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*DECLARATION OF CONDITIONS,  
COVENANTS, RESTRICTIONS, AND EASEMENTS  
FOR CERTAIN PROPERTY LOCATED WITHIN  
WOODMEN HILLS FILING NO. 9*

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Exhibit A - Map Depicting Lots 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780 in Woodmen Hills Filing No. 9

Exhibit B - Legal Description of the Expansion Property

## DECLARATION

of  
Conditions, Covenants, Restrictions, and Easements  
for

### CERTAIN PROPERTY LOCATED WITHIN

### WOODMEN HILLS FILING NO. 9

ELITE PROPERTIES OF AMERICA, INC., a Colorado corporation and Skywalk Development Corp., a Colorado corporation, are the owners of certain real property located in El Paso County, Colorado described as follows:

LOTS 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780 THROUGH 814, INCLUSIVE, IN WOODMEN HILLS FILING NO. 9, AS DEPICTED ON THE PHASE I LOTS MAP ATTACHED AS EXHIBIT A.

Elite Properties of America, Inc. shall be the "Declarant" pursuant to this Declaration. Declarant, with the consent of Skywalk, desires to place protective covenants, conditions, restrictions, reservations, liens, and charges upon the Subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value. Consequently, the Subdivision is hereby subjected to the following easements, covenants, restrictions, and conditions (collectively referred to as "Covenants"), all of which shall run with the Subdivision and shall be binding upon all parties having or acquiring any rights, title or interest in it or any part thereof, and shall inure to the benefit of each Owner thereof. Capitalized words and terms shall have the meanings ascribed to them herein or their commonly accepted meanings.

### ARTICLE I

#### PROVISIONS TO MAINTAIN THE QUALITY OF LIFE

The quality of life in the Subdivision is affected not only by the natural surroundings but also by the various uses of the land. This Article I contains provisions intended to protect the unique natural beauty of the Subdivision and to regulate uses of the land in a harmonious and compatible manner.

Section 101. Property Uses. All Lots and Building Sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling or Structure erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling.

Notwithstanding the foregoing, the business activities associated with the sale of Lots or residences, or the construction thereof, as described in Section 108 hereof shall be allowed. In addition, in-home businesses not involving the servicing of customers or employees shall be allowed, provided such activities are conducted solely within the residence and do not create or result in any unreasonable, unwarranted, or unlawful use or interference with public rights, including, but not limited to, unreasonable or unwarranted use or interference with public streets, rights of way, or sidewalks, or in any other offensive or noxious activities.

Section 102. Structures. No Structure shall be erected within the Subdivision except single-family dwellings and those Accessory Buildings and accessory Structures which have been approved by the Declarant. No Structure other than a dwelling, no Accessory Building, trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes, either temporarily or permanently. No other Structure may be placed on any Building Site before completion of the dwelling upon such Building Site except with the permission of the Declarant. All Accessory Buildings and Structures must be compatible and in harmony with the dwelling located upon the Lot.

Section 103. Construction Type. All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot, except as expressly hereinafter provided for temporary buildings and except as provided in Section 108 hereof.

Section 104. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction or building or its alteration or improvement, unless enclosed within an approved Structure so as not to be visible from any neighboring property or adjacent streets.

Section 105. Substantial Completion. A Structure shall not be occupied in the course of original construction until substantially completed and until a final inspection has been performed and approved by Regional Building and any other necessary governmental or quasi-governmental authority. All construction work shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 106. Commencement of Construction. Commencement of construction of a single-family dwelling upon a Lot shall be commenced within twelve (12) months of the Owner acquiring such Lot, unless such deadline shall be extended with the written permission of the Declarant, which permission may be granted or withheld in the sole and absolute discretion of the Declarant. This Section 106 shall not apply to any Lots owned by Declarant.

Section 107. Construction Completion. The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty days without permission of the Declarant, the Declarant may, at Declarant's option, provide the Owner thereof Due Notice of such fact, and if construction on such Structure is not diligently commenced

within thirty days after such notice, the unfinished Structure (or unfinished portion thereof) shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. If not so removed by the Owner, the unfinished structure (or unfinished portion thereof) may forthwith be removed by the Declarant at the cost of the Owner.

Section 108. Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Declarant. Model homes may be used and exhibited only by Declarant or with the permission of the Declarant. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes. The appearance and placement of temporary buildings or Structures permitted for construction or sales purposes must be approved by Declarant.

Section 109. Construction Debris. When construction is commenced upon a Lot, a trash container area will be provided, properly used and maintained. During the progress of construction, the Owner of a Lot shall use his best efforts to ensure that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. The Owner shall use his best efforts to ensure that no construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly retrieved and disposed of properly.

Section 110. Drilling Structures. No derrick or other Structure designed for use in or used for boring or drilling for water, oil, natural gas, or other underground substance shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum, other hydrocarbon substances, or other underground substance be produced from any well or other Structure or mechanism located upon, in or under any Lot.

Section 111. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant easements to others over, under, in and across each of the seven foot (7') strips along and adjoining each rear Lot Line of each Lot, and each of the five foot (5') strips along and adjoining each side Lot Line of each Lot for use of all or part of such areas for lines for public utility and drainage easement purposes, transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and drainage Improvements and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. In addition, all Lot Lines to streets are subject to a ten foot (10') easement for public utilities and drainage purposes. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance and as provided for on the required plat for the Subdivision.

Section 112. Underground Utilities. All utilities that will be installed within the Subdivision after the date of execution of this Declaration, including, electrical, telephone and cable television service, except lighting standards and customary service devices for access, control or use of utilities, shall be installed underground. The Declarant may grant approval for temporary above ground utility lines as needed during construction. This Section 112 shall have no applicability to overhead

utilities or aboveground utilities that are or were in place prior to the date of execution of this Declaration.

Section 113. Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall each arrange and maintain any drives, dwellings, or other Structures so that ingress and egress to and from their respective Lots is exclusively from a publicly dedicated street and not through other private property or adjoining public lands. Vehicular access to and from the Lots is prohibited from Eastonville Road. As such, all Lots located on or adjacent to Eastonville Road must arrange and maintain any drives, dwelling or other Structures so that ingress and egress to and from their respective Lots from a publically dedicated street other than Eastonville Road.

Section 114. Garage and Driveway. The Structures on each Lot or Building Site shall include an attached one-car or two-car fully enclosed garage or such equivalent garage arrangements as may be approved by the Declarant. All driveways shall be improved with brick paver or concrete paving unless otherwise approved by the Declarant.

Section 115. Setbacks. Building Setbacks must comply with the requirements of the County of El Paso and all other applicable governmental or quasi-governmental agencies having appropriate jurisdiction for front, rear and side Lot lines, as of the date of commencement of construction. No fence, hedge, tree, shrubbery or landscaping shall be installed or maintained on a corner Lot that will obstruct visibility at an intersection.

Section 116. Compliance with Building Codes. All construction must also conform to the building codes, zoning codes and subdivision regulations of El Paso County, Colorado, which regulations may vary from the provisions of these Covenants; provided, however, if these Covenants are more restrictive then such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

Section 117. Minimum Floor Area. No dwelling or Structure shall be erected which, exclusive of basements below garden level, porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross liveable floor area less than as follows: (1) if a ranch or single story Structure, 800 square feet and (2) if other than a ranch or single story Structure, 1100 square feet.

Section 118. General Architectural Standards. The Declarant shall have the right and authority to establish and amend specific architectural standards from time to time as provided in Section 205 hereof.

Section 119. Fences. The height, location, and material of all fences, animal pens, dog runs, and other similar items must be approved by the Declarant. Chain link or similar wire or wire mesh fencing shall not be allowed as the primary fencing material. Except with approval of the Declarant, no fence or hedge more than two feet high shall be installed closer to an adjoining street than the dwelling or any other Structure located on the Lot. The fencing of front yards is not permitted.



Section 120. Height Restriction. The height of any dwellings or other Structures or Accessory Buildings constructed or to be constructed on any Lot in the Subdivision is hereby restricted and shall not exceed thirty-five (35') feet in height. Height shall be measured from the highest finish grade contour at any point adjoining the foundation perimeter of the Structure to the highest point on the Structure exclusive of any chimney. Finished grade contour shall mean the ground contour established by Declarant during development of the Lots and existing immediately prior to commencement of construction of any dwelling or other Structure, or such other finished grade as may be approved by the Declarant.

Section 121. Sight Triangles. In addition to the height restrictions described in Section 120, any obstruction greater than eighteen inches (18") in height is prohibited within sight triangles as provided by County ordinance, including but not limited to those contained within Lots 666, 672, 673, 674, 680, 679, 684, 694, 695, 700, 701, 705, 743, 744, 753, 760, 761, 766, 767, 780, 785, 788, 789, 797, 803, 804, 806, and 809.

Section 122. Pedestrian Access Easements. No fences, landscaping or other Structures will be allowed within any pedestrian access easement shown on the plat of the Subdivision in a manner that would impede free access to or within any such pedestrian access easement.

## ARTICLE II

### DENSITY AND QUALITY STANDARDS

Section 201. Resubdivision. No more than one dwelling shall be erected or maintained within any Lot or the combination of two or more Lots or portions thereof unless approved by the Declarant.

Section 202. Antennas. Except as provided below, no aerial, antenna, or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall any such aerial, antenna or other device be mounted at any location so as to be visible from neighboring properties or adjacent streets. Notwithstanding the above, an antenna that is: (i) designed to receive direct broadcast satellite service that is one meter or less in diameter, (ii) designed to receive video programming services via multiple distribution services that is one meter or less in diameter or diagonal measurement, or (iii) that is designed to receive television broadcast signals (the "Antenna"), as defined by the Federal Communications Commission or the Telecommunications Act of 1996, shall be permitted so long as the means, method and location of such Antenna comply with the rules adopted from time to time by Declarant or the Approving Authority. No unreasonable delay or unreasonable increase in the cost of installation or maintenance shall be imposed by such rules, nor shall the rules prevent reception or otherwise make reception impossible for any Owner who shall seek to install an Antenna, other than for health and safety reasons.

Section 203. Owner Maintenance. In order to keep the Subdivision an attractive, quality environment, each Owner shall maintain the exterior of any Improvements, including buildings, other Structures, landscaping, walks, driveways and parking areas on his Lot in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surface becomes worn-off or weatherbeaten. Any dead or diseased landscaping will promptly be replaced, all lawns will be properly mowed and maintained, and weeds and other noxious plants will be controlled. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawn, shrubs, trees, other landscaping material, fences, signage, mailboxes and outdoor lighting.

Section 204. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a slightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the date the damage occurred, unless otherwise approved by Declarant.

Section 205. Design Standards. Declarant may, from time to time, adopt Design Standards defining the architectural and development criteria for the Subdivision, the approval processes and other related matters. All Improvements in the Subdivision must also comply with these Design Standards.

### ARTICLE III

#### LIVING ENVIRONMENT STANDARDS

Section 301. Building and Grounds Conditions. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings, Structures or grounds on his Lot which tend to decrease the beauty of the Lot, the neighborhood, the Subdivision as a whole, or in the area.

Section 302. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 303. Maintenance Equipment. All maintenance equipment, including yard and garden equipment, shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 304. Clotheslines. No outdoor clotheslines will be permitted unless such clotheslines are approved by the Declarant and are placed upon a Lot in such a manner so as not to be visible from neighboring property or adjoining streets.

Section 305. Refuse. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or adjoining street, except

during refuse collection times and except during construction and during construction the Owner shall comply with the provisions of Section 109 hereof.

Section 306. Nuisances. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on any Lot or in any living unit or Structure. No annoying lights, sounds or odors shall be permitted to emanate from any living units or Structure.

Section 307. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any Structure or within any Building Site.

Section 308. Landscaping. Within six (6) months after substantial completion of a dwelling or within any extension of that period granted by the Declarant, all landscaping shown in any approved landscaping plans must be properly installed. Unless otherwise approved by the Declarant and subject to the restriction described in this Section 308, at least fifty percent of the front yard area shall be covered with lawn of a type approved by the Declarant. For purposes of this section, the front yard is defined as the area of the Lot between the paved surface of any street adjacent to the Lot and the building setback line on the Lot. The Owner of any Lot having a strip of land between the curb and the sidewalk shall cover such strip of land with lawn of a type approved by the Declarant, unless otherwise approved by the Declarant. The landscaping of such area between the curb and the sidewalk shall be in addition to the requirement to maintain at least fifty percent (50%) of the front yard with lawn of a type approved by the Declarant. Additionally, the County often provides the first home buyer within a newly developed subdivision with a tree. Each Owner receiving such a tree from the County shall be required to plant that tree within the strip of land between the curb and the sidewalk, provided such area exists on that Lot. Notwithstanding any other provision contained in this Section 308, all irrigated landscaping must be in compliance with the rules and regulations of the Woodmen Hills Metropolitan District, including the establishment by the Woodmen Hills Metropolitan District; and shall have an allowable maximum of 2,500 square feet of irrigated sod and/or landscaping within each Lot.

Section 309. Weeds. All yards and open spaces and the entire area of every Lot on which no building has been constructed shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which, in the reasonable opinion of the Declarant, are likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which, in the reasonable opinion of the Declarant, causes undue danger of fire or is unsightly.

Section 310. Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot shall mow, cut, prune, clear and remove from the Lot diseased trees, unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot. The Declarant has the right (but not the duty) to enter

upon any Lot and perform this work after Due Notice to the Owner, in which case the reasonable costs incurred by the Declarant in performing such work will be a lien against the Lot involved in the same manner and to the same extent as provided in Section 504 below.

Section 311. Transmitters. No electronic or radio transmitter of any kind which tends to interfere with or create a nuisance with respect to any other Lots or the Owners thereof, other than garage door openers or cordless telephones, shall be operated in or on any Structure or within any Building Site.

Section 312. Animals. Domesticated birds or fish and other small domesticated animals permanently confined indoors will be allowed. No other animals, except an aggregate of not more than three domesticated dogs or cats (which must be fenced or restrained at all times within the Lot), will be permitted on any Lot. No animal of any kind shall be permitted which, in the opinion of the Declarant, makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes. All household pets shall be controlled by their Owner and shall not be allowed off the Owner's Lot except when properly leashed and accompanied by the pet Owner or such Owner's representative. Each Owner of a household pet shall be financially responsible and liable for any damage caused by said household pet.

Section 313. Trailers, Campers, etc. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit or truck, excepting only one (1) ton or smaller vehicles, commonly known as pickup trucks, solely for the private use of the residents of a dwelling, shall be parked within any Lot or Building Site except in a completely enclosed Structure, or fully screened in a manner approved by the Declarant. Parking of automobiles or vehicles on the side of a dwelling is not permitted unless it is in a completely enclosed Structure or in a fully screened manner approved by the Declarant.

Section 314. Inoperative Vehicles. No stripped down, partially wrecked or inoperative motor vehicle, or any part thereof, shall be permitted to be parked on any street or on any Lot in such a manner as to be visible from any neighboring property or adjoining street.

Section 315. Vehicle Repairs. No maintenance, servicing, repair, dismantling, restoration, or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed Structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 316. Signs. The only signs permitted on any Lot or Structure shall be:

- (a) One sign of customary size for offering of the signed property for sale or for rent;

- (b) One sign of customary size for identification of the occupant and address of any dwelling;
- (c) Multiple signs for sale, administration and directional purposes installed by or with the permission of Declarant during development;
- (d) Signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
- (e) Such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental, except by the Declarant or with the prior written permission of the Declarant. All permitted signs must be professionally painted, lettered and constructed. If a permitted sign is not in compliance with the Design Standards, the Declarant may, upon Due Notice, require it to be modified or removed.

Section 317. Drainage. The soils within the state of Colorado consist of both expansive soils and low-density soils which will adversely affect the integrity of the Structure or dwelling located upon a Lot if the Structure or dwelling and the Lot containing it are not properly maintained. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils, and the addition of moisture to low-density soils causes a realignment of soiled grains, thereby resulting in consolidation and/or collapse of the soils.

Declarant intends to sell Lots to Owners, who may thereafter construct or have constructed a Structure or dwelling upon each Lot purchased. Each Lot shall be graded by the Owner in accordance with the approved grading plan. No change in the approved grading plan may be made without the prior written approval of the Declarant. Anyone desiring to change the grading plan shall cause to be prepared by a professional engineer, a revised grading plan which must be submitted to the Declarant prior to the change of grading. The procedure for approving grading plans shall be the same as the procedure for approval of plans and specifications applicable to the construction of a Structure or dwelling upon the Lot, as further set forth in these Covenants. Each Structure or dwelling shall be located on a Lot in such a way as to be compatible with the approved grading plan and not interfere with drainage patterns established by the grading plan. The final drainage patterns established during grading of a Lot are the sole responsibility of the Owner and the Declarant shall not have any liability whatsoever for damage caused by improper grading or drainage upon any Lot.

An Owner shall not permit the moisture content of the soil supporting the foundation and supporting the concrete slabs forming a part of the Structure or dwelling to increase to an extent that would adversely affect the foundation and concrete slabs, and shall not introduce excessive water

into the soil surrounding the Structure or the dwelling. An Owner shall maintain the grading and drainage patterns of the Lot established according to the approved grading plan authorized by the Declarant.

An Owner shall not impede or hinder in any way the water flowing on his Lot from reaching the drainage courses established for the Lot and the Property.

By virtue of the review and submittals described in this Section 317, the Declarant is in no manner certifying, guaranteeing or otherwise making any representations or warranties with respect to the adequacy, sufficiency or appropriateness of any grading plan applicable to the Lot. Each Owner of a Lot acknowledges and agrees that the Declarant shall have no responsibility or liability whatsoever with respect to such issues and each Owner shall be fully and solely responsible for same.

Section 318. Hazardous Materials. No materials shall be transported to, from or within the Subdivision in such a way as to create a nuisance or hazard. Storage, use or disposal of hazardous or radioactive material within the Subdivision is prohibited. Any continued or intensive use of pesticides or herbicides is deemed to be a use of hazardous materials.

Section 319. Air Conditioning and Heating Equipment. No heating, air conditioning or refrigeration equipment shall be placed, allowed or maintained anywhere other than on the ground; provided, however, that solar units meeting all governmental guidelines for residential uses may be located on the roof if (a) such solar unit is built into and made an integral part of the roof flashing or the structure of any house constructed on such Lot; and (b) such solar unit is specifically approved by the Declarant pursuant to the terms of this Declaration.

#### ARTICLE IV

#### RESERVED RIGHTS OF DECLARANT

Section 401. Building Approval. No Improvement shall be permitted, except in accordance with plans, specifications and other information submitted to the Declarant and approved by the Declarant no more than one year before start of the construction, alteration or installation. Matters which require the approval of the Declarant include but are not limited to: the exterior appearance, material, color, height and location of each Structure, drive, walk, fence, grading of site, site lighting, and location, size and type of any landscaping material including grass, ground cover, ornamental rock, shrubs and trees.

a. In granting or withholding approval, the Declarant shall adhere to any standards specified in these Covenants and shall consider among other things: the requirement of the Design Standards, the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings and surrounding uses, the proper relation of the Structure to the environment and to surrounding uses, and the degree, if any, to which the proposed Structure

or covering will cause intrusions of sound, light, or appearance or cause other effects on neighboring sites beyond those reasonably to be expected in a quality urban residential area and reasonably acceptable to considerate neighbors.

b. All plans, samples and other materials to be submitted to the Declarant shall be submitted in duplicate, together with the fee described in Section 502 hereof. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan shall show in scale the location of all buildings, drives, walks, fences and any other Structures. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples, if requested by Declarant. If requested, a soils report for the Building Site shall be supplied to Declarant. Landscaping plans shall show the location of all landscaping elements, including grass, ground cover, shrubs, trees and other landscape materials for all the area of the Lot not covered by Structures. The size and type of all new plant materials shall be indicated.

c. In discharging its rights and obligations hereunder, the Declarant makes no representations or warranties to the Owner or any other person or entity concerning the construction of the Structures on the Lot, and the Declarant shall have no liability or responsibility for defective construction or other similar matters. Each Owner of a Lot acknowledges and agrees that the Declarant, in discharging its rights and obligations hereunder, is not making any warranty or representation, expressed or implied, that any Structure to be constructed by an Owner upon a Lot is suitable for that Lot and each Owner further acknowledges that each Owner, and such Owner's representatives or contractors, are ultimately and fully responsible for any construction techniques, measures and means utilized in the construction of a Structure upon a Lot.

Section 402. Files. The Declarant shall be entitled to retain one copy of all approved plans and any accompanying submittal items as part of its files and records.

Section 403. Variances. The Declarant shall have the authority to grant for a Lot or Building Site a variance from the terms of one or more of the Sections of Articles I, II or III of these Covenants, or the Design Standards, subject to terms and conditions which may be fixed by the Declarant and will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of those sections could result in unnecessary hardship. Following an application for a variance:

- (a) The Declarant shall, within 30 days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Declarant fails to act on the request for the variance within this 30 days, the variance shall be deemed not to be granted as of the expiration of such 30 days.
- (b) A variance granted hereunder shall run with the Lot or Building Site for which granted.

- (c) A variance shall not be granted unless the Declarant shall first find that all of the following conditions exist:
- (i) the variance will not authorize the operation of a use other than a use authorized by Section 101 above;
  - (ii) owing to the exceptional and extraordinary circumstances, literal enforcement of the sections above enumerated could result in unnecessary hardship;
  - (iii) the variances will not substantially or permanently injure the use of other property in the Subdivision;
  - (iv) the variance will not alter the essential character of the Subdivision;
  - (v) the variance will not weaken the general purposes of these Covenants;
  - (vi) the variance will be in harmony with the spirit and purpose of these Covenants; and
  - (vii) the circumstances leading the applicant to seek a variance are unique to the Lot or Building Site or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.
- (d) If a variance is denied, another application for substantially the same variance for the Lot involved may not be made for a period of at least one year from the date of submittal of the original request.

#### ARTICLE V

#### DECLARANT; ARCHITECTURAL COMMITTEE

Section 501. Declarant Rights; Composition of the Architectural Committee. Ten years after the Declarant first conveys a Lot in the Subdivision to an Owner who is not the Declarant, or at such earlier time as the Declarant may so elect in Declarant's sole discretion, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other responsibilities, functions, rights and powers under these Covenants to an Architectural Committee, as described hereafter. The Architectural Committee shall consist of no fewer than three individuals and no more than five individuals, each of whom shall be an Owner of a Lot within the Subdivision. The Declarant shall designate the number of and the members who shall constitute the initial Architectural Committee. After the Declarant has transferred its rights, powers and responsibilities pursuant to this Section 501, any one or more members of the Architectural Committee may from time to time be removed and their successors designated and the number of



members constituting the Architectural Committee may be changed within the limits set forth in this Section 501 by an instrument signed and acknowledged by the Owners of at least fifty percent (50%) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County. Vacancies in the Architectural Committee may be filled by action of the remaining members of the Committee, subject always to the power of the Owners to remove and designate members of the Committee as provided above.

Section 502. Delivery of Items and Approval Process. Any item required or permitted to be delivered to the Declarant shall be deemed properly delivered when actually received by the Declarant at the Declarant's principal office, which initially shall be the office of the Declarant at 6385 Corporate Drive, Colorado Springs, Colorado 80919. Subsequent to the date of formation of the Architectural Committee as provided in Section 501 hereof, the Architectural Committee shall designate a new address for the delivery of any such items. The Owner or person submitting the materials to the Architectural Committee shall pay all costs, without exception, associated with the matter so submitted as such costs may reasonably be established by the Declarant or Architectural Committee, as applicable. Initially, such costs are established at fifty dollars (\$50.00). Payment of costs shall be evidenced by a receipt signed by an authorized agent of the Declarant or Architectural Committee, as applicable. All action required or permitted to be taken by Declarant or subsequently by the Architectural Committee shall be in writing and any such written statement shall protect any person relying on the statement. If the Declarant or the Architectural Committee does not execute and acknowledge such a statement within thirty days after actual payment of all costs and actual delivery of all the required materials to the Declarant or the Architectural Committee, as applicable, the materials so delivered shall be deemed approved to the extent delivered for the purpose of these Covenants (except in the case of a request for variance); provided, however, that such approval shall not be deemed to permit any matter that is in violation of or contrary to an express provision of these Covenants. Any required plans and specifications must be submitted in duplicate. One set of these plans and specifications and details with the approval or disapproval endorsed thereon shall be returned to the person submitting them and the other copy thereof shall be retained by the Declarant or Architectural Committee, as applicable, for its permanent files. Upon formation the Architectural Committee may take action without a meeting by a written instrument signed by all of the members of the Architectural Committee and the Architectural Committee may delegate to one or more members of the Architectural Committee any or all functions and powers of the Architectural Committee and until each delegation is revoked or modified the action of the member to whom such delegation is made shall constitute the action of the Architectural Committee for the purposes of these Covenants.

Section 503. Liability. The Declarant, the officers, directors, shareholders and agents of the Declarant, and the members of the Architectural Committee 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. Neither the Declarant, the officers, directors, shareholders or agents of the Declarant, the Architectural Committee or any architect, engineer, or agent acting on behalf of the Architectural Committee, or Declarant shall be responsible in any way for any defects in any plans or

specifications submitted, revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans and specifications.

Section 504. Violation: Remedy. Until the time for establishment of the Architectural Committee as provided in Section 501 hereof, Declarant may, and after the establishment of the Architectural Committee, the Architectural Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Architectural Committee or Declarant to invoke this Section unless within a period stated in the notice (which notice shall not be less than ten (10) calendar days unless a shorter period of time is otherwise provided for in these Covenants), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Architectural Committee or Declarant (whichever gives the notice) may, but shall not be obligated to, cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry upon such Owner's Lot as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Architectural Committee for the purpose of entering onto a Lot to remedy violations or breaches of these Covenants. Declarant and the Architectural Committee may delegate their entry and removal rights hereunder to agents and independent contractors. The cost so incurred by the Architectural Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per annum and costs of collection (including reasonable attorneys' fees), shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. Such lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded but 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 the lien established in this Section 504. The Architectural Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of collection against the Owner and may bring an action to foreclose the lien against the Lot and Improvements subject to the lien and there shall be added to the amount of such obligation the costs of collection, and the judgment in any such action shall include interest as above provided and the costs of collection, including reasonable attorney's fees. The waiver of homestead exemption set forth above shall apply to any foreclosure action for the lien imposed by this Section 504. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce these Covenants pursuant to Section 607 or as otherwise may be provided herein or by law or equity; provided, however, that only the Declarant and the Architectural Committee shall have the right to proceed under this Section 504. In the event that the Declarant or Architectural Committee, whether acting for themselves or through their agents and representatives, elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the

entry on the Lot unless (i) damage is caused to the Lot or Improvements thereon that is unrelated to the remediation of the breach of the Covenants and (ii) is caused by the willful and wanton acts of the Declarant or the Architectural Committee. In no event shall there be any liability for damage to a Structure that is in violation of these Covenants.

Section 505. Declarant's Rights to Complete Development of the Property. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of the Subdivision or nearby areas and to subdivide, resubdivide, or rezone any portion of the Subdivision; to grant licenses, easements, reservations and rights-of-way; to construct or alter Improvements on any property owned by Declarant within the Subdivision; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant within the Subdivision; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Subdivision. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to this Declaration by means of an amendment to this Declaration or addition hereto; to change any landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any Improvements on any property owned by Declarant, or to use any Structure on any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within the boundaries of the Subdivision, nor shall anything herein be deemed to require Declarant to seek or obtain the approval of the Architectural Committee for any such activity or Improvement to property by Declarant on any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration, which rights are incorporated in this section by this reference.

Section 506. Declarant's Reserved Rights to Expand. Declarant hereby reserves the right to expand the scope of this Declaration to include the property described in Exhibit B attached hereto and by this reference incorporated herein, in addition to the Lots created within the Property described in the introductory paragraph of this Declaration (the "Expansion Property"). To bring the Expansion Property into the Subdivision and under this Declaration, Declarant shall execute, acknowledge and record a Plat map or maps depicting the Expansion Property and the Lots created thereby, together with an amendment to this Declaration in which the scope of this Declaration is extended to include the Expansion Property. Declarant's reserved rights as to the Expansion Property shall allow Declarant to expand the scope of the Subdivision and this Declaration to include the Expansion Property in phases pursuant to which portions, but less than all, of the Expansion Property may be made a part hereof without all of the Expansion Property being made a part of same.

Section 507. Provisions Regarding Exercise of Declarant's Reserved Rights. Declarant may exercise the reserved rights of Declarant as to the Expansion Property as set forth herein. Declarant makes no assurances that any of the Expansion Property will be developed and made a part of the Subdivision or this Declaration and makes no assurances that all of the Expansion Property will be developed and made a part of the Subdivision. The exercise by Declarant of some of the reserved

rights of Declarant hereunder shall not require Declarant to exercise any other of Declarant's reserved rights hereunder.

## ARTICLE VI

### METROPOLITAN DISTRICT

Section 601. Development Agreement. All Owners recognize and understand that the Property is controlled by a "Long-Term Water Lease, Option to Purchase, and Development Agreement" and a "Lease and Option-Clubhouse Agreement between the Woodmen Hills Metropolitan District (the "District")" and the Declarant.

Section 602. Special Districts. The Owners further recognize and understand that the Property is within the boundaries of the District which supplies various municipal and recreational services to the Property and that the Owners' Lots are subject to the ordinances, regulations, and various fees and charges now in force or which might be adopted by the District.

## ARTICLE VII

### GENERAL PROVISIONS FOR EFFECT OF THE COVENANT

Section 701. Definitions. The following words and expressions as 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, separate guest houses without kitchens, separate servants' quarters without kitchens and other buildings customarily used in connection with the single-family residence.

(b) Building Site. A Lot as established by the recorded Plat or the combination of two or more Lots or portions thereof as approved by the Declarant.

(c) Architectural Committee. A committee established to maintain architectural control, as provided in Article V.

(d) Covenants. This Declaration and the provisions contained in it.

(e) Declarant. The entity identified as the "Declarant" in the preamble to this Declaration or its specific replacements or substitutions pursuant to Section 715 below.

- (f) Design Standards. The guidelines for uses and architectural approvals which Declarant or the Architectural Committee may, from time to time, adopt pursuant to Section 205 of these Covenants.
- (g) Due Notice. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least ten calendar days prior to the action required by the notice.
- (h) 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.
- (i) Expansion Property. The property described in Exhibit B attached hereto and incorporated herein, as referred to in Section 506 and 507 hereof.
- (j) 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.
- (k) Improvement. Any Structure, object or activity on a Lot which alters the previous exterior appearance of the Lot or any Structures located on it. Grading activity, removal of natural vegetation, construction of any Structures or additions to, remodeling, repainting and material changes to any previously approved building, Structure or landscaping plans all fall within the definition of an "Improvement."
- (l) Lot. Each area designated as a lot in any recorded plat of the Subdivision.
- (m) Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of the County of El Paso 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. Other Lot Lines are rear Lot Lines.
- (n) 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. Person includes corporations and other entities recognized by Colorado law as being capable of owning property.

- (o) Plat. Shall mean and refer to any Plat of the Property or the Expansion Property, as applicable, which has been approved by the County of El Paso and recorded in the real property records of said County.
- (p) Property. Shall mean and refer to the real property described in the introductory paragraph of this Declaration. If Declarant exercises the reserved rights of Declarant to include the Expansion Property within the Subdivision, then the term Property shall include those portions of the Expansion Property as to which Declarant has exercised its rights.
- (q) 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, lawn ornamentation, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering or outdoor lighting or play equipment. 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.
- (r) The Subdivision. The area subdivided as Woodmen Hills Filing No. 9, Lots 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780 and 814, inclusive, El Paso County, Colorado, according to the Plat recorded at Reception No. 200010459 in the office of the Clerk and Recorder of the County of El Paso and State of Colorado, as the same may be expanded with any Expansion Property.

Section 702. 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 703. Declarant Resolves Questions of Construction. These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised its discretion with respect to one Lot or property in the Subdivision is not a guarantee that

Declarant's discretion will be exercised in the same manner with respect to other Lots or properties in the Subdivision. It shall be presumed that the Declarant at all times exercised its discretion in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action or proceeding challenging any action or interpretation of the Declarant under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious. In the event that the rights and powers of the Declarant are transferred to an Architectural Committee pursuant to the terms of these Covenants, then the provisions of this Section 603 shall be applicable to the Architectural Committee to the same extent as this Section provides for the Declarant.

Section 704. Covenants Run With the Land. These Covenants shall run with the land and shall inure to the benefit of 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 705. 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 706. 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 validity and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as 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 707. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, the Declarant, and the Architectural Committee and may be enforced by an 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, the Declarant, the Architectural Committee, or any combination of these. All costs, including reasonable attorneys' fees, incurred by Declarant or the Architectural Committee in connection with any successful enforcement proceeding initiated by them (along or in combination with Owners), shall be paid by the party determined to have violated the 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. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation, of the Declarant to do such things.

Section 708. 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 twenty (20) years after the date of recordation of these Covenants in the El Paso County records, and shall be automatically renewed for successive periods of ten years unless before the expiration of the initial twenty (20) years, 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 the Owners of at least two-thirds (2/3) of the Lots in the Subdivision, in which event these Covenants shall terminate as of the end of the initial twenty (20) year term or ten (10) year extension, as applicable.

Section 709. Amendment and Termination. All sections of these Covenants (except Section 111) may be terminated at any time, and from time to time any one or more sections of these Covenants (except Section 111) may be amended or one or more new sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds (2/3) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County and provided that all of the other requirements set forth in this Section 609 are satisfied. Until ten (10) years have elapsed after the recordation of these Covenants in the real property records of El Paso County, Declarant reserves the right to unilaterally amend these Covenants, including addition of new sections hereto, without having to obtain the approval of the percentage of Owners specified in the first sentence of this Section 609. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent must be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Subdivision has been conveyed by Declarant to the first Owner other than Declarant.

Section 710. Liability of Employees. No member of, the Architectural Committee, officer, shareholder or director of Declarant, or any of their employees or agents will be liable to any party whatsoever for any act or omission taken pursuant to these Covenants unless the act or omission amounts to fraud or willful misconduct.

Section 711. 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 712. Action in Writing. Notices, approvals, consents, applications, and other actions 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, application or other action. Permission, consent or approval of the Declarant or the Architectural Committee under these Covenants is not effective unless in writing.

Section 713. Notices. Any writing described in Section 712, including but not limited to any communication from Declarant, or the Architectural Committee 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 Architectural Committee and if the Owner has not furnished an address, then to the most recent address of which the Architectural Committee has a record.

Section 714. Substitution of Declarant. The Declarant may, at its option, replace Declarant by substituting another person or entity for Declarant to fulfill the functions assigned to Declarant by these Covenants. Such a substitution must be accomplished by written instrument specifically referring to Section 615 of these Covenants. Any such replacement or substitution will become effective upon the appropriate written instrument being duly recorded in El Paso County, Colorado.

Section 715. Colorado Common Interest Ownership Act. Declarant hereby claims that this Declaration and the Subdivision are exempt from the provisions of the Colorado Common Interest Ownership Act (CCIOA) (C.R.S. 38-33.3-101, *et seq.*) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned communities from the provisions of CCIOA if the annual average common expense liability of each lot restricted to residential purposes, exclusive of optional user fees, may not exceed that amount set forth in Section 38-33.3-116 or its successor (which amount, on the date of execution of this Declaration, is \$300.00). At present there are no such average annual assessments (because there is no property owners association). If a property owners association is established in the future, the assessments levied by such association must comply with this Section 715.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of 30<sup>th</sup>  
of October, 2000.

DECLARANT:  
  
ELITE PROPERTIES OF AMERICA, INC.,  
a Colorado corporation  
By: Fred Bernau  
Its: Vice President

CONSENT

Skywalk Development Corp., a Colorado corporation, as an owner of a portion of the Property, hereby consents to the above Declaration of Conditions, Covenants, Restrictions, and Easements for Certain Property Located Within Woodmen Hills Filing No. 9.

SKYWALK DEVELOPMENT CORP.,  
a Colorado corporation

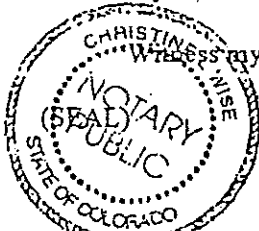
By: [Signature]  
Its: President

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

J. Patrick Kelly El Paso Cty, CO 200132338  
11/01/2000 09:53  
Doc \$0.00 Page  
Rec \$145.00 26 of 29

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of October, 2000, by Fred Berman as Vice President of Elite Properties of America, Inc., a Colorado corporation.

My Commission Expires: 12-02-2001



Witness my hand and official seal.

Christina M. Wiese  
Notary Public

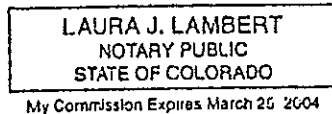
STATE OF COLORADO )  
                                  ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of October, 2000, by Benjamin I. Green as President of Skywalk Development Corp., a Colorado corporation.

My Commission Expires: March 25, 2004

Witness my hand and official seal.

(SEAL)



Laura J. Lambert  
Notary Public

EXHIBIT A  
TO  
DECLARATION  
of  
CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS  
for  
CERTAIN PROPERTY LOCATED WITHIN  
WOODMEN HILLS FILING NO. 9

Map Depicting Lots 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780 in Woodmen Hills Filing No. 9

J. Patrick Kelly El Paso Cty, CO 200132338  
 11/01/2000 09:53  
 Doc \$0.00 Page  
 Rec \$145.00 27 of 29

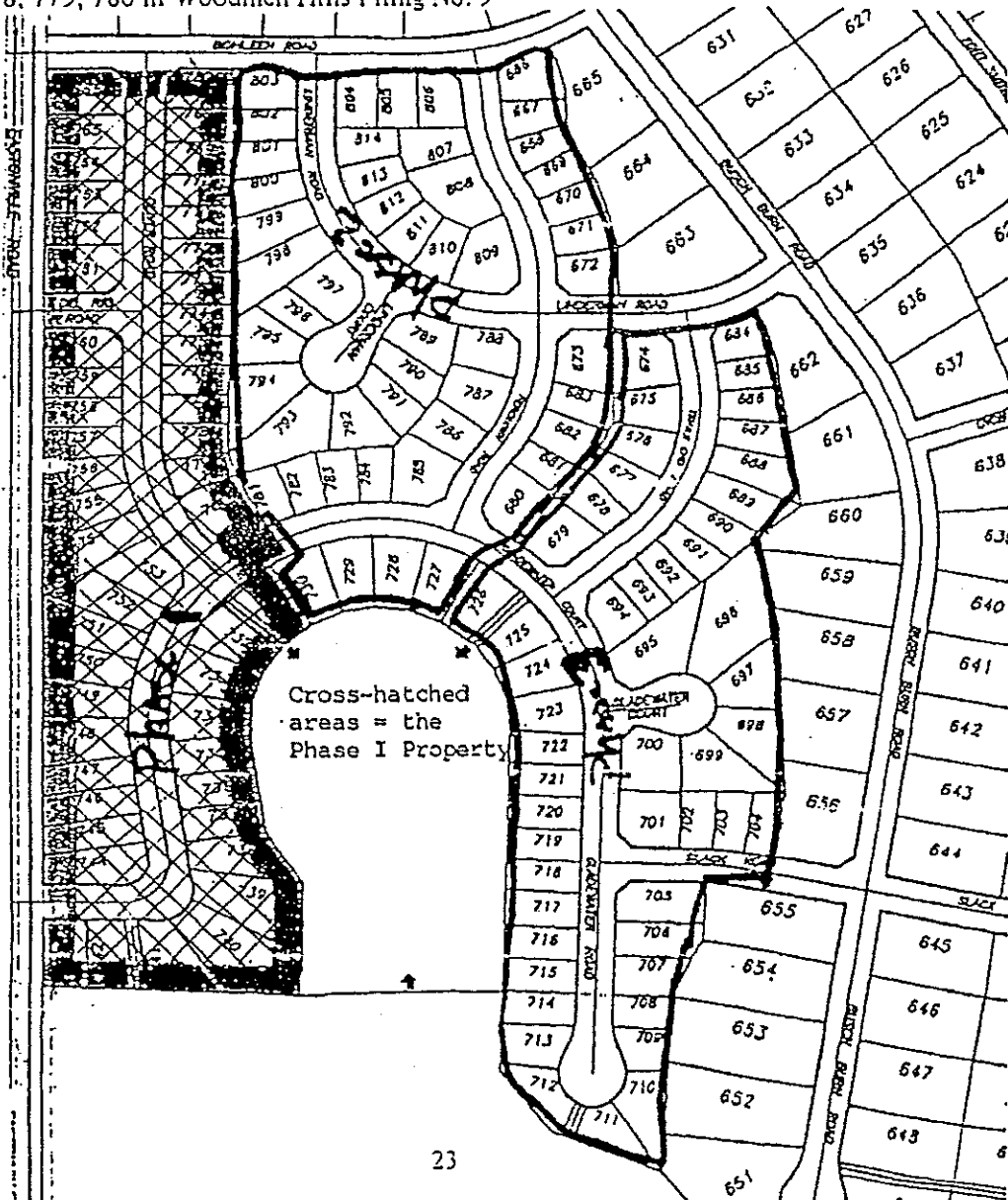


EXHIBIT B  
TO  
DECLARATION  
of  
CONDITIONS, COVENANTS, RESTRICTIONS, AND EASEMENTS  
for  
CERTAIN PROPERTY LOCATED WITHIN  
WOODMEN HILLS FILING NO. 9

Legal Description of Expansion Property of Certain Woodmen Hills Filing No. 9.

Phase 2 lots are to be the following: 727, 728, 729, 730, 781, 782, 783, 784, 785,  
786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801,  
802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 666, 667, 668, 669,  
~~670, 671, 672, 673, 683, 682, 681, 680~~, all in Woodmen Hills Filing No. 9.

Phase 3 lots are to be the following: 726, 725, 724, 723, 722, 721, 720, 719, 718,  
717, 716, 715, 714, 713, 712, 711, 710, 709, 708, 707, 706, 705, 704, 703, 702, 701,  
700, 699, 698, 697, 696, 695, 694, 693, 692, 691, 690, 689, 688, 687, 686, 685, 684,  
~~679, 678, 677, 676, 675, 674~~.

J. Patrick Kelly El Paso Cty, CO  
11/01/2000 09:53  
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200132338

SUBORDINATION OF LENDER

The signature of \_\_\_\_\_ hereby constitutes an acknowledgment by \_\_\_\_\_ of the subordination of the lien and encumbrances of that certain Deed of Trust held by \_\_\_\_\_ recorded at Reception No. \_\_\_\_\_ of the records of El Paso County, Colorado to the terms and conditions of the within Declaration.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by \_\_\_\_\_ as \_\_\_\_\_ of Elite Properties of America, Inc.

My Commission Expires: \_\_\_\_\_

Witness my hand and official seal.

(SEAL)

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

J. Patrick Kelly El Paso Cty, CO 200132338  
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ANNEXATION AMENDMENT TO  
DECLARATION  
OF

CONDITIONS, COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR CERTAIN PROPERTY LOCATED WITHIN  
WOODMEN HILLS FILING NO. 9  
EL PASO COUNTY, COLORADO

This Annexation Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Certain Property Located within Woodmen Hills Filing No. 9, El Paso County, Colorado is made as of March 15, 2001 by Elite Properties of America, Inc., a Colorado corporation, as the Declarant and owner of certain Annexed Property, defined below with the consent of Skywalk Development Corp., as the owner of the remaining Lots within the Annexed Property.

WHEREAS, a Declaration of Conditions, Covenants, Restrictions and Easements for Certain Property Located Within Woodmen Hills Filing No. 9 was recorded on November 1, 2000 at Reception No. 200132338 of the real property records of El Paso County, Colorado (the "Declaration");

WHEREAS, pursuant to Section 506 of the Declaration, the Declarant has the right to annex additional property within the real property which is subject to the Declaration without the consent of the individual homeowners;

WHEREAS, the real property described in the Declaration as the Phase 2 lots and the Phase 3 lots are currently described as follows (collectively, the "Annexed Property"):

The Phase 2 Lots: Lots 727, 728, 729, 730, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 666, 667, 668, 669, 670, 671, 672, 673, 683, 682, 681, 680, all in Woodmen Hills Filing No. 9;

The Phase 3 Lots: Lots 726, 725, 724, 723, 722, 721, 720, 719, 718, 717, 716, 715, 714, 713, 707, 706, 705, 704, 703, 702, 701, 700, 699, 698, 697, 696, 695, 694, 693, 692, 691, 690, 689, 688, 687, 686, 685, 684, 679, 678, 677, 676, 675, 674; and

The Replatted Phase 3 Lots: Lots 4 through 8, inclusive, Woodmen Hills Filing No. 9. E, formerly known as Lots 712, 711, 710, 709, 708, Woodmen Hills Filing No. 9.

WHEREAS, the Annexed Property is all of the real property described on Exhibit "B" of the Declaration as the Expansion Property;

WHEREAS, Declarant, as Declarant under the Declaration and as the owner of the Annexed Property, desires to submit all of the Annexed Property to the terms and conditions of the Declaration;

NOW THEREFORE, Declarant, as the Declarant under the Declaration and as the owner of the Annexed Property; hereby declares as follows:

1. Annexation. The Annexed Property is hereby made subject to and shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated and conveyed subject to the easements, restrictions, covenants, provisions and conditions of the Declaration, as the same may hereafter be amended, all of which are for the purpose of enhancing and protecting the desirability and attractiveness of the Annexed Property and the remainder of the Property (as such term is defined in the Declaration) and all of which shall run with the land and be binding upon all parties having any right, title or interest in the Annexed Property or any part thereof, their heirs, successor and assigns, and which shall inure to the benefit of each such Owner thereof. Declarant, as the Declarant under the Declaration and as the owner of the Annexed Property, hereby further declares that the definitions, easements, restrictions, covenants, provisions and conditions of the Declaration, as the same has been amended, shall apply equally and alike to all Owners of Lots (as such terms are defined in the Declaration), whether located in the Annexed Property or the real property originally submitted by the Declaration. For example, "Property," as that term is defined in Section 701 (p) of the Declaration, shall hereafter include the Annexed Property annexed into the Declaration pursuant to the terms of this Annexation Amendment, as well as the Property originally encumbered by the Declaration.

2. Effect. This Annexation Amendment shall be effective upon the execution and recording hereof and the terms and conditions hereof shall be binding upon any subsequent Owner of the Annexed Property.

IN WITNESS WHEREOF, the undersigned has executed this Annexation Amendment as of the date and year first above written.

Elite Properties of America, Inc.,  
a Colorado corporation, as manager

ATTEST:

By: Mildred J. West  
Its: Executive Assistant

By: Fred Boyma  
Its: Vice President

S:\Current\Clients B-M\Elite Properties\Woodmen\COVENANT\ANNEX F1-Lwpd

J. Patrick Kelly El Paso Cty, CO  
04/11/2001 10:30 201044765  
Doc \$0.00 Page  
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STATE OF COLORADO )

) ss.

COUNTY OF EL PASO )

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The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of March, 2001, by Fred Bormann as Vice President and ceo of Elite Properties of America, Inc., a Colorado corporation, as manager.

Witness my hand and official seal.

My Commission Expires: 12-02-2001



Christine L. Wise  
Notary Public

CONSENT

Skywalk Development Corp., a Colorado corporation, as an owner of a portion of the Annexed Property, hereby consents to the above Annexation to Amendment of Declaration of Conditions, Covenants, Restrictions and Easements for Certain Property Located within Woodmen Hills Filing No. 9.

SKYWALK DEVELOPMENT CORP.,  
a Colorado corporation

By: [Signature]  
Its: [Signature]

STATE OF COLORADO )

) ss.

COUNTY OF El Paso )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of March, 2001, by Benjamin I. Green as President of Skywalk Development Corp., a Colorado corporation.

Witness my hand and official seal.

My Commission Expires: 5-31-04



Susan K. Smith  
Notary Public



**Walt Lukasik**

---

**From:** Geoff Lindquist [glindquist@smmclaw.com]  
**Sent:** Wednesday, June 10, 2009 8:44 AM  
**To:** Kathy Wennen  
**Cc:** Walt Lukasik  
**Subject:** RE: Property Question

Walt and Kathy,

I got some stuff back from the title company and it looks like 9E was annexed into the Elite declaration and Lots 4-8 of 9E used to be Lots 708, 709, 710, 711, 712 of Filing 9.

So, I'll have to update the Elite "homeowner" assignment and we should be good to go on enforcing the declaration on those lots once we get a homeowner assignment for the Elite declaration.

Geoff

-----  
Geoffrey L. Lindquist  
Susemihl, McDermott & Cowan, P.C.  
660 Southpointe Ct., Ste. 210  
Colorado Springs, CO 80906  
719-579-6500 (Phone)  
719-579-9339 (Fax)

\*\*\*\*\*  
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**From:** Kathy Wennen [mailto:kathywfalcon@msn.com]  
**Sent:** Tuesday, June 09, 2009 7:45 PM  
**To:** Geoff Lindquist  
**Cc:** Walt Lukasik  
**Subject:** Fw: Property Question

Geoff,

Can you see if these were the the later set of Declarations that were turned over.

Kathy  
----- Original Message -----  
**From:** Walt Lukasik  
**To:** Kathy Wennen  
**Cc:** Irene Borisov  
**Sent:** Tuesday, June 09, 2009 4:35 PM  
**Subject:** RE: Property Question

Hi There again:  
The lot is at the end of the Gladwater cul-de-sac. The plat map shows eight lots separately numbered 1 through 8, that flow over from Buschborn to the Gladwater cul-de-sacs but does not show them as Filing 9E although the lots are in a totally different sequence than the adjacent lots on both streets. They interrupt the numbered sequence of lots they are adjacent to. So, it does appear they are replated lots, probably done by the developer to change sizes of lots in those areas. It seems someone (probably me) should go to the Clerk and Recorder or Assessor to see if there is a plat map of a Filing 9E and then discover where the heck the Declarations are (if any).  
Walt

*Walter A. Lukasik, CMCA®, AMS®, MCM®  
Marketing and Development*

Colorado Management & Associates, Inc.

Colorado Springs, Colorado Office  
P.O.Box 25040  
Colorado Springs, CO 80936

888-243-0564 x3124  
WLukasik@ColoradoManagement.com

-----Original Message-----

**From:** Kathy Wennen [mailto:kathywfalcon@msn.com]  
**Sent:** Tuesday, June 09, 2009 2:28 PM  
**To:** Walt Lukasik  
**Subject:** Re: Property Question

Walt,

7824 Gladwater is in filing 9, with a lot number of 713. See if this was a corner lot, and maybe the address was changed.

However, Lot number 6, is in filing one on the other side of the road.

I believe the county may have a mistake. Let me know how I can help.

Kathy

----- Original Message -----

**From:** Walt Lukasik  
**To:** Kathy Wennen  
**Sent:** Tuesday, June 09, 2009 10:09 AM  
**Subject:** FW: Property Question

Hi Kathy:

Totally new subject. HELP.

Please read the email below that I sent to Tawni, Irene and Erica. Do you know anything about a filing 9E. We don't seem to have any information on it.

Thanks,  
Walt

*Walter A. Lukasik, CMCA®, AMS®, MCM®  
Marketing and Development  
Colorado Management & Associates, Inc.*

*Colorado Springs, Colorado Office  
P.O.Box 25040  
Colorado Springs, CO 80936*

*888-243-0564 x3124  
WLukasik@ColoradoManagement.com*

-----Original Message-----

**From:** Walt Lukasik  
**Sent:** Tuesday, June 09, 2009 9:50 AM  
**To:** Tawni O'Day  
**Cc:** Erica Sandoval; Irene Borisov  
**Subject:** Property Question

Hi There:

I received a DRC request on the property below and have hit a problem.

- It doesn't show in our data base.
- The legal description is in Filing 9E.
- I don't have any Declarations for a filing 9E. It's not included in the 9B, 9C, 9D Declarations.
- I don't know if it was accidentally omitted or purposefully omitted.

- Should we have it or not?

I'm copying Irene and Erica to see if they have any knowledge of this filing of 8 lots. It's like the filings for 9B, 9C and 9D, but I can't find anything on 9E.

Any help would be appreciated.  
Thanks,  
Walt



## Public Record Property Information

Database Updated: 6/8/2009 12:00:00 AM Today: Tuesday, June 09, 2009 Time: 9:31:46 AM

### Property Search

[Parcel Map](#)  
[Print Data](#)  
[County Zoning](#)  
[Comparable Search](#)

[Map Sheet](#)  
[43064.tif](#)

### Personal Information

Schedule No: 4306401073  
Owner Name: MOODY CHARLES H  
Location: 7823 GLADWATER RD  
Mailing Address: 7823 GLADWATER RD PEYTON CO 80831-6166

[Photo](#)  
[4306401073.jpg](#)

OLD Parcel Map link is no longer available.

### Legal Description

LOT 6 WOODMEN HILLS FIL NO 9E

Plat No: 10892

### Market Information (2009 Values)

Levy Year: 2008 Mill Levy: 63.191 Exempt Status: Not Exempt

| Table | Use Code              | 2009 Market Value | 2009 Assessed Value | Exen |
|-------|-----------------------|-------------------|---------------------|------|
| Land  | SINGLE FAMILY RES.    | 43400             | 3450                |      |
| Imp   | FRAME AVERAGE QUALITY | 149347            | 11890               |      |
|       | <b>Total Value \$</b> | <b>192747</b>     | <b>15340</b>        |      |

**Tax Entity and Levy Information** Estimated Property Tax Information  
( District: SB9 )

| Taxing Entity                    | Contact Name           | Contact Phone  |
|----------------------------------|------------------------|----------------|
| EL PASO COUNTY                   | COUNTY OFFICE BUILDING | (719) 520-6498 |
| EPC ROAD & BRIDGE (UNSHARED)     |                        | (719) 520-6498 |
| FALCON SCHOOL NO. 49             | WENDE HESTER           | (719) 495-3601 |
| PIKES PEAK LIBRARY               | MIKE VARNETT           | (719) 531-6333 |
| FALCON FIRE DISTRICT             | TRENT HARWIG           | (719) 495-4050 |
| UPPER BLK.SQUIRREL CRK.GRD.WATER | TRACY DORAN            | (719) 347-0704 |
| WOODMEN HILLS METRO.DISTRICT     | LARRY BISHOP           |                |
| EL PASO COUNTY CONSERVATION DIST | LORRAINE GRIFFITH      | (719) 473-7104 |

**Sale Information**

( Click on the row for further information )

| Seq# | Sale Date  | Sale Price | Sale Type           |
|------|------------|------------|---------------------|
| 1    | 05/31/2005 | 196000     | Good sale; verified |

**Land Information**

| Seq # | Use                | Exempt | Area        |
|-------|--------------------|--------|-------------|
| 1     | SINGLE FAMILY RES. |        | 11221 sq ft |

**Residential Information**

( Click on the row for further information )

| Bldg # | Year Built | Style     | Total Above Grade Area |
|--------|------------|-----------|------------------------|
| 1      | 2001       | TWO STORY | 1401                   |

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## Commercial Information

None

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