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JOSEPH D. BOWER

MAY 16, 2005

Bill Bradley, President
RCR-Newton Property Owners Association, Inc.
850 Newton Road
Pueblo, CO 81005

Re: C.C.I.O.A. APPLICABILITY/DECLARATION REVIEW

Dear Bill:

At your request I have reviewed the following two (2) legal questions:

1. Whether or not a "Declarant" or "Association" may exempt itself from the requirements and rights conferred by the Colorado Common Interest Ownership Act, C.R.S. § 38-33.3-101 et seq.; and
2. Whether or not the Court Order by amendment of the Declarations to Phase V extends application of Phase V to all property located in RCR-Newton Property Owners Association, Inc.

The following is a summary of my findings:

1. Applicability of C.C.I.O.A. C.R.S. §38-33.3-104 states as follows:

"Except as expressly provided in this Article, provisions of this Article may not be varied by agreement and the rights conferred by this Article may not be waived. A Declarant may not act under a Power of Attorney or use any other device to evade the limitations or prohibitions of this Article or the Declaration."

Section 1.1 of the Declaration of Covenants, Conditions, Restrictions and Easements for Red Creek Ranch correctly define Red Creek Ranch and Red Creek Ranch--Phase V as a common interest community created by the Declaration and a planned community as defined in C.C.I.O.A §38-33.3-103(22). C.C.I.O.A. does not contain any procedure by which a Declarant or an Association can exempt itself from C.C.I.O.A. To the contrary, C.R.S. §38-33.3-104 prohibits variation of C.C.I.O.A. by agreement.

Based on the foregoing, it is my opinion that the following sentence contained in the first paragraph of the Declarations is void and contrary to C.R.S. §38-33.3-104:

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“The purpose is to exempt the property (as defined below) from the Colorado Common Interest Ownership Act.”

Essentially, C.C.I.O.A. contains basic rights, limitations and prohibitions which act as default rules if there is no recorded declaration. A Declarant or an Association may add additional rights as long as they don't conflict with C.C.I.O.A. If there is a dispute between adopted Declarations and C.C.I.O.A., C.C.I.O.A. controls.

2. Effect of Order Approving Amendment Dated November 23, 2004. A review of the Declaration of Covenants, Conditions, Restrictions and Easements for Red Creek Ranch (hereinafter the “Declaration”), the Declaration of Covenants, Conditions, Restrictions and Easements for Red Creek Ranch Phase V (states §§ 16,36) (hereinafter the “Phase V Declaration”), the Petition dated August 20, 2004, and the Order Approving Amendment dated November 23, 2004 reveals that the Phase V Declaration applies to all property identified on Attachments A, B, and C, as a result of the amendment to Section 10.1.6 of the Phase V Declaration. As Attachment A to the Order encompasses the property within the RCR-Newton Property Owners Association, Inc., the Phase V Declaration is the appropriate governing document for your Association and the property owners within the legal descriptions identified on Attachment A.

As a final note, the Phase V Declaration Section 1.3 states as follows:

“This Declaration restates and amends in its entirety any previous declaration recorded against the property in all respects; any such previous declaration is superseded and amended by this Declaration, which shall be the sole Declaration against the property.”

Based on this language and the amendment of Section 10.1.6 of the Phase V Declaration to include all real property legally described on Attachment A, the Phase V Declaration controls over the original Declaration.

Thank you for the opportunity to represent you in connection with this matter. If you have any questions, please don't hesitate to contact me at the above number.

Very truly yours,



Joseph D. Bower

JDB/srm