

J. Patrick Kelly El Paso Cty, CO  
03/13/2000 04:42  
Doc \$0.00 Page  
Rec \$50.00 1 of 10

200026120



DECLARATION  
of  
Conditions, Covenants, Restrictions, Easements and Charges  
Affecting the Real Property known as

**COTTONWOOD MEADOWS**

THIS DECLARATION is made by RBJ Investments, LLC, a Colorado corporation, hereinafter called Declarant.

RECITALS

A. Declarant owns the real property located in El Paso County, Colorado that is more particularly described on Exhibit A attached hereto and made a part hereof, which real property will be platted into lots in a subdivision known as Cottonwood Meadows (the "Property").

B. Declarant desires to enhance and protect the quality and value of the Property and to provide for the operation and maintenance of the Common Area thereof. All references to Common Area shall include that detention basin ("Detention Basin") which is the subject of the "Private Detention Basin Maintenance Agreement" between and among the Declarant, the Association referred to below, and the Board of County Commissioners of El Paso County, which Private Detention Basin Maintenance Agreement is recorded at reception number 200026123 in the Clerk and Recorder's Office of El Paso County, Colorado. The provisions of Private Detention Basin Maintenance Agreement are incorporated herein by this reference. The Detention Basin shall be located on the property described on Exhibit B hereto.

C. Declarant deems it necessary and desirable to subject the Property to the covenants, conditions, restriction, reservations, easements, assessments, charges and liens set forth below, which shall burden and benefit Declarant, all other parties having any right, title or interest in the Property, or any portion thereof, and their respective successors, assigns, heirs, devisees and personal representatives.

D. Declarant shall form a nonprofit corporation (the "Association") to (i) manage, operate and maintain the Property's Common Area, including the cleaning, maintenance and repair of the Detention Basin; (ii) administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby, and those contained in the Private Detention Basin Maintenance Agreement; and (iii) levy, collect and enforce the assessments, charges and liens imposed pursuant hereto.

NOW, THEREFORE, Declarant declares that the Property shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens ("Covenants") hereinafter set forth.

## ARTICLE 1. COVENANT FOR ASSESSMENTS

1.1 Creation of the Obligation for Assessments. Each Owner, for each lot owned by acceptance of a deed therefor, or interest therein, whether or not it shall be so expressed in such deed or instrument creating the interest in the Lot, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines, and other sums which are described in these Covenants, which shall be both a personal obligation of the Owner and a lien against his lot as provided herein. Each Owner (and such Owner's successors, assigns, heirs, devisees and personal representatives) shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by nonuse of the Common Area or the facilities contained therein, by abandonment or leasing of his lot, or by asserting any claims against the Association, the Declarant or any other person or entity.

2.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, including allocation to reserves, and for the improvement and maintenance of the Common Area, including cleaning, maintenance and repair of the Detention Basin.

2.3 Annual Assessments. The annual assessment shall specifically include, but shall not be limited to the following common expenses:

- a) expenses of management;
- b) taxes and special assessments for the Common Area;
- c) premiums for all insurance which the Association maintains as required or permitted under these Covenants;
- d) common lighting, water and other common utility and sewer service charges;
- e) cleaning, maintenance and repair of the Detention Basin;
- f) wages for Association employees;
- g) legal and accounting fees;
- h) any deficit remaining from a previous assessment year;
- i) a working capital fund;

- j) the creation of reasonable contingency reserves, surpluses and sinking funds;
- k) trash removal;
- l) security services;
- n) performance of all the Association's obligations under the Private Detention Pond Maintenance Agreement;
- o) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of these Covenants.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof. The Association may enter into cooperative arrangements for provision of services with other homeowner associations in the surrounding area and may assume responsibility for that part of the cost fairly attributable to the subdivision.

2.4. Fixing Assessments. For the calendar year 2000, the annual assessment shall be \$\_\_\_\_\_ per lot, which assessments shall commence upon such date as a lot has had a house constructed thereon. Each year thereafter the Association's Board of Directors shall fix the annual assessment at an amount deemed sufficient to meet the needs of the Association. At a minimum, the amount of the annual assessment shall be fixed on an amount adequate to clean, maintain and repair the Detention Basin.

2.5 Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of an emergency situation or of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. Such special assessment may include an assessment for paying for any liability of the Declarant, the Association or the Owners under the Private Detention Basin Maintenance Agreement.

2.6 Procedure for Assessment Under Paragraph 2.5. Any assessment under Paragraph 2.5 shall be made pursuant to the procedures for special assessments set forth in the Bylaws of the Association.

2.7 Rate of Assessment. Except as provided herein, both annual and special assessments shall be fixed at a uniform rate for all lots sufficient to meet the expected needs of the Association.

2.8 Assessment Procedure.

a) Annual Assessments. No later than ninety (90) days before the beginning of each annual assessment period, the Board of Directors of the Association shall prepare a proposed budget for the Association for the purpose of setting the total annual assessment based upon the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. At least sixty days prior to the commencement of the assessment year, the Board shall mail, by ordinary first class mail, or otherwise deliver a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing or other delivery of the summary. Unless at that meeting a majority of the Owners entitled to vote reject the budget, the budget shall be deemed 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. The annual assessment shall be payable either (i) in one annual installment or (ii) in monthly installments (the "monthly assessment") on the first day of each successive month, as the Board directs. The Association shall cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual and monthly assessment, as applicable.

b) Special Assessments and Other Sums. Special assessments and other sums imposed hereunder shall be due and payable on the date and in the manner specified by the Board in written notice to each Owner, but such date shall not be less than thirty (30) days after such notice is sent.

c) Special Assessments Due to Acts of Owner. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of these Covenants, the Association's By-Laws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a special assessment against such Owner and his Lot and shall be enforceable as provided herein. Any other sum imposed by the Board as provided hereunder shall also be deemed a special assessment. Any special assessment imposed under this subparagraph shall be only against the Owner and the lot of the Owner responsible for the assessment.

d) Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of his lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date thirty (30) days after such notice is given.

2.9 Certificate of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A property executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

2.10 Effect of Nonpayment of Assessments-Remedies of the Association.

a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee for each delinquent assessment. The amount of the late charge shall be as set forth in the By-Laws of the Association, or if no such amount is stated, the later charge shall be the greater of (i) ten percent (10%) of the amount of the delinquent assessment or (ii) fifty dollars (\$50.00). Any assessment not paid within thirty (30) days after the due date thereof shall also bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's lot, and/or may suspend the delinquent Owner's right to vote and the right to use the Common Area. In the event a judgment is obtained, such judgment shall include interest and late charges on the assessment as above provided and the costs of collection, including reasonable attorney's fees.

b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an owner or his lot, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, late charges, costs of collection and reasonable attorney's fees, shall be a charge on the interest of the Owner in that lot and shall be a continuing lien, in favor of the Association, upon the lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, late charges, costs of collection, reasonable attorney's fees, and then to the assessment payment first due. The Board may, but shall not be required to, record a statement of lien with respect to the lot. The Board may proceed to foreclose the lien in the manner as provided by law. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, fees or other sums, which are not fully paid when due.

c) Authority. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an

action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

2.11 Working Capital. The Association may require an Owner who purchases a lot from Declarant to pay to the Association an amount equal to not more than the amount of three monthly assessments, which sum shall be held by the Association as and for working capital. Such sums shall not be refundable to such Owner. If the Association decides that such sums are not required for working capital, such sums may be placed in the general revenues. Furthermore, such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

2.12 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any bona fide First Mortgage of record provided, however, that the assessment lien shall have priority over a First Mortgage in an amount equal to the common expense assessments based on the budget adopted by the Association pursuant to these Covenants which would have become due, in the absence of any acceleration, during the six months immediately preceding the institution of the action to enforce the assessment lien, but in no event shall the priority of the assessment lien exceed one hundred fifty percent (150%) of the average monthly assessment during the immediately preceding assessment year multiplied by six. Sale or transfer of any lot shall not affect the lien for said assessment charges except that transfer of title of any lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to any such transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, subject to the limited priority granted to the assessment liens as described in this Section. No such transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure shall relieve any lot from liability for any assessment charges thereafter becoming due, nor for the lien thereof.

2.13 Notice to Mortgagees and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under these Covenants and/or the By-Laws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure

such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

2.14 Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a lot subject to these Covenants shall constitute a waiver of the homestead exemption as against said assessment lien.

2.15 Exempt Property. The following Property subject to these Covenants shall be exempt from the assessments created herein: (a) all Property dedicated to and accepted by local public authority; and (b) the Common Area including the Detention Basin.

### ARTICLE 3. MAINTENANCE

3.1 Association Maintenance. Except as otherwise provided in these Covenants, the Association, or its duly designated agent, shall maintain all Common Areas and the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas so that Cottonwood Meadows displays a pride of ownership. In this regard, the Association shall have the following duties and obligations:

- a) acquisition and maintenance of liability insurance for all of the Common Areas for the benefit of the Association in a minimum combined single limits amount of \$1,000,000.00;
- b) the installation and maintenance of all signs which Declarant, or if applicable, the Association deems advisable for the safety or well-being of the Owners or which are required by an applicable governmental authority.


The Association shall also be responsible for the repair, replacement, improvement and maintenance of all Common Areas not described above as well as all improvements thereon.

### ARTICLE 4. CONSTRUCTION OF DETENTION BASIN

4.1 RBJ Enterprises, LLC, and its successors and assigns, hereby covenant to construct the Detention Basin referenced elsewhere in this Declaration, pursuant to the Private Detention Basin Agreement. Should RBJ Enterprises, LLC, or its successors and assigns fail to construct said Detention Basin as provided in the Private Detention Basin Agreement, then the Association shall construct the Detention Basin.

In witness whereof, RBJ Enterprises, LLC has executed these Covenants this 7 day of March, 2000.

**RBJ ENTERPRISES, LLC**



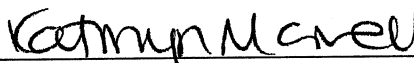
By: Rudy Byler, General Manager

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of March, 2000, by Rudy Byler, General Manager of RBJ Enterprises, LLC.

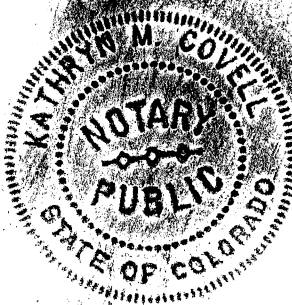
Witness my hand and official seal.

My commission expires:

March 19, 2001



Notary Public



**COTTONWOOD MEADOWS SUBDIVISION**  
**Legal Description**

Cottonwood Meadows Filing No. 1, El Paso County, Colorado,

More particularly described as follows:

That portion of the Southeast One-Quarter of Section 15, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows: Commencing at the Center One-Quarter corner of said Section 15; thence N89°52'46"E on the East-West centerline of said Section 15, a distance of 2002.78 feet to the Westerly right-of-way line of Marksheffel Road, a 60 foot County Road; thence S04°35'00"W on said Westerly right-of-way line, 605.33 feet; thence continue on said Westerly right of way line on a curve to the right whose radius is 5699.75 feet, through a central angle of 10°40'00", an arc distance of 1061.11 feet; thence continue along said Westerly right-of-way line S15°15'00"W, a distance of 861.91 feet to the Point of Beginning of the tract to be described; thence continue along said Westerly right-of-way line S15°15'00" W, a distance of 133.23 feet to a point on the Northerly right-of-way line of Fontaine Boulevard, said right-of-way line being 30.00 feet North of and parallel with the South line of said Southeast One-Quarter of Section 15; thence on said Northerly right-of-way line S89°52'03" W, a distance of 1514.53 feet to intersect the West line of said Southeast One-Quarter of Section 15; thence on said West line N00°05'44"E, a distance of 431.53 feet; thence N89°52'03"E, a distance of 1265.78 feet; thence on a curve to the right, whose radius is 270.00 feet, through a central angle of 13°01'21", an arc distance of 61.37 feet (the chord of said curve bears S31°56'05"W); thence S51°33'14"E, a distance of 402.79 feet to the Point of Beginning.

**EXHIBIT A**

To Declaration of Conditions....

### DETENTION BASIN SITE

That portion of the Southeast One-Quarter of Section 15, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows:

Commencing at the Center One Quarter corner of said Section 15; thence N89°52'46"E on the East-West centerline of said Section 15, a distance of 2002.78 feet to the Westerly right-of-way line of Marksheffel Road, a 60 foot County Road; thence S 04°35'00" W on said Westerly right-of-way line, 605.33 feet; thence continue on said Westerly right-of-way line on a curve to the right whose radius is 5699.75 feet, through a central angle of 10°40'00", an arc distance of 1061.11 feet; thence continue along said Westerly right-of-way line S 15°15'00" W, a distance of 861.91 feet; thence N 51°33'14" W, a distance of 81.60 feet to the Point of Beginning of the tract to be described; thence S 15°15' 00" W, a distance of 154.89 feet, thence S 89°52'03" W, a distance of 398.74 feet; then N 69°31'54" E, a distance of 170.64 feet; thence N 21°48'48" W, a distance of 163.61 feet; thence along the arc of a curve to the left, said curve having a central angle of 29°44'30", a radius of 330.00 feet for an arc distance of 171.30 feet (the chord of said curve bears N 53°19'01" E); thence S 51°33'14" E, a distance of 261.19 feet to the Point of Beginning;

### EXHIBIT B

To Declaration of Conditions....