

Section 502. Delivery of Items. Any item required or permitted to be delivered to the Approving Authority shall be deemed properly delivered when actually received by the Approving Authority at such address as it may from time to time designate.

Section 503. Liability. Members of the Approving Authority shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

## ARTICLE VI

### GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 601. Definitions. The following words and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

- (a) Accessory Building: Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar structures, recreation facilities and other buildings customarily used in connection with the single family residence.
- (b) Approving Authority. The architectural review board established pursuant to Section 501 of these Covenants.
- (c) Building Site. A Lot as established by the recorded plat or the combination of two or more Lots or portions thereof as approved by Declarant and aggregating not less than 14,500 square feet.
- (d) City. The City of Colorado Springs.
- (e) These Covenants. This Declaration and the provisions contained in it.
- (f) Lot. Each area designated as a Lot in any recorded plat of the Subdivision.
- (g) Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of the City in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any public street. A side Lot Line is any boundary line which meets and forms an angle with a public street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street which affords the principal access to the Lot.
- (h) Map. The generalized map of the Subdivision attached hereto as Exhibit A.
- (i) Owner. Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time. A vote of Owners shall be determined on the basis of one vote for each Lot.
- (j) Structure. Any thing or device other than trees and landscaping the placement of which upon any Building Site might affect its architectural appearance, including by way of illustration and not limitation, any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering, antenna, mailbox, solar collector or outdoor

lighting. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(k) The Subdivision. The area subdivided as Mountain Shadows Filing No. 11 according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado.

(l) Enumerations Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

(m) Gender and Number. Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

(n) Due Notice. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least ten days prior to the action required by the notice.

Section 602. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 603. Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent or meaning of any of these Covenants, the Approving Authority shall determine the proper construction of the provision in question and shall set forth in written instrument duly acknowledged by the Approving Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this Section 603.

Section 604. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 605. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 606. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as

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an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 607. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, and the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, or the Approving Authority, or any combination of these. Until seven years after these Covenants were filed of record, or when Declarant owns no property within the Subdivision, whichever is sooner, Declarant may also enforce these Covenants in any of the manners permitted above. All costs, including reasonable attorneys' fees, incurred by the Approving Authority in connection with any successful enforcement proceeding initiated by them (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated these Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 608. Duration of Restrictions. Unless sooner terminated as provided in Section 609, the restrictions and other provisions set forth in these Covenants shall remain in force until the year 2012 and shall be automatically renewed for successive periods of ten years unless before the year 2012 or before the end of any ten year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by a majority vote of Owners of the Lots in the Subdivision.

Section 609. Amendment and Extensions. From time to time any one section of these Covenants (except Section 109) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by the holders of at least two-thirds of the votes of Owners of Lots and filed for record with the Clerk and Recorder of El Paso County.

Section 610. Termination. All sections of these Covenants (except Section 109) may be terminated at any time, and from time to time any two or more sections of these Covenants (except Section 109) may be amended or two or more new sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least three-fourths of votes of Owners of Lots and filed for record with the Clerk and Recorder of El Paso County.

Section 611. Partial Amendments. These Covenants may be amended for only a portion of the Subdivision by a written instrument executed by Declarant and one hundred percent of the then Owners of such portion of the Subdivision if:

- (a) the portion of the Subdivision affected by such amendment contains at least ten contiguous Lots;
- (b) no improvements have been erected on any such Lots; and
- (c) Declarant reasonably determines that the amendments will not materially adversely affect the general living

environment contemplated by these Covenants for the remaining Lots.

Section 612. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 613. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

Section 614. Notices. Any writing described in Section 613, including but not limited to any communication from the Approving Authority to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situate on the Lot owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Approving Authority has a record.

Section 615. VA/FHA Approvals. Declarant reserves the right to amend this Declaration as may be required in order to obtain VA or FHA approval of the Subdivision.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 10<sup>th</sup> day of July, 1987.

DECLARANT:

RIDGE DEVELOPMENT CO., LTD.

By: C-M-H Developers, Inc.,  
General Partner



By Jane A. Trinklein  
Jane A. Trinklein, Secretary

By C. Michael Hausman  
C. Michael Hausman, President

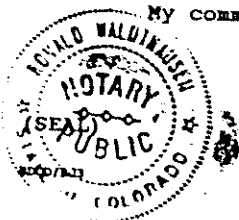
(Corporate Seal)

STATE OF COLORADO )  
                          ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of July, 1987 by C. Michael Hausman as President and by Jane A. Trinklein as Secretary, respectively, of C-M-H Developers, Inc., General Partner of Ridge Development Co., Ltd., Declarant.

Witness my hand and official seal.

My commission expires 9-13-87



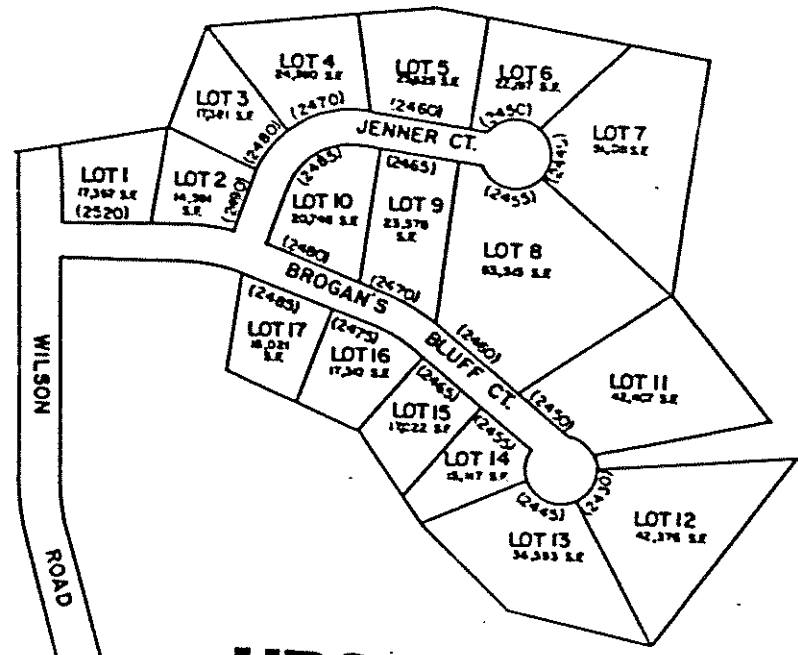
Ronald W. Whitman  
Notary Public

# MOUNTAIN SHADOWS FILING NO.II

IN THE CITY OF COLORADO SPRINGS  
EL PASO COUNTY, COLORADO



SCALE: 1"=200'



**URS**  
CORPORATION  
"MAKING TECHNOLOGY WORK"  
1040 S. EIGHTH ST.  
COLORADO SPRINGS, COLO.  
634-6699

Exhibit A