and enforce a watering schedule to allow each homeowner to have adequate pressure for watering. Any watering schedule will be published to all owners.

In all other respects, THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF RUBY CANYON ESTATES SOUTH, as amended by the first and second amendments, shall remain in full force and effect.

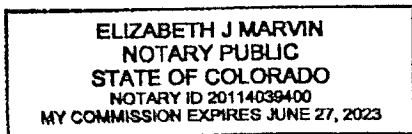
RUBY CANYON ESTATES SOUTH HOMEONWERS ASSOCIATION
A Colorado nonprofit corporation.

By: *J. A. Smith*
Print Name: Jeffrey A. Smith
Title: President BCHOA

STATE OF COLORADO)
) ss.
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this 2nd day of March, 2021 by Jeffrey Smith, as President of the Ruby Canyon Estates South Homeowners Association.

Witness my hand and official seal.
My commission expires: June 27, 2023



[Signature]
Notary Public