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RD 37867A03

**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR PONDEROSA RANCH SUBDIVISION**

THIS DECLARATION is made and declared as of this 7<sup>th</sup> day of April, 2003, by Matt Miles hereinafter referred to as "Declarant."

RECITALS

A. Declarant is the owner of certain real property situated in Montrose County, Colorado, known and described on the Plat attached hereto as Exhibit A and incorporated herein by this reference, hereinafter referred to as the "Properties";

B. Declarant desires to develop and improve the Properties as a planned community as defined in section 38-33.3-103(22), C.R.S., and subject the same to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Declarant hereby makes the following declaration of covenants, conditions and restrictions:

ARTICLE I  
DEFINITIONS

1.1 "Allocated Interests" shall mean and refer to the common expense liability and the ownership interest and votes in the Association as set forth in Sections 4.3.B. and 5.2 of this Declaration.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of Ponderosa Ranch Homeowners Association, Inc.

1.3 "Association" shall mean and refer to Ponderosa Ranch Homeowners Association, Inc., a Colorado nonprofit corporation, formed for the purpose of being and constituting the entity for the furtherance of the interests of the Owners of property in Ponderosa Ranch Subdivision and enforcing the restrictions set forth in this Declaration.

1.4 "Board" shall mean and refer to the Executive Board of the Association.

1.5 "Building" shall mean and refer to any Building, including all fixtures and improvements thereto, situate on the Properties.

1.6 "Bylaws" shall mean and refer to the Bylaws of the Association.



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1.7 "Common Elements" shall mean and refer to all of the Properties, including any Improvements thereto, *including but not limited to The common area sidewalks and detention pond and park.*

1.8 "Declarant" shall mean and refer to **Matt Miles**.

1.9 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.10 "Improvements" shall mean and refer to any and all Buildings, parking areas, fences, screening fences, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees, shrubs, signs, objects of art, mailboxes, irrigation facilities such as pumps, pipelines and sprinklers and other structures or landscaping of every type and kind situate on the Properties.

1.11 "Lot" shall mean and refer to that part of the Properties owned in fee simple by the Owners. The boundaries of each Lot, and an identifying number for each Lot, are reflected on the map attached hereto as Exhibit B.

1.12 "Member" shall mean and refer to a person or entity which is a member of the Association.

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

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1.14 "Plat" shall mean and refer to that certain plat of the Properties to be recorded in the ~~Mesa County Clerk and Recorder's official records.~~  
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1.15 "Properties" shall mean and refer to all of the real estate situate within the area described in Exhibit A, *excluding lot 39.*

ARTICLE II  
GENERAL DECLARATION

2.1 Intent. By making the Declaration hereunder, Declarant specifically intends to enhance, perfect and preserve the value, desirability and attractiveness of the Properties and, to provide for the maintenance of the Common Elements, Improvements and Buildings thereon in a manner beneficial to all Owners.

2.2 Estate Subject to Declaration. By this Declaration, Declarant expressly intends and does hereby subject the Properties to the provisions of the Declaration. All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted,



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created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding upon any person having at any time any interest or estate in the Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

2.3 Owners' Rights to Common Elements. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot subject to the provisions of this Declaration and the Articles and Bylaws of the Association. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities for the members of his family, his tenants, or contract purchasers who reside on the Properties.

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2.4 Recording Data. The recorded easements and licenses appurtenant to, or included in, the Ponderosa Ranch Subdivision, or to which any portion of Ponderosa Ranch Subdivision may become subject by virtue of a reservation herein will be found on the Plat to be recorded in the Mesa County Clerk and Recorder's Records. These easements include, but are not limited to, an easement for public use of a trail system over a portion of the Common Elements, a temporary construction ingress and egress easement, irrigation water access easements, utility easements and multipurpose easements.

Mesa Montrose

ARTICLE III  
RESTRICTIONS ON USE

3.1 Building Restrictions.

A. No Lots shall be used except for residential purposes. Only single-family dwellings, private garages for not more than three (3) cars, and other outbuildings directly incidental to residential use shall be erected, altered, placed or permitted to remain on any Lot. At no time shall there be more than one single family residential Building situate upon any Lot.

B. No HUD homes, mobile homes, trailer homes or other moveable structures shall be permitted as dwellings within the Properties. Only new, site-built Buildings and U.B.C. Modulares shall be permitted within the Properties. Further, no temporary Building or structure of any type whatsoever shall be used at any time for a residence, either temporary or permanent.



C. Ponderosa Ranch Subdivision is located in the City of Montrose. All Buildings shall meet or exceed applicable setbacks, standards and requirements. No Building shall be commenced, nor shall any Building be remodeled, without the issuance of a building permit by the City of Montrose.

D. Each Building shall contain at least One Thousand One Hundred (1,100) square feet of living space, excluding garages, porches, patios, decks and basements. Exterior siding of each Building shall be vinyl, color lock or other maintenance free material. Fascia boards and soffits may be of wood if they are painted or sealed. Each Building shall have a nominal roof pitch of 4:12. Each overhang shall be a minimum of twelve (12) inches. Wood decking on any Building must be sealed and not painted.

E. The resubdivision of Lots into smaller units is prohibited.

F. Once the construction of a Building has begun, construction of the Building must be completed and a certificate of occupancy must be obtained within twelve (12) months.

G. No more than one outbuilding shall be permitted per Lot. Outbuildings shall be constructed of the same materials and exterior finishes as the primary structure and shall resemble the primary structure in architectural style. Location of outbuildings shall be to the rear of the primary structure and shall be subject to the same setbacks as the primary structure.

3.2 Maintenance of Lots, Buildings, Improvements and Common Elements.

A. The Owners shall keep, maintain and repair their Lots, Buildings and Improvements, including landscaping and vegetation in a neat, clean, cultivated, attractive and well maintained condition, free from the accumulation of trash or debris or visual deterioration. Repairs for unsightly damage caused by fire or other casualty shall be completed within three (3) months from the date of the casualty. In the event the Owners fail to keep, maintain or repair their Lots, Buildings or Improvements in accordance herewith, the Association may conduct such maintenance, repairs or restoration and assess the cost thereof to the Owner(s) on whose Lot, Building or Improvements the maintenance or repairs were conducted as a reimbursement assessment pursuant to Section 5.4 hereof.

B. The Owners shall not cause or permit any damage, deterioration or the accumulation of trash and debris upon the Common Elements.

C. The Common Elements shall be owned in common by all of the Owners of the Lots and shall remain undivided. By the acceptance of his or her deed or other



instrument of conveyance or assignment, each Owner specifically waives his or her right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements. Each Owner agrees not to institute any action therefor. Furthermore, each Owner agrees that this section may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the complying Owner to personally collect, jointly and severally, from the parties violating the same, the actual attorneys' fees, costs and other damages the complying Owner incurs in connection therewith. Further, all Owners covenant that they shall neither by act nor omission seek to abandon, subdivide, encumber, sell or transfer the Common Elements without first obtaining the written consent of fifty-one percent (51%) of the Owners of the individual Lots. Each such Owner shall have one (1) vote for each Lot owned by it. Any such action without the written consent of such Owners shall be null and void.

D. Each Owner shall be entitled to exclusive ownership of his or her Lot. Each Owner may use the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners.

E. No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish or trash shall be allowed to accumulate on any Lot or the Common Elements. All garbage, rubbish and trash shall be placed and kept in covered, fly, rodent and scavenger proof containers. ~~All containers shall be kept within garages or enclosed backyards so as to not be visible from neighboring property, except to make the same available for collection during regular trash collection days, and then only for a period of from 7:00 A.M. through 8:00 P.M. on such trash collection day.~~ Owners shall ensure that trash containers are regularly emptied and that their trash is disposed of in accordance with any sanitary requirements established by local, state or federal authorities.

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All containers shall be kept next to the garage or behind a fence, except to make the same available for collection during regular trash collection days.

F. No elevated tanks of any kind, including but not exclusively oil, gas, and water tanks, shall be permitted.

G. The Association or Declarant, upon the failure of the Owner of any Lot, to maintain his/her Lot and Improvements, including the payment of any taxes assessed thereon, in a reasonable satisfactory manner as determined by the Association, or upon use by the Owner in a manner inconsistent with these covenants, may enter upon the site and repair, maintain, rehabilitate, and restore the Lot and/or Improvements, or abate the improper use, or pay the taxes thereon, and any costs incurred shall be charged against the Owner of said Lot and collected in the manner set forth in Article V hereof.

H. Driveways shall be surfaced with a hard surface such as concrete, asphalt, masonry pavers or similar materials.



I. Exterior lighting shall be incandescent and of low intensity, not to exceed seventy-five (75) watts. No high intensity lighting, such as high pressure sodium fixtures, mercury gas vapor fixtures or the like shall be allowed. Pole or wall mounted lighting fixtures shall not exceed ten (10) feet in height.

3.3 Home Occupations and Offensive Activities.

A. No Lot or Building may be used for commercial purposes of any type whatsoever, except that those home occupations which do not involve storage of inventories or goods outside of the residence or outbuildings and those home occupations which do not involve manufacturing will be permitted.

B. No obnoxious, offensive, or other activity which would constitute a public or private nuisance or annoyance to the neighborhood shall be permitted, including, but not limited to, the repair of automobiles other than minor tune-ups performed by an Owner on his own vehicle.

C. No firearms, illegal fireworks, explosives, air rifles, BB guns, crossbows or similar devices shall be discharged on the Properties.

3.4 Restrictions on Occupants and Pets.

A. At no time shall any single family residence be occupied by more than one family.

B. No Lot or Building shall be leased for occupancy by someone other than the Owner, unless the lease extends for a period of at least six months.

C. No animals shall be allowed other than domestic pets. Not more than two (2) pets in cumulative total shall be kept on the premises and only then if they are kept solely as household pets for private use and not for commercial purposes. No such animal may be kept which is a nuisance or annoyance to other Owners' property. Household pets shall be contained on their Owner's property or on a leash and not permitted to run loose. At the request of any Owner, the Board of the Association shall determine whether a particular animal shall be considered a household or yard pet, a nuisance, or whether the number of any such animals on any Lot is in compliance. Habitually barking dogs and vicious breeds are prohibited, at the sole discretion of the Association. Household pets shall be kept and raised only for private use and not for commercial purposes. No horses or livestock of any type shall be kept on any Lot. Household pets shall be under the control of their owners at all times. Members shall promptly clean up any droppings from public areas.

3.5 Parking.

A. All residences shall be constructed so as to provide sufficient hard surfaced off street parking to accommodate the household's vehicles. Owners shall use off street parking for their vehicles. Guest parking shall be permitted on the platted streets and roads of the subdivision.

B. No Lot roadway or easement shall be used as a parking, storage or accommodation area for any type of abandoned or junk vehicles or vehicles under repair. A vehicle shall be considered abandoned if it is non-operative for fourteen (14) consecutive days. If, within fourteen (14) days after receiving written notice from the Association, abandoned or junk vehicles are not removed by the owner, the Association may have the vehicles removed at the owner's expense.

C. Only those cars and trucks incidental to residential family use will be permitted within the Subdivision. Recreational vehicles shall be screened by fences, plantings or otherwise kept from public view. All vehicles operated within the subdivision must be "street legal," except that such vehicles may, for the purpose of transportation into or out of the subdivision, be operated for the purpose of loading or unloading onto or from trailers.

D. <sup>All</sup> ~~No~~ vehicles, boats, campers, trailers, snowmobiles, motorcycles or other recreational vehicles, devices or equipment, or vehicles used for business (other than normal passenger-type vehicles) shall be stored ~~or permitted to remain on the premises unless garaged, placed in an outbuilding or screened storage facility, or otherwise screened from view.~~ Recreational vehicles, boats and trailers shall not be parked on the streets adjacent to each Lot.

3.6 Landscaping.

A. During the course of construction, all precautions shall be taken to provide for a minimum disturbance of the land.

B. Each Owner shall grade, landscape and plant those portions of his Lot visible from the street within one (1) year after completion of construction of any Building on the Lot. A minimum of twenty-five percent (25%) of the front yard shall be planted with grass. At least one tree on each Lot shall have a minimum trunk diameter of one and one-half (1½) inches measured at one (1) foot above ground level. Vegetable gardens shall not exceed four hundred (400) square feet per lot. Greenhouses must be contiguous with the residential dwelling unit.

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designated parking  
area next to the  
house.

C. All vegetation shall be properly cultivated (including watering) and neatly trimmed. All equipment, including lawn and garden implements and waste containers, and all wood and storage piles shall be kept in an enclosed or screened area so as not to be visible from the street or from neighboring properties.

D. Should the Owner of any Lot fail to comply with landscaping guidelines as set forth herein, the Association may, at its sole discretion, cause such landscaping to be completed upon subject Lot and assess the Owner for all costs incurred.

E. No Owner shall remove, alter, injure or interfere in any way whatsoever with any tree, shrub or other landscaping or Improvement placed upon the Properties by Declarant or the Association.

F. No tree, shrub or planting of any type shall be permitted to overhang or otherwise encroach upon or above any easement created pursuant to this Declaration or the Replat such as to hinder, or interfere with the purposes for which such easement was created.

3.7 Signs. No sign of any kind (except decorative home identification signs) shall be displayed to the public view on any Lot except a sign of not more than four (4) square feet advertising the Lot for sale or rent, or signs used and erected by a builder to advertise the Property during the period when construction and sales of any dwelling occur.

3.8 Fences. Fences shall be no more than six (6) feet in height, except that chainlink fences shall not exceed forty-eight (48) inches in height. No fence shall be erected past the front corner of the house, except a rail, decorative fence not to exceed 36". There shall also be a space of at least 24" between back edge of sidewalk and fence on side yard of corner lots. Said 24" space shall be properly landscaped and maintained weed-free. All fences shall be properly maintained in a neat, orderly and attractive manner so as not to be visually unacceptable. All fence posts shall be vertical, straight and perpendicular to the ground and shall not be allowed to lean. All fences shall be of new materials and shall not be made of field wire or hog panels, except that wire mesh may be used for the purpose of kennel space for household pets.

3.9 Miscellaneous.

A. No Lot shall be used in any manner whatsoever to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substances or other mineral of any type.





B. All facilities for permanent utilities service shall be kept or maintained underground, or in the original condition at such time the Lot and Improvements thereupon are first conveyed to the Owner by Declarant.

C. No antenna, ariel or other apparatus for transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained out of doors, except that a satellite dish, or an antenna specifically covered by the Telecommunications Act of 1996, as amended from time to time, may be placed on a Lot or Building.

D. No hunting, shooting, trapping or harming of wildlife shall be permitted, it being the intent to conserve and protect all wildlife to the utmost.

E. No recreational vehicles, motorcycles, dirt bikes, off-road vehicles, etc. shall be operated in the development at any time except for ingress and egress to and from the development and upon established roads.

3.10 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents and contractors of improvements, structures or signs necessary or convenient to the development, sale, operation or other disposition of the Lots or Improvements situate within the Properties, provided that this exemption shall not be interpreted to impose limitations on the power of the Association to deal with Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons.

ARTICLE IV  
THE ASSOCIATION

4.1 Purpose and Membership. By acceptance of a deed to a Lot, each Owner shall be a member of the Association, which is a Colorado nonprofit corporation, organized for the general purpose of being and constituting an entity for the furtherance of the mutual interests of the Owners of the Properties pursuant to this Declaration and the Articles and Bylaws, including without limitation, enforcement of the Declaration; owning, repairing and maintaining the Common Elements; maintenance and use of any Lots, Buildings and Improvements; levying and enforcing assessments to defray the cost and expenses of operation; and, providing other utilities and services pursuant to the Articles and Bylaws. This is a Colorado Common Interest Community as defined by the Colorado Common Interest Community Act. The business of the Association will be conducted according to the Act.

4.2 Directors of the Association. The affairs of this 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 4.3.C., below, the Board shall be managed by at least three (3) directors. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

**4.3 Voting Rights.**

A. A membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

B. The Association shall have one class of voting membership, each Owner being entitled to vote one vote for each Lot owned upon matters subject to vote by the Members as provided in the Articles and Bylaws of the Association. A vote for each Lot shall be exercised as the Owner determines, but in no event shall more than one vote be cast with respect to any Lot.

C. 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 either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant or two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business. 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. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that may be created to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board must be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that may be created to Owners other than Declarant, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board must be elected by Owners other than Declarant. Within sixty (60) days after Owners other than Declarant elect a majority of the Board, Declarant shall deliver to the Association all property of the Owners and the Association held or controlled by Declarant, including, without limitation, those items specified in section 38-33.3-303(9), C.R.S. (1997).



4.4 Limitation Upon Liability.

A. Indemnification of Officers and Board Members. Neither the Association, any member of the Board, any officer of the Association, nor any agent or employee of the Association, shall be liable to any Owner or other person or entity for any action of for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without willful or intentional misconduct. The Association shall indemnify and hold harmless any member of the Board, any officer of the Association or any agent or employee of the Association from any and all reasonable costs, damages charges, liabilities, obligations, fines, penalties and claims, demands, or judgments and any and all expenses, including, without limitation, attorneys' fees, incurred in the defense or settlement of any action arising out of or claimed on account of any act, omission, error or negligence of such person or of the Association, the Board, or any committee of the Association, provided that such person has acted in good faith and without willful or intentional misconduct.

B. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Properties, the Association shall not be liable for injury or damage, other than the normal costs of the maintenance and repair, caused by any latent condition of the Properties or by the conduct of other Owners or persons or by casualties for which insurance pursuant to this Declaration is not required, or for which insurance is not provided by the Association.

4.5 Association Insurance. The Association shall be required and empowered to obtain and maintain the following insurance so far as such insurance coverage is obtainable:

A. Property insurance on the Common Elements and also on property that must become a Common Element for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

B. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board Member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties.

C. Insurance policies carried pursuant to both immediately preceding subsections of Section 4.5 must provide that:

(1) Each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(2) The insurer waives its rights to subrogation under the policy against any Owner or member of his household;

(3) No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

D. Workers' Compensation coverage upon employees.

E. Fidelity bonds to protect against dishonest acts on the part of those who handle receipt and disbursement of Association funds. Such bonds shall (1) name the Association as an obligee; (2) be written in an amount not less than Fifty Thousand Dollars (\$50,000.00); (3) contain waivers of any defense based upon the exclusion of persons serving without compensation from any definition of "employee" or similar expression; (4) provide that no modification in any substantial manner, or cancellation shall be had without thirty (30) days' prior written notice to the Association.

F. Such other insurance as the Board may deem desirable for the benefit of the Owners.

#### 4.6 Ownership and Maintenance.

A. The ownership, maintenance, repair and restoration of the Common Elements, together with Improvements thereon, shall be vested solely in the Association. The costs and expenses incurred for the purpose of owning, maintaining, repairing and restoring the Common Elements and Improvements thereon shall be borne by the Owners as a regular assessment as provided in Section 5.2, hereof.

B. The Association shall further be charged with the maintenance, repair and restoration to any Improvement situate on any Lot provided the Owner thereof fails to repair, restore or maintain the same. The costs and expenses thereof shall be borne by such Owner as a reimbursement assessment as provided in Section 5.4, hereof.

4.7 Duty of Association. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Subdivision. The cost of all such maintenance shall be a common expense to all of the Owners. The Association shall not be required to obtain the prior approval of the Owners to cause such maintenance or repairs to be accomplished, regardless of the cost thereof.

4.8 Specific Powers and Duties of the Association. In addition to all other rights, duties, privileges and liabilities of the Association, as provided by this Declaration and the Articles of Incorporation and Amendments, the Association shall have the following specific powers and duties and shall provide to the Owners the following services, all of which shall be paid as part of the common expense assessments.

- A. Maintenance, repair and restoration of the Common Elements, except only as otherwise provided.
- B. The obtaining and maintaining of all required insurance as provided herein.
- C. Collection of assessments for maintenance of the common elements and other obligations or duties of the Association.

## ARTICLE V ASSESSMENTS

5.1 Owner's Obligation. By accepting a deed to any Lot, each Owner agrees to pay to the Association all annual and special assessments, to be fixed and levied from time to time as provided in the Declaration, the Articles and Bylaws. Such assessments, together with interest accruing thereon and the costs of collection in the event of a delinquency of payment, shall be the personal obligation of the person who is the Owner, or the persons who are jointly and severally the Owner, at the time the assessment was made.

### 5.2 Regular Assessments.

A. At least thirty (30) days prior to the commencement of each fiscal year, the Board shall estimate the cost and expenses to be incurred by the Association during such fiscal year in performing its functions, and shall subtract from such estimate an amount equal



to the anticipated balance (exclusive of any reserves) in the operating fund at the start of such fiscal year which is attributable to the operation and maintenance assessments for the prior fiscal year. The annual assessments made for common expenses shall be based upon the advance estimate of the cash requirements by the Association to provide for the payment of all common expenses growing out of or connected with the maintenance and operation of the Common Elements, which sums may include, among other things, expenses of management, taxes and special assessments, premiums for all insurance which the Association is required or permitted to maintain, landscaping and care of grounds, common lighting and heating, repairs and renovations, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, the Articles of Incorporation and the Bylaws of the Association, any deficit remaining from a previous assessment, the creation of a reasonable contingency or other reserve or surplus fund and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Subject to Section 5.2.B. hereof, the sum or net estimate so determined shall be assessed to the Owners as an operation and maintenance assessment by dividing the total estimate by the total number of single family residential Lots and assessing the resulting amount to the Owner of each Lot. Assessments shall be paid in one (1) annual installment due on or before the 10th day of each January. The annual assessment shall be Seventy-Five dollars (\$75.00) per lot for the first year in which the Association collects assessments.

B. Within ten (10) days after adoption of any proposed budget for the Association, the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5.3 Special Assessments. If at any time during the fiscal year the regular assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may levy a further assessment in the amount of such actual or estimated inadequacy. The special assessment shall be assessed to the Owners by dividing the total estimate by the total number of residential Lots and assessing the resulting amount to the Owner of each Lot, such assessment to be paid either in equal monthly installments over the balance of the remaining fiscal year, or in a lump sum upon billing as the Board shall determine.

5.4 Uniform Rate of Assessments. All annual and special assessments shall be at a uniform rate for all lots, other than those owned by the Declarant.



**5.5 Reimbursement Assessment.** The Board may levy an assessment against any Owner as a result of such Owner's failure to landscape his Lot, including a sprinkler system, rebuild damaged Improvements or to restore or maintain his Lot or the Improvements situate thereon. Such assessment shall be for the purpose of reimbursing the Association for its actual costs and expenses incurred for the repair, maintenance or restoration of such Owner's Lot or Improvements, and shall be due and payable to the Association when levied.

**5.6 Reserve Fund.** The Association may establish a reserve fund for the maintenance, repair and replacement of the Common Elements. The amount of such fund shall be determined by the Association and shall be funded through annual payments of the common assessments and shall be held by the Association in a separate account, which may be an interest-bearing account, to be held in trust for the Owners for such purposes.

**5.7 Capital Improvements.** In addition to regular and special assessments, the Association may levy, in any assessment year, a special assessment for the purposes of defraying in whole or in part the cost of any capital Improvement upon the Common Elements, including fixtures, landscaping or personal property related thereto, provided that such assessment shall have the assent of a majority of the members of the Association subject to the assessment.

**5.8 Enforcement.** In the event any assessment is not paid when due, the Association may enforce payment of such obligation by any or all of the following remedies:

A. The Association may elect to accelerate and declare immediately due and payable the remaining balance of regular or special assessments for such fiscal year.

B. The Association may bring a suit at law to collect the delinquent assessments, including any accelerated assessment. Any judgment rendered in such action shall include a sum for costs of suit, including a reasonable attorney's fees.

C. All delinquent assessments shall be a lien on the Owner's Lot to which the provisions of section 38-33.3-316, C.R.S. (1993), shall apply.

D. Beginning with second month of delinquency, a five percent (5%) penalty will be added to all delinquent amounts each month until payments are current.

**5.9 Out-of-State Owners Who Are Not Occupants.** In the event an Owner shall not occupy his residence and shall further maintain his principal residence outside of the State of Colorado, the Board may, to insure and guarantee payment of the assessments provided herein, require such out-of-state Owner who does not occupy his residence to:



- A. Post a surety bond with the Association indemnifying the Association against the default of such Owner in the payment of any assessment levied herein, the amount of such surety bond to be twice the amount of the regular assessment for the preceding fiscal year; or
- B. Pay the regular assessment pursuant to Section 5.2 hereof in advance by the 10th day of the first month of the fiscal year; or
- C. Either or both of the immediately preceding subsections of Section 5.8 hereof.

ARTICLE VI  
CASUALTY, DAMAGE AND REPLACEMENT OF IMPROVEMENTS

6.1 Owner's Insurance. All Owners shall keep and maintain fire and casualty insurance upon all Improvements situate on their Lots to the full insurable value thereof, and file the certificate of insurance with the President of the Association, such certificate providing for ten (10) days' written notice of cancellation, surrender or modification.

6.2 Loss, Damage or Destruction of Improvements Other Than Buildings. In the event of a loss, destruction or damage to any Improvements situate on any Owner's Lot exclusive of the residential building, such Owner shall repair or restore such damaged Improvement with an identical Improvement as to the one destroyed, lost or damaged. In the event an Owner fails to make such repair, replacement or restoration within ninety (90) days of the loss, damage or destruction, the Association shall have the option to make such repair, restoration or replacement and charge the cost thereof to the Owner as a reimbursement assessment.

In the event of loss, damage or destruction of any Improvement situate upon the Common Elements, the Association shall within ninety (90) days of such loss, damage or destruction, replace, repair or restore such Improvement with an identical Improvement.

6.3 Loss, Damage or Destruction to Buildings. In the event of loss, damage or destruction of any residential building, the Owner thereof shall repair, restore or rebuild the same within one year following such damage or destruction. The new structure shall be rebuilt in the same location, following the same floor plan and elevation and using the same exterior materials and stain as the building which had been lost, damaged or destroyed. It is the specific intent of this section to impose upon the Owner of each Lot, the obligation to replace any destroyed building with a new building having the identical appearance as the building destroyed and the other residences within the Properties. Further, following completion of the repair, restoration or replacement of the damaged structure, the Owner shall repair, replace or restore any landscaping or other Improvements





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involved in the damage, destruction or loss to the residents within ninety (90) days of completion of the structure. However, in the event completion is after September 1st of any year, landscaping shall be completed by May 1st of the following calendar year.

**ARTICLE VII**  
**USE OF SUBDIVISION FOR SALES PURPOSES**

7.1 **Maintenance of Sales Office and Models.** Declarant reserves the right to maintain a sales office and/or model homes in the Subdivision for sales purposes. Declarant shall maintain no more than one sales office and no more than two model homes at any time. Each sales office or home shall occupy no more than one Lot, and Declarant reserves the right to use any unsold Lot for such purposes.

**ARTICLE VIII**  
**GENERAL PROVISIONS AND MISCELLANEOUS**

8.1 **Enforcement.** The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by 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, or a waiver of any other or subsequent breach of any covenant, condition or restriction herein contained.

8.2 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

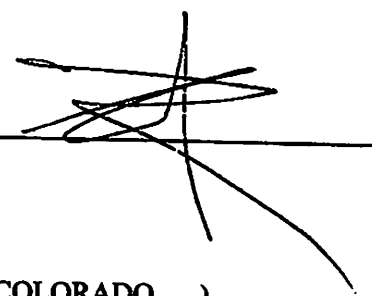
8.3 **Amendments.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of ten (10) years from the date this Declaration was recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by Declarant at any time prior to the recording of the first deed from Declarant to an Owner. Thereafter, this Declaration may not be amended for any purpose whatsoever for a five (5) year period, and thereafter, this Declaration shall only be amended by vote or agreement of Owners of Lots to which at least seventy percent (70%) of the votes in the Association are allocated. Any amendment must be recorded.

8.4 **Limitation on Association.** Any action, resolution or attempted action of the Association in conflict with any term or provision of this Declaration shall be void and of no force and effect whatsoever.

8.5 **Notice.** Notice of matters affecting Ponderosa Ranch Subdivision may be given to Owners by mailing such notice by first class mail to the last address provided by the Owner to the

Association. If no address has been provided by Owner, such notice shall be mailed to the address of Owner's Lot.

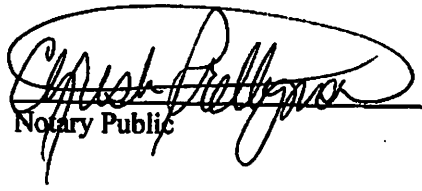
IN WITNESS WHEREOF, Declarant sets his hand and seal the 12<sup>th</sup> day of June, 2003.

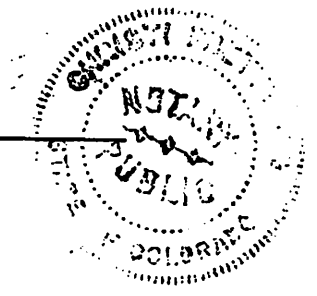
  
\_\_\_\_\_  
Matt Miles

STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of June, 2003, by Matt Miles.

My commission expires: 3-28-06.  
Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public



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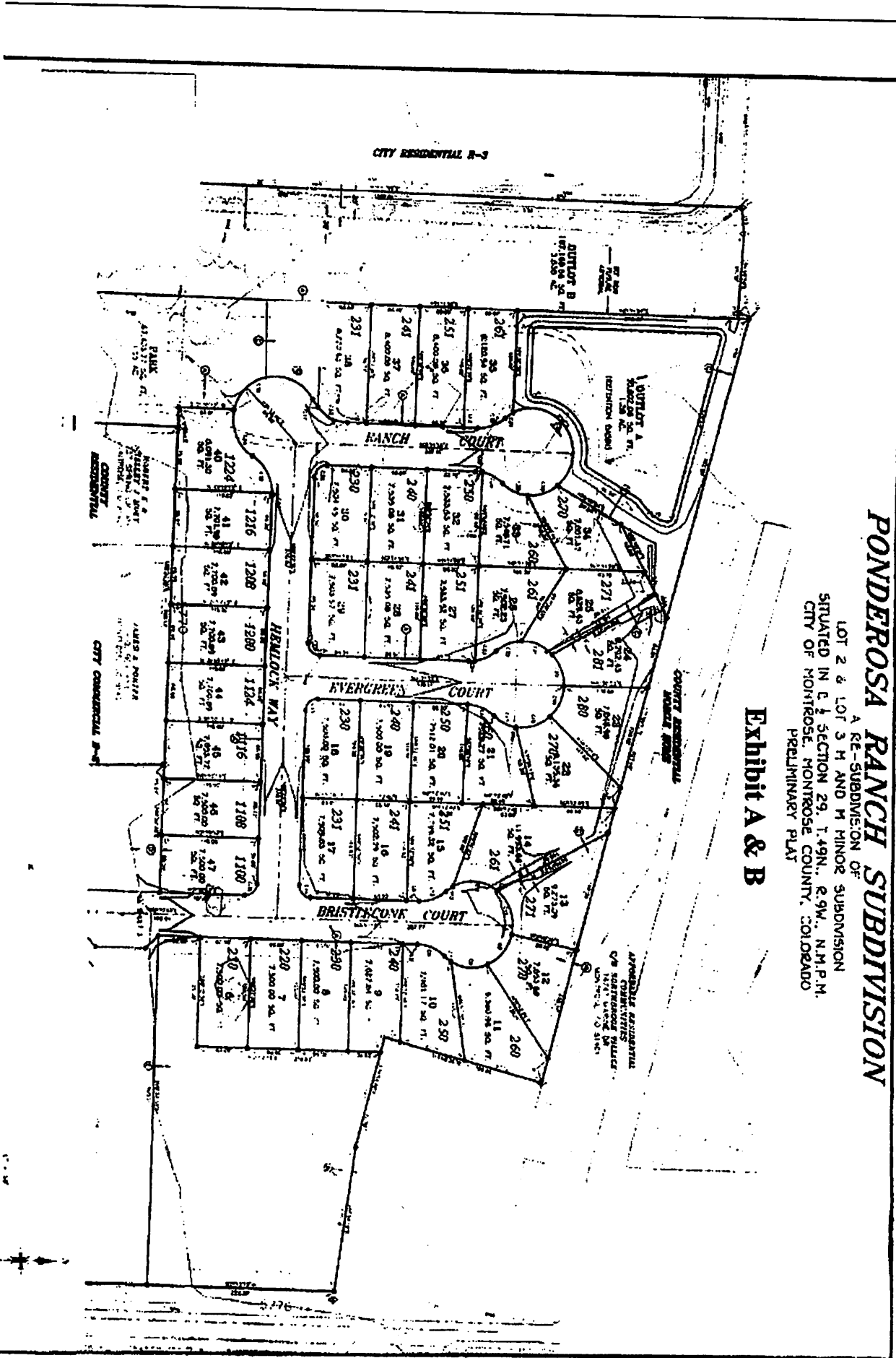
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DATE OF SUBMISSION TO THE CITY OF MONTROSE

DATE OF 1998



# PONDEROSA RANCH SUBDIVISION

A RE-SUBDIVISION OF  
LOT 2 & LOT 3 H AND M MINOR SUBDIVISION  
SITUATED IN E 1/2 SECTION 29, T.49N., R.9W., N.M.P.M.  
CITY OF MONTROSE, MONTROSE COUNTY, COLORADO  
PRELIMINARY PLAN

## Exhibit A & B

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
PONDEROSA RANCH SUBDIVISION**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PONDEROSA RANCH SUBDIVISION ("Amendment") is made and declared this 26 day of May, 2004, by MATT MILES, hereinafter referred to as "Declarant."

**RECITALS**

- A. The Declaration of Covenants, Conditions and Restrictions for Ponderosa Ranch Subdivision ("Declaration") was made and declared on April 7, 2003 by Declarant.
- B. The Declaration was filed in the Montrose County real property records at Reception No. 705002 on June 19, 2003.
- C. Declarant desires to amend the Declaration as set forth herein.

NOW, THEREFORE, Declarant hereby makes the following Amendments to the Declaration:

1. Paragraph 1.7 of Article I, entitled "Common Elements" is amended to read in its entirety as follows:

✓ "1.7 "Common Elements" shall mean and refer to all of the Properties, including any Improvements thereto, including but not limited to the common area sidewalks and detention pond and park."

↘ 2. Paragraph 1.14 of Article I and paragraph 2.4 of Article II are amended to reflect the correct county for recording the Plat as Montrose County.

↘ 3. Paragraph 1.15 of Article I is amended to read in its entirety as follows:

"1.15 "Properties" shall mean and refer to all of the real estate situate within the area described in Exhibit A, excluding Lot 39."

IN WITNESS WHEREOF, Declarant sets his hand and seal on the 26 day of May, 2004.



Amended Declaration of Covenants Conditions and Restrictions for Ponderosa Ranch  
Subdivision

Amended Date September 18, 2013

The following amendments have been changed after a majority vote collected in  
August 2013.

Article III Section 3.2E has been amended to read:

No Lot shall be used as a dumping ground for rubbish. No garbage, rubbish or  
trash shall be allowed to accumulate on any Lot or the Common Elements. All  
garbage, rubbish and trash shall be placed and kept in City approved contain-  
ers. All containers shall be kept next to the garage or behind a fence, except to  
make the same available for collection during regular trash collection days.  
Owners shall ensure that trash containers are regularly emptied and that their  
trash is disposed of in accordance with any sanitary requirements established  
by local, state or federal authorities.

Article III Section 3.5D has been amended to read:

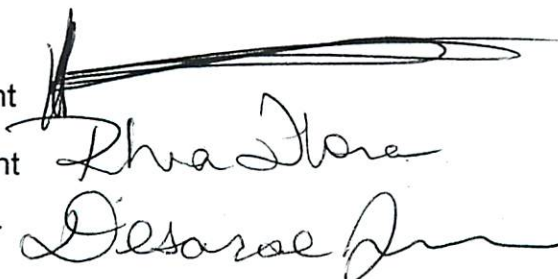
All vehicles, boats, campers, trailers, snowmobiles, motorcycles or  
other recreational vehicles, devices or equipment, or vehicles used  
for buisness (other than normal passenger-type vehicles) shall be  
stored off the street, in a designated parking area next to the house,  
or placed in an outbuilding or screened storage facility, or otherwise  
screened from veiw. Recreational vehicles, boats and trailers shall  
not be parked on the streets adjacent to each lot.

Board of Directors

Ken Morehouse – President

Rhea Flora – Vice President

Desarae Jones - Treasurer



The image shows three handwritten signatures in black ink. The first signature is for Ken Morehouse, the second is for Rhea Flora, and the third is for Desarae Jones. The signatures are written in a cursive style and are positioned to the right of their respective names.