

**DECLARATION OF AMENDED AND RESTATED PROTECTIVE COVENANTS  
OF  
MOON RIDGE SUBDIVISION**

This document constitutes the third amendment to the Protective Covenants for Moon Ridge Subdivision and is a complete Restatement of the Protective Covenants for said subdivision with new amendments, and is intended to supersede and replace the Declaration of Protective Covenants recorded at Reception No. 465166 of the Gunnison County records, and the amendments thereto recorded at Book 787 at Page 392 and at Reception No. 482482. In making this Third Amendment, said subdivision shall not be deemed to have elected treatment under the Colorado Common Interest Ownership Act.

**ARTICLE 1**

**STATEMENT OF PURPOSE OF DECLARATION**

Section 1. Ownership of Property. Declarant is the owner of the real property ("Property") situate in Gunnison County, Colorado described as follows:

MOON RIDGE SUBDIVISION, according to the Plat thereof filed the 11th day of January, 1996, and bearing Reception No. 465167 of the records of Gunnison County, Colorado, as more particularly described on attached Exhibit A.

Section 2. Declaration of Covenants. Declarant hereby makes, declares and establishes the following covenants, restrictions and easements which shall affect the Property. This Declaration of Protective Covenants shall run with the Property and shall be binding upon all persons and entities having any right, title or interest in and to the Property or any Lots, tracts or parts thereof, their heirs, successors and assigns and their tenants, employees, guests and invitees and shall inure to and be for the benefit of each Owner of the Lot within the Property.

Section 3. Statement of Purpose. This Declaration of Protective Covenants is imposed for the benefit of all Owners and future owners of lots, parcels and areas located within the Property and to provide for the preservation of values of the Property and to provide and preserve the covenants, easements, restrictions, assessments and liens hereafter set forth, all of which are for the benefit of the Property.

## ARTICLE 2

### DEFINITIONS

The following terms and words shall have the following definitions:

Section 1. "Adjacent Property" shall mean the Southeast quarter of Section 35, Township 13 South, Range 86 West, 6<sup>th</sup> Principal Meridian, Gunnison County, Colorado excepting therefrom the Property as more particularly described on attached Exhibit A.

Section 2. "Association" shall mean the Moon Ridge Subdivision Association, Inc., a Colorado non-profit corporation, or any successor thereof charged with the duties and obligations set forth herein.

Section 3. "Association Documents" shall mean this Declaration of Protective Covenants, the Articles of Incorporation and Bylaws of the Association, any amendments thereto, and any rules, regulations or policies adopted by the Association.

Section 4. "Assessments" shall mean annual, periodic, special or default assessments levied pursuant to this Declaration to provide the funds required to meet the obligations of the Association.

Section 5. "Board of Directors" or "Board" shall mean the Board of Directors of the Association duly elected and acting according to the Articles of Incorporation and Bylaws of the Association.

Section 6. "Building" shall mean a structure having a roof supported by walls or similar type of improvement.

Section 7. "Building Site" shall mean the envelope or area within a lot or tract where a building or other improvement shall be located, always subject to the prior written approval of the Board of Directors.

Section 8. "Common Area" shall mean all real property in which the Association owns any interest or has a leasehold interest for the common use and enjoyment of its members, as designated on the recorded plat. Such interest may include, without limitation, estates in fee, estate for a term of years, leasehold estates, or easements. Each and every Common Area may have a restricted use or enjoyment and may be designated for a specific use for such Common Area.

Section 9. "Garage" shall mean an accessory building or an accessory portion of a residence designed for the storage of one or more motor vehicles and any incidental use associated therewith.

Section 10. "Home Occupation" shall mean any commercial use carried on within a residence which is:

- 10.1 Customarily conducted entirely within a residence by the occupants of the residence;
- 10.2 Incidental and secondary to the use of the subject Lot for residential purposes;
- 10.3 Conducted in such a fashion that the residential character of use of the residence is not changed;
- 10.4 Conducted in such a fashion that any noises and activities do not interfere with the quiet of the neighborhood; and
- 10.5 Conducted without the employment of individuals other than the occupants of the residence.

Section 11. "Improvement" shall mean all buildings, structures, parking areas, loading areas, fences, walls, hedges, plantings, poles, driveways, ponds, lakes, recreational facilities, signs, decks, enclosures, changes in exterior color or shape, excavation, and all other site work including without limitation grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement constructed or completed on the Property.

Section 12. "Long Term Leases" shall mean bona fide leases of a Lot or the improvements thereon for single-family residential use for a fixed term of not less than one full year, or for a periodic tenancy with a periodic term of not less than one full year.

Section 13. "Lot" shall mean a tract or lot as shown on the plat of Moon Ridge Subdivision and any subsequent plat, but not including common areas.

Section 14. "Maintenance Fund" shall mean the fund created by assessments and fees levied pursuant to this Declaration to provide the Association with funds it requires to carry out its duties hereunder.

Section 15. "Member" shall mean any person holding membership in the Association.

Section 16. "Mortgage" shall mean any mortgage, deed of trust or other document pledging a lot or interest therein as security for the payment of any indebtedness.

Section 17. "Open Space" shall mean all of the Lot except for any building or

structure located thereon and shall include, but is not limited to, lawns, gardens, walkways, sidewalks, parking areas, driveways and outdoor living or recreational space.

Section 18. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot; provided, however, that prior to the first conveyance of any Lot for value under this Declaration, the Owner shall mean the Declarant.

Section 19. "Plat" shall mean the plat of Moon Ridge Subdivision and all subsequent plats as filed in the records of Gunnison County, Colorado, which are subject to these Protective Covenants, and as the same may be amended or revised from time to time and affecting the Property.

Section 20. "Property" shall mean and include all of the Property subject to this Declaration, consisting of approximately 29.06 acres as described on attached Exhibit A, including, where appropriate, the access road to the Property.

Section 21. "Short Term Leases" shall mean leases of, or licenses to use, a Lot or the improvements thereon for a fixed term of less than one full year, or for a periodic tenancy with a periodic term of less than one full year.

### ARTICLE 3

#### USE AND BUILDING RESTRICTIONS

Section 1. Use Restrictions. All Lots shall be subject to the following use restrictions:

1.1 Residential Use. Lots shall be used and occupied exclusively for single family residential purposes, including approved Home Occupations. No timesharing or other additional uses shall be permitted.

1.2 No Commercial Use. No commercial or business enterprise of any nature shall be allowed or permitted on any Lot except for Home Occupations approved in advance by the Board of Directors.

1.3 Leasing. Short-Term Leases of any Lot or the improvements thereon are prohibited. Long-Term Leases of Lots or the improvements thereon shall be permitted, provided that use of the Lot under the Lease complies with all restrictions contained herein, and any rules and regulations adopted by the Association.

Section 2. Building Restrictions. All Lots shall be subject to the following building restrictions:

2.1 Permitted Buildings. The only buildings permitted on a Lot shall be a single-family residence together with either an attached or detached garage. No other buildings are permitted on any Lot.

2.2 Building Site. The single-family residence and garage shall be situated within the designated building site of the Lot.

2.3 Approval of Improvements. No improvements shall be constructed on any Lot, without prior written approval of the Board of Directors pursuant to the provisions of Article 4.

## ARTICLE 4

### ARCHITECTURAL REVIEW AND APPROVAL

Section 1. Board. The Board of Directors of the Association shall be the Architectural Review Board.

Section 2. Review and Approval. No single-family residence, garage, building or improvement shall be commenced, constructed, erected or maintained upon any Lot, nor shall any landscaping be done, nor shall any exterior addition, change or alteration be made, until the plans and specifications therefor have been submitted to and approved in writing by the Board in the manner hereafter set forth.

Section 3. Submittal Procedure. Prior to the commencement of any such construction, the plans for the proposed building or improvement shall be submitted to the Architectural Review Board for approval. The submittal for approval shall include at a minimum, the following documents prepared by a licensed architect and, where appropriate, by a licensed engineer.

3.1 A plot plan showing the location of any building or improvement, access driveway, parking area and any terrain or structure features, such as large rocks, trees, ponds, patios, fences, utility lines, storage areas or decks.

3.2 The plans and specifications for the building, including a roof plan, in sufficient detail to verify and confirm the size, type and dimensions of the building, mass and height of the building, all design features thereof, all exterior elevations showing all sides of the building, all floor plans and the types of construction and materials.

3.3 Samples of the exterior materials and color schemes for the building.

3.4 A landscape, drainage and grading plan.



Section 4. Purpose of Review. The Board shall consider compliance with this Declaration, the harmony of the building with the environment, the effect of the building on the utilization and view of the Lot and surrounding Lots and property and the placement of the building with respect to topography, drainage, snow removal, ground elevations and existing natural and terrain features. In the event of substantial hardship caused by lot topography, configuration or other similar factor, the Board shall have the right, but not the obligation, to grant a variance as to any requirement set forth in this Declaration, except for density under Sections 5 and 6 of Article 5, which shall not be varied.

Section 5. Hearing. The Board shall, within forty days of receipt of a submittal for approval request with all accompanying data, hold a hearing on such request. The Board may approve, disapprove or approve with conditions any request submitted to it. The decision of the Board shall be in writing. In the event that the Board fails to take action within ten days after the date of the hearing, or fails to hold such hearing within forty days after receipt of a complete submittal for approval request, the application shall be deemed to have been approved.

Section 6. Notice of Hearing. The applicant, and any person on his behalf, may attend the hearing on the application for approval and submit information. Notice of the hearing with copies of the plans shall be given by the applicant in writing to all members of the Association and members shall have the right to be present at the hearing or to submit written comments.

Section 7. Quorum. A majority of the Board of Directors shall constitute a quorum and all decisions of the Board shall be by a majority vote of the directors of the members present.

Section 8. Final Decision. The decision of the Board of Directors shall be final, subject only to the right of judicial review as provided by the laws of the State of Colorado. The Board shall indicate to any applicant in the event of disapproval, the reasons why the request was rejected and grant to the applicant an opportunity to resubmit with the revisions and corrections that would secure approval.

Section 9. Rules and Regulations. The Board may adopt such rules and regulations as are appropriate to govern its proceedings as an Architectural Review Board.

Section 10. No Application Fee. No application fee will be required for any approval request. However, the applicant shall compensate the Association for all reasonable expenses incurred, including professional fees, in reviewing the application.

Section 11. Building Permit. In addition to securing approval from the Board of Directors, each owner is responsible for obtaining all approvals, licenses and permits required by Gunnison County, Colorado and any entity or district having jurisdiction over the Lot prior to the commencement of construction.

## ARTICLE 5

### DESIGN REQUIREMENTS

Section 1. Design Requirements. Any building or other improvement situate on any Lot shall comply with the design requirements of this Article.

Section 2. Building Site. Any building or other improvement shall be constructed entirely within the designated Building Site for the Lot.

Section 3. Uniform Building Code. All buildings and other improvements shall meet all of the requirements, including fire protection standards, of the applicable building code or fire code of Gunnison County, Colorado then in effect. All building foundations shall be designed by a Colorado registered engineer or architect.

Section 4. Minimum Residence Size. The total floor area of any single-family residence constructed upon a Lot, including all levels and rooms, (but exclusive of any attached or detached garage) shall not be less than 2,500 square feet, with at least 1,500 square feet on one level.

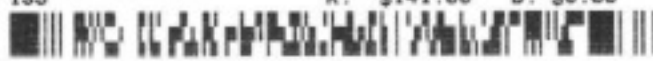
Section 5. Aggregate Maximum Size. The aggregate total floor area of all buildings constructed upon a Lot, including all levels, rooms, and garages, shall not exceed a total of 5,000 square feet.

Section 6. Floor Area. For all purposes of this article, floor area or total floor area shall be deemed to mean the area included within the surrounding exterior walls of the building, or a portion thereof, exclusive of vent shafts and courts. The floor area of a building, or a portion thereof, not provided with surrounding exterior walls, shall be the usable area under the horizontal projection of the roof or floor above. Porches and patios may be excluded from floor area or total floor area only upon written approval by the Board of Directors.

Section 7. Height Limitation. The maximum height of any building constructed upon a Lot shall be 30 feet.

Section 8. Determination of Height. For all purposes of this article, height shall be measured from the center of the building envelope's natural elevation (prior to excavation) to the highest point of the roof of the building. The Board shall make a determination of elevation of the center of the building envelope's natural elevation prior to commencement of any construction activity on the Lot. The Board of Directors shall have the authority to maintain a measuring device outside of the building envelope to monitor the building height during construction and to confirm the final building height upon completion.

Section 9. Roofs. Any metal roof must be non-reflective and have a color finish



with no bright colors.

Section 10. Exterior Building Material and Style. All buildings shall be built in an exterior style and with colors and materials harmonious with the area. No exterior walls shall consist of sheet metal, metal material, T-111 or any similar material, composition shingles or unplastered cement or similar type block. The exterior siding, excluding the roof, shall be comprised of at least two different materials. All colors of exterior walls and roofs will be natural or earth tones in color to blend with the natural surroundings, except that colored trim may be allowed upon approval of the Board of Directors. No A-frames, geodesic domes or yurts shall be allowed, even temporarily.

Section 11. Service or Utility Areas. All service or utility areas of yards, including garbage cans and trash storage areas shall be screened from view on all sides.

Section 12. Exterior Lighting. All exterior lighting shall be designed and directed in a manner approved by the Board. All exterior lighting or illumination on any Lot shall be so located, placed, shielded and designed to be architecturally and aesthetically in keeping with the Buildings and surroundings and to have minimum visual pollution or impact on any other Lot, on the Gothic County Road or the Town of Crested Butte, Colorado.

Section 13. Antennae. No exterior radio, television, microwave or other antennae or antenna dish or signal capture or distribution device, unless 18 inches in diameter or less, shall be permitted or installed on any Lot unless it is entirely screened from view on all sides and such screening shall be in keeping with the terrain and environment.

Section 14. Wood Burning Devices. The maximum number of woodburning devices per Lot shall be one. Such wood burning device shall be designed to reduce polluting emissions from such wood burning device and shall comply with all applicable rules and regulations of Gunnison County. All stoves shall comply with Colorado Regulation No. 4 of the Colorado Air Quality Control Commission. All fireplaces shall be Rumford masonry fireplaces.

Section 15. Fences. No fences shall be constructed on any Lot, except for screening fences approved by the Association, except that the Association shall have the right to construct and maintain a barbed wire fence, with a cattle guard on the road, around the perimeter of the Property.

## ARTICLE 6

### CONSTRUCTION AND MAINTENANCE REQUIREMENTS

Section 1. Excavation. No excavation shall be made on any Lot, except in connection with a building approved in accordance with this Declaration of Protective Covenants. All disturbed areas shall be revegetated.



Section 2. Electrical and Telephone Service. All electrical and telephone service serving or within any Lot shall be underground.

Section 3. Water and Sewage Disposal Systems. All buildings designed for human occupancy shall be connected with individual water and sanitation facilities. All individual water systems and sewage disposal systems shall be constructed, installed and maintained in compliance with all applicable rules and regulations of any governmental entity having jurisdiction over the Property. All sewage disposal systems shall meet all applicable rules and regulations of Gunnison County and the State of Colorado.

Section 4. Signs. No sign of any kind shall be displayed to public view on any portion of any Lot, except only a sign not to exceed four square feet identifying the Owner and/or address of the Lot or a sign, not to exceed four square feet, advertising a Lot for sale.

Section 5. Drainage. No Owner shall do or permit any work, construct any improvements or do any landscaping which shall alter or interfere with the natural drainage for the Property, except to the extent the same is approved by the Board and as authorized for any surface water discharge easement.

Section 6. Mobile Homes and Temporary Structures. No mobile home, modular home, trailer house, travel trailer, recreational vehicle, boat, snowmobile, trailer, bicycle, motorcycle or temporary structure shall be permitted on any Lot unless contained within a fully enclosed garage.

Section 7. Continuity of Construction. All construction, reconstruction, alterations or improvements shall be prosecuted diligently to completion and shall be completed within twelve months of the commencement thereof, unless an extension is granted by the Board for good cause.

Section 8. Trash and Outside Storage. No trash, ashes, garbage or other refuse shall be allowed to accumulate or be placed on any Lot or areas within the Property. There shall be no burning or other disposal of refuse out of doors. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be placed within a garage or other building. No personal property of any kind shall be stored outside on any Lot.

Section 9. Motor Vehicles. No motor vehicles shall be stored outside except for those in periodic use (at least weekly). Motor vehicles not in such periodic use shall not be stored or parked within the Property except within a fully enclosed garage. A written notice requesting removal of any vehicle not in such periodic use may be personally served upon the Owner or posted on the vehicle; and if such vehicle has not been removed within seventy-two (72) hours thereafter, the Association shall have the right to remove the vehicle without liability and the removal expense shall be charged against the Owner of the Lot.

Section 10. Noise. No exterior horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the improvements on any Lot, shall be placed or used on any Lot.

Section 11. Nuisance. No obnoxious or offensive activity shall be carried on within the Property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise or other nuisance shall be permitted to exist or operate upon the Property which is offensive or detrimental to any owners or occupants of any part of the Property; provided, however, that this Section shall not apply to any noise or other activity relating to the construction of any improvements approved by the Board. No construction activity shall occur before 7:00 a.m. or after 7:00 p.m.

Section 12. Hazardous Activities. No activities shall be allowed or conducted on the Property which are unsafe or hazardous to any person or property. Such hazardous activities, include, but are not limited to using fireworks, firearms, bows and arrows, explosives, air or pellet guns or any similar devices. No outside open fires shall be permitted on any Lot unless contained within a cooking or barbecue type unit or grill.

Section 13. Snowmobiles. No snowmobiles, snowcats, snowtractors or similar motorized vehicles for travel over snow shall be allowed, maintained or operated within the Property except to and from a residence directly to the nearest area where such conveyances are permitted.

Section 14. Wildfire Hazard.

14.1 Adjacent to any building with combustible siding, a decorative rock or gravel area free of vegetation is recommended for the area three to five feet immediately adjacent to the building. If the building has noncombustible siding, widely spaced foundation plantings of low growing shrubs are acceptable, provided they are not planted directly below windows or next to foundation vents. Firewood or other combustibles shall not be stored adjacent to the building. Gravel coverage shall extend underneath decks. The area under decks shall not be used for storage.

14.2 Sage brush denser than 20 feet between plants shall be thinned or eliminated completely by cutting and disposal outward from the graveled zone a minimum of 40 feet from the building. Grass in this area shall be mowed to a height no greater than 6 inches, especially in the spring and fall.

ARTICLE 7

ANIMALS

Section 1. Domestic Household Pets. Not more than two domesticated

household pets shall be allowed, kept or maintained on any Lot.

Section 2. Confinement of Pets. All pets shall be kept confined to the Owner's Lot or attached to a leash or other suitable control device. The Owner of any Lot shall at all times be personally liable and responsible for all actions of such pet and any damage caused by pets which are allowed on such Owner's Lot.

Section 3. Livestock. No horses or other livestock shall be allowed upon the property.

Section 4. Impoundment of Dogs. The Association is specifically empowered to impound any dog running at large within the Property. Upon impoundment, the owner of the dog, if known, shall be immediately notified and the animal shall be taken to the nearest facility which accepts impounded dogs. It is the duty of the owner of such dog to recover the dog from such facility and if the dog is not recovered by the owner in accordance with the rules and regulations of such facility, the facility may destroy the dog without liability to the owner thereof.

## ARTICLE 8

### MOON RIDGE SUBDIVISION ASSOCIATION, INC.

Section 1. Government of Association. Moon Ridge Subdivision Association, Inc., a Colorado non-profit corporation, shall be governed by and shall exercise all of the duties, privileges and obligations set forth in this Declaration, and the Articles of Incorporation and Bylaws of the Association.

Section 2. Members. Each Owner shall be a member of the Association. No Owner, whether one or more persons or entities shall be more than one membership per Lot owned by such Owner, but all persons owning each Lot shall be entitled to the rights of membership and the use and enjoyment appurtenant to the ownership of each Lot.

Section 3. Termination of Membership. The right of membership in the Association and the status as a member shall terminate upon the termination of status as an Owner of a Lot. Upon conveyance of the Owner's interest, the conveying Owner shall be relieved of liability for assessments levied from and after the date of such conveyance; provided, however, that no such conveyance of any ownership shall relieve an Owner of liability arising prior to the date of such conveyance.

Section 4. Voting Rights. All Owners within Moon Ridge Subdivision shall be members of the Association. The Owner(s) of each Lot shall be entitled to one vote in the Association. The one vote for each Lot shall be exercised by the Owner and when more than one person or entity holds an interest in a Lot, the vote for the Lot shall be exercised as the Owners may determine among themselves, but the vote for the Lot shall be cast by

only one person.

Section 5. Compliance with Documents. Each Owner shall abide by and have the benefit of the provisions, covenants, conditions and restrictions contained in the Association Documents.

Section 6. Rules and Regulations. The Association shall from time to time adopt, amend and repeal rules and regulations to be known as the "Moon Ridge Subdivision Rules" governing, among other things, and without limitation:

- 6.1 The use of any private road or street.
- 6.2 The use of any easements for utilities or irrigation within the Property.
- 6.3 Standards for the care and maintenance of all improvements, grounds and landscaping within the Property, including private roads and streets.
- 6.4 The use, maintenance and enjoyment of any real property, private road, street or easement conveyed or dedicated to the Association.
- 6.5 Any other matter deemed by the Board to be an appropriate subject for a rule or regulation on condition that such rule or regulation shall not be inconsistent with these Protective Covenants or the Association's Articles of Incorporation or Bylaws.

Section 7. Grant of Utility Easements. The Association may grant a utility easement for the installation, construction and maintenance of underground utilities and/or water lines over and across any road easement designated on the Plat. The Owner of each Lot, by virtue of such ownership, hereby authorizes and empowers the Association, as its attorney in fact, to grant:

- 7.1 A utility easement and right of way 10 feet in width adjacent to the exterior boundary line of each Lot for the installation, construction and maintenance of underground utilities; and
- 7.2 A water line and/or ditch easement 10 feet in width across each Lot on condition that such water line and/or ditch shall not traverse or otherwise interfere with any Building Site.

Section 8. Road Maintenance and Dust Control. All road maintenance repairs, snow plowing and supervision thereof shall be the duty of and vested in the Association. The Association shall specifically:

- 8.1 At all times keep in good repair all roads within and providing access to the Property and maintain the same in suitable condition for use by the

members of the Association, the owner of the Adjacent Property and emergency vehicles, including fire trucks.

8.2 Plow snow from the roads as required for year around access to any Lot or to the Adjacent Property. The Association shall have on all Lots a 10 foot wide easement for snow storage purposes contiguous to Moon Ridge Lane.

Section 9. Domestic Water System. Operation and maintenance of the central domestic water system serving all Lots in Moon Ridge Subdivision shall be the duty of and vested in the Association.

## ARTICLE 9

### ASSESSMENTS

Section 1. Owners' Obligation and Creation of Lien. Each Owner of any Lot, by acceptance of a Deed therefor, whether or not it shall be so expressed in any Deed, is deemed to covenant and agree to pay to the Association: (1) All regular assessments or charges; and (2) any special assessments or charges; and (3) any default assessments or charges, all of which shall be fixed, established and collected as determined by the Association. The annual, special and default assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of such Lot at the time when the assessment became due.

All such assessments shall be adopted and assessed in the manner set forth in this Article 9.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be limited to and used exclusively for the following:

2.1 The maintenance, repair, snow removal and improvement of any private road or street within or providing access to the Property, including the construction of acceleration and/or deceleration lanes on County Road 317, if required by Gunnison County.

2.2 The installation, operation, maintenance and repair of any irrigation system and/or domestic water system.

2.3 Any maintenance, repair or improvement required to be made by any Owner to any Improvement on any Lot which the Owner fails to do.



2.4 Any costs and expenses pertaining to the operation of the Association in the performance of its duties.

2.5 Any other purpose approved by a majority vote of all members of the Association.

Section 3. Types of Assessments. The Board of Directors shall have the authority to levy the following types of assessments for the Association:

3.1 Regular Assessments. Assessments for the business and operation of the Association pertaining to all members of the Association and to be apportioned and allocated equally among all Lots.

3.2 Special Assessments. Special assessments for the purpose of construction, improvement, repair, replacement, enlargement or other special purposes pertaining to a specific or special matter. Special assessments shall be apportioned and allocated among all Lots benefitted.

3.3 Default Assessments. Default assessments for the purpose of correcting or remedying an Owner's default hereunder.

Section 4. Regular Assessments. The Board of Directors shall prepare a budget prior to the beginning of each fiscal year of the Association and not less than thirty days prior to the commencement of each fiscal year, the Board shall adopt a final budget and shall determine, levy and assess the Association's regular assessments for the following year. The proposed budget for the next fiscal year shall be distributed to the members.

Section 5. Special Assessments. In addition to the regular assessments set forth in Section 4 above, the Board of Directors may levy in any fiscal year one or more special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or construction, repair or replacement or to make up any shortfall in the current year's budget. Notice of the amount and due dates for such special assessments shall be sent to each owner at least thirty days prior to the due date.

Except as hereinafter provided, prior to the board of directors levying a special assessment that exceeds \$9,000.00, the special assessment shall be submitted to and approved by an affirmative vote of the members to be benefitted at either a regular meeting of the members or a special meeting of the members called for such purpose.

Notwithstanding the foregoing, the Board of Directors shall have the authority and obligation to levy a special assessment, without an affirmative vote of the members, to finance the Association's proportional share, in relation to other developments using the same County Road 317 access point and based on documented traffic impacts, of constructing acceleration/deceleration lanes at the intersection of the subdivision's access onto County Road 317. Such special assessment shall be levied at such time as Gunnison

County determines that the growth in traffic generated by additional development outside of Moon Ridge using the subdivision's access onto County Road 317 reasonably requires acceleration/deceleration lanes for traffic safety purposes.

Section 6. Assessment for Each Lot. All regular and special assessments shall be apportioned and allocated equally among all Lots.

Section 7. Default Assessments. Any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner, shall be a default assessment and shall become a lien against such Owner's Lot and may thereafter be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such default assessment shall be sent to the Owner subject to such assessment at least thirty days prior to the due date.

Section 8. Nonpayment of Assessments. Any assessment, whether regular, special or default assessment, which is not paid within thirty days of its due date shall be deemed delinquent. In the event that any assessment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

8.1 Assess a late charge of at least 10% of the amount due and owing per delinquency.

8.2 Assess an interest rate charge from the date of delinquency at 18% per year, or such other higher or lower rate as shall be established by the Board of Directors.

8.3 Suspend the voting rights of the Owner during any period of delinquency.

8.4 Bring suit against any Owner personally obligated to pay the delinquent assessment to recover a money judgment, without foreclosing or waiving the lien securing the same.

8.5 To evidence such lien, the Association may prepare a written Statement of Lien setting forth the amount of the assessment, the amount remaining unpaid, the name of the owner, and a description of the Lot. Such statement shall be signed on behalf of the Association by an authorized officer and may be recorded in the records of Gunnison County, Colorado. Such lien shall attach from the date assessed and shall continue as a lien until all sums with interest and other charges thereon, including the Association's reasonable attorney fees and costs, including the drafting and recording of the Statement of Lien, have been fully paid, and such lien shall not be extinguished nor annulled by the foreclosure of any other lien.

8.6 Such lien may be enforced by foreclosure by the Association in the

same manner as a foreclosure of a mortgage. In such foreclosure, the owner shall be required to pay the costs and expenses for such proceedings, the costs and expenses for filing the Statement of Lien, and all reasonable attorney's fees. The owner shall also be required to pay to the Association periodic assessments for the Lot during the period of foreclosure, and the Association shall be entitled to a receiver to collect the same. The Association shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

8.7 The Association's lien for unpaid assessments shall be superior to all other liens and encumbrances on such Lot, except only any tax and assessment liens levied by any governmental entity.

Section 9. Successor's Liability for Assessment. In addition to the personal obligation of each Owner of a Lot to pay all assessments and the Association's lien on a Lot for such assessments, all successors to the ownership of a Lot shall be jointly and severally liable with the prior Owner for any and all unpaid assessments, penalties, interest, costs, expenses and attorneys' fees against such Lot.

## ARTICLE 10

### WATER RIGHTS

Section 1. Water Augmentation Plan. With respect to the water rights owned by the Association, the Association shall be responsible for compliance with the terms of all Water Court cases and augmentation plans relating to Moon Ridge Subdivision, including the maintenance of all records and other reporting requirements imposed by all decrees and the release of water in storage therein as required by the Colorado Division of Water Resources consistent with the terms of such decrees, and the maintenance, repair, and replacement of all ditches, pipes, flumes, dams, outlet works, and other physical components required for the proper implementation of all plans of augmentation. In the event that one or more wells to serve the subdivision are located on the Adjacent Property, the owner of the Adjacent Property agrees to grant to the Association all easements necessary for the construction, operation and maintenance of such well or wells and all related water lines and other facilities.

Section 2. Enforcement of Water Rights. Any owner of a Lot in the Property shall have the right, in the event of the failure or inability of the Association to preserve and administer the water system and water rights within the Property, to undertake such action as was required of the Association but not performed, and to charge all costs and expenses thereof to the Association, including the maintenance of litigation for the recovery of all costs and expenses so incurred, including such owner's attorneys' fees and costs.

Section 3. Lawn and Garden Irrigation. No owner or occupant of any Lot shall install or irrigate more than 2,000 square feet of lawn and garden out of the Moon Ridge Subdivision Central Water System on any Lot nor shall any owner or occupant of any Lot take any action which contravenes the provisions and limitations contained in the decree of the Division 4 Water Court in case(s) relating to Moon Ridge. Subject to the foregoing limitations, a Lot owner shall have the right to irrigate with water from the Moon Ridge central water system.

## ARTICLE 11

### ENFORCEMENT OF COVENANTS

Section 1. Violations Deemed a Nuisance. Every violation of this Declaration of Protective Covenants, the Articles and Bylaws of the Association or any rules and regulations adopted by the Association shall be deemed to be a nuisance and is subject to all the remedies provided for the abatement thereof.

Section 2. Failure to Comply. The failure to comply herewith or with the Articles, Bylaws or rules and regulations shall be grounds for an action to recover damages, or for injunctive relief or for specific performance, or any of them. Reasonable notice and an opportunity for a hearing before the Board shall be provided by the Association to any delinquent Owner who is alleged to have violated rules and regulations of the Association prior to imposing any fines for violation of the same or commencing any legal proceedings.

Section 3. Who May Enforce. Any action to enforce any violation of any provision of these Protective Covenants may be brought as follows:

- 3.1 By the Association in the name of the Association and on behalf of the Owners.
- 3.2 By the Owner of any Lot.
- 3.3 By the Owner of the Adjacent Property or any portion thereof.
- 3.4 By Gunnison County, Colorado.

Section 4. No Waiver. The failure of the Board, the Association, any Lot Owner, the Owner of the Adjacent Property or Gunnison County, Colorado to enforce or obtain compliance as to any violation, shall not be deemed a waiver of the right to do so for any subsequent violation or the right to enforce any part of such documents.

Section 5. Right of Gunnison County, Colorado. The Board of County Commissioners of Gunnison County, Colorado is specifically granted the right to

enforce these Protective Covenants and to bring any action as may be required for the violation of these Protective Covenants pertaining to the following:

- 5.1 To protect Gunnison County, Colorado or its inhabitants.
- 5.2 To enforce all provisions and requirements for the construction, maintenance and control of all roads and driveways, the plowing of snow therefrom, and any dust pollution controls pertaining thereto, all in accordance with the conditions of the approval of the road permits by Gunnison County, Colorado.

Gunnison County, Colorado may enforce these Protective Covenants at its sole discretion, without assumption of any liability whether or not such enforcement is exercised, and without obligation to exercise such enforcement in any circumstance. The ability of Gunnison County, Colorado to enforce the Protective Covenants is non-exclusive and does not preclude any other appropriate party from enforcing these Protective Covenants.

## ARTICLE 12

### DURATION OF COVENANTS

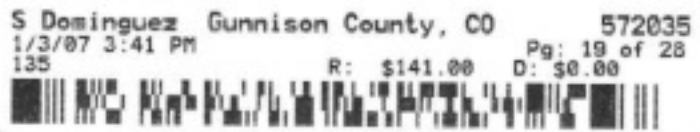
Section 1. Term. The term of this Declaration of Protective Covenants, and any amendments or supplements thereto, shall be from the date of recording in the records of Gunnison County, Colorado and until January 1, 2020. Thereafter, this Declaration of Protective Covenants shall be automatically extended for five successive periods of ten years each, unless otherwise terminated or amended as hereafter provided.

Section 2. Amendment. This Declaration of Protective Covenants, or any provision thereof, may be terminated, extended, modified or amended as to the Property subject to the Protective Covenants, or any portion thereof, upon the written consent by Gunnison County and the Owners of 66% or more of the Lots in the Property, provided, however, that no amendment affecting the Adjacent Property shall be effective unless approved in writing by the owner of the Adjacent Property. Any such amendment shall be by an instrument or instruments duly executed, acknowledged and recorded in the records of Gunnison County, Colorado, and upon such recording shall be for the benefit of and be binding on all Owners of Lots within the Property.

Section 3. Mortgage Holder Approval Not Required. The Declaration and/or Plat may be amended as set forth in Sections 2 and 3 of this Article 12 and such amendment shall be effective against the holders of Mortgages encumbering Lots in the Subdivision notwithstanding the fact that such holders of Mortgages have not approved



such amendment.



## ARTICLE 13

### PRINCIPLES OF INTERPRETATION

Section 1. Severability. This Declaration of Protective Covenants, to the extent possible, shall be construed so as to give validity to all of the provisions hereof. If any provision of this Declaration of Protective Covenants is determined to be invalid, unenforceable or prohibited by any court, the same shall not affect any other provision or section hereof and all other provisions and sections shall remain in full force and effect.

Section 2. Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders.

Section 3. Headings. The headings on any section or article are included only for purposes of convenient reference and shall not affect the meaning or interpretation of this Declaration of Protective Covenants.

Section 4. Written Notice. All notices required under this Declaration shall be in writing. Notice to any Owner shall be considered delivered and effective upon personal delivery or five days after mailing by certified or registered mail, return receipt requested, to the address of such Owner on file in the records of the Association at the time of such mailing.

Section 5. Limitation of Liability. Neither the Association nor any officer, director or other representative of the Association shall be liable to any party for any action or for any failure to take any action with respect to any matter arising by, through or under this Declaration if the action or failure to act was made in good faith. The Association shall indemnify all officers, directors or other representatives of the Association with respect to any action taken in their official capacity as provided in the Articles of Incorporation and Bylaws of the Association. Such indemnification shall include repayment of all costs and expenses incurred, including reasonable attorneys' fees.

Section 6. Attorneys' Fees. The prevailing party shall be entitled to reasonable attorneys' fees, as well as its reasonable costs and expenses, incurred by it in any proceeding or action to interpret or enforce any provision of the Association documents, including these Protective Covenants.

Section 7. Applicable Law. The proper jurisdiction and venue for any action pertaining to the interpretation or enforcement of the Association documents shall be

the County Court or District Court of Gunnison County, Colorado, unless otherwise chosen by the Association.

Section 8. Interest. Any sums, amounts or monies due and owing to the Association documents shall bear interest at 18% per year or at such other higher or lower rate as the Board of Directors may establish from the date due until paid.

Section 9. Partition of Lots. No part of a Lot may be partitioned, separated or subdivided from any other part thereof.

Section 10. Reserved Easements. There is hereby reserved, the following permanent non-exclusive easements, for the benefit of the Adjacent Property:

10.1 An easement for the owner(s) of the Adjacent Property, his, her or their tenants, servants, visitors and invitees, at all times hereafter, with or without vehicles of any description, for all purposes connected with the development, subdivision, use and enjoyment of the Adjacent Property, to pass and repass along the roads and easements within and serving Moon Ridge Subdivision for the purpose of going from the Gothic County Road (#317) to the Adjacent Property, or vice versa, to utilize such roads and easements for the installation and maintenance of utilities and to pass and repass over and across Lots 3 and 8 for the purposes of maintaining the ponds located on such lots and utilizing the water in such ponds. The owner(s) of the Adjacent Property shall contribute to the Association a share of the cost of maintaining and plowing snow from such roads and easements and constructing acceleration/deceleration lanes in proportion to the number of residential dwelling units on the Adjacent Property.


10.2 An easement for the owner(s) of the Adjacent Property, her successors, representatives and assigns, at all times hereafter, to utilize the Moon Ridge Subdivision Water System and easements to serve the adjacent property consistent with the terms of any decrees or augmentation plans relating to the Moon Ridge Subdivision on condition that the owner(s) of the Adjacent Property shall contribute to the Association a share of the cost of installing, operating and maintaining such water system in proportion to the number of residential dwelling units on the Adjacent Property.

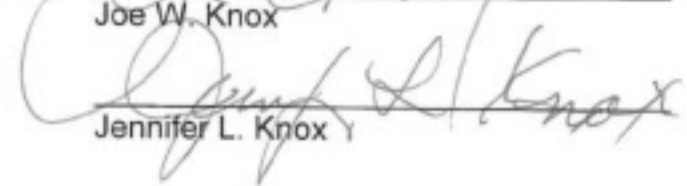
10.3 The right to utilize any and all utility and other easements within Moon Ridge Subdivision.

IN WITNESS WHEREOF, the foregoing Declaration of Amended and Restated Protective Covenants of Moon Ridge Subdivision is hereby approved and adopted by the following Lot owners, constituting 66% or more of the Lots in the subdivision, and by Gunnison County.



(Owners of Lot 2)

  
 \_\_\_\_\_  
 Joe W. Knox

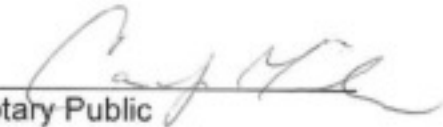
  
 \_\_\_\_\_  
 Jennifer L. Knox

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF GUNNISON )

The above and foregoing Declaration of Amended and Restated Protective Covenants of Moon Ridge Subdivision was acknowledged before me this 12<sup>th</sup> day of December, 2006, by Joe W. Knox and Jennifer L. Knox.


Witness my hand and official seal.

My commission expires: 5-3-08

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



S Dominguez Gunnison County, CO 572035  
 1/3/07 3:41 PM Pg: 22 of 28  
 135 R: \$141.00 D: \$0.00



(Owners of Lot 3)

Patricia K. Hundley  
Patricia K. Hundley

John L. Hundley  
John L. Hundley

STATE OF FLORIDA        )  
  ) ss.  
COUNTY OF PALM BEACH)

The above and foregoing Declaration of Amended and Restated Protective Covenants of Moon Ridge Subdivision was acknowledged before me this 20<sup>th</sup> day of October, 2006, by Patricia K. Hundley and John L. Hundley.

Witness my hand and official seal.

My commission expires:



Chris K Hancock  
My Commission D0340792  
Expires August 02, 2008

Chris K Hancock  
Notary Public

S Dominguez Gunnison County, CO 572035  
1/3/07 3:41 PM  
135 R: \$141.00 D: \$0.00 Pg: 23 of 28



(Owners of Lot 8)

Randall Lee Rosenblatt  
Randall Lee Rosenblatt

Barbara Glazer Rosenblatt  
Barbara Glazer Rosenblatt

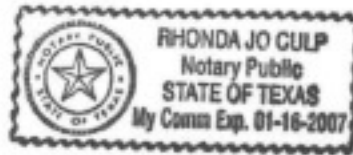
STATE OF TEXAS        )  
                                  ) ss.  
COUNTY OF DALLAS    )

The above and foregoing Declaration of Amended and Restated Protective Covenants of Moon Ridge Subdivision was acknowledged before me this 11 day of October, 2006, by Randall Lee Rosenblatt and Barbara Glazer Rosenblatt.

Witness my hand and official seal.

My commission expires:

Rhonda Jo Culp  
Notary Public



S Dominguez Gunnison County, CO 572035  
1/3/07 3:41 PM Pg: 24 of 28  
135 R: \$141.00 D: \$0.00  
[Barcode]

(Owners of Lot 6)

Patrick J. Kearns  
Patrick J. Kearns  
Michele Kearns  
Michele Kearns

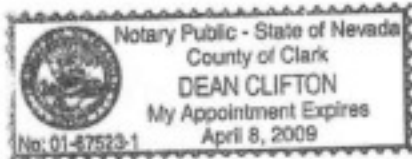
STATE OF NEVADA )  
 ) SS.  
COUNTY OF CLARK )

The above and foregoing Declaration of Amended and Restated Protective Covenants of Moon Ridge Subdivision was acknowledged before me this 24 day of Oct., 2006, by Patrick J. Kearns and Michele Kearns.

Witness my hand and official seal.

My commission expires:  
08 APRIL 2009

Dean Clifton  
Notary Public



S Dominguez Gunnison County, CO 572035  
1/3/07 3:41 PM Pg: 25 of 28  
135 R: \$141.00 D: \$0.00  
[Barcode]



(Owner of Lot 5)

Mary N. Brown  
Mary N. Brown

STATE OF NEW JERSEY )  
COUNTY OF Mercer ) ss.

The above and foregoing Declaration of Amended and Restated Protective Covenants of Moon Ridge Subdivision was acknowledged before me this 13<sup>th</sup> day of October, 2006, by Mary N. Brown.

Witness my hand and official seal.

My commission expires:

Nancy Tawfik  
Notary Public

NANCY TAWFIK  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires January 13, 2008



S Dominguez Gunnison County, CO 572035  
1/3/07 3:41 PM Pg: 27 of 28  
135 R: \$141.00 D: \$0.00

