TOWN OF FREDERICK
RESOLUTION NO. 10-R-__

A RESOLUTION ACKNOWLEDGING RETURN OF REAL PROPERTY INTEREST IN PHASES III AND IV FOR RASPBERRY HILL SUBDIVISION BY DR HORTON, AND CANCELATION OF PARTIAL ASSIGNMENT OF PUBLIC IMPROVEMENT OBLIGATIONS TO SUCCESSOR-DEVELOPER.

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, on Tuesday, July 27, 2010, reviewed the application of DR Horton, 301 Commerce St., Ste. 500, Ft. Worth, TX 76102 for return of the remaining public improvement obligations at the Raspberry Hill Subdivision (the Subdivision), pursuant to Section 14.8 of the Memorandum of Agreement for Public Improvements (MOAPI) entered into by the Town and Melody Homes, Inc.

WHEREAS, DR Horton previously sold a portion of the Subdivision to another developer and began the process under the MOAPI to transfer improvement obligations to that developer, though the process was never completed, no transfer or assignment occurred and DR Horton has repurchased the subject portion of the Subdivision.

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:

Section 1. **Findings of Fact.**

a. Melody Homes, Inc. d/b/a DR Horton – Melody Series (Horton or Developer) and Town entered into an MOAPI, dated December 17, 2004, (Weld County, Rec. No. 3305758) regarding the installation and maintenance of public improvements for the Subdivision.

b. Horton commenced development of Phases I and II, pursuant to the final plat for the Subdivision, recorded April 14, 2005, and thereafter received partial acceptance and release of the respective improvement obligations and guarantees for Phases I and II, pursuant to the terms of the MOAPI.

c. Horton subsequently sold to Capital Real Estate Services ("CRES") its interest in Phases III and IV of the Subdivision, and in 2009 Horton sought to transfer its remaining obligations under the MOAPI to CRES.

d. Pursuant to Sec. 14.8 of the MOAPI, until Town accepted transfer of the public improvements obligations set forth therein, Horton and any successor were joint and severally liable for performance of such obligations; no transfer was to be effective until CRES posted replacement improvement security, which CRES never did.

e. Horton has reacquired title to the property and now desires to cancel the transfer and resume responsibility for the remaining public improvement obligations for the Subdivision.

f. The Town and Horton agree that the public improvements described in the MOAPI are directly related to and generated by development intended to occur within the Subdivision and that no taking thereby will occur requiring any compensation.

Section 2. **Conclusions and Order Approving Reversion of the MOAPI for the Raspberry Hill Subdivision.**

a. That the estimated cost of public improvements for Phases III and IV of Raspberry Hill Subdivision shall be reviewed and adjusted if determined appropriate by the Town of Frederick, pursuant to § 1.10 of the MOAPI.

b. That the contemplated transfer of any improvement responsibility from Horton to CRES was ineffective and has been abandoned by those entities.

c. Horton shall retain 100% of all remaining improvement obligations for the Subdivision, as set forth in the MOAPI, as amended.

INTRODUCED, READ, PASSED, AND SIGNED THIS 27th DAY OF JULY, 2010.

ATTEST:

By _____
Nanette S. Fornof, Town Clerk

TOWN OF FREDERICK

By _____
Eric E. Doering, Mayor

APPENDIX A
RASPBERRY HILLS SUBDIVISION

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST ONE-QUARTER OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 68 WEST, OF THE 6TH. P.M., TOWN OF FREDERICK, WELD COUNTY, COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTH LINE OF THE SOUTHWEST ¼ OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 68 WEST OF THE 6TH P. M. , MONUMENTED AT THE SOUTHWEST CORNER BY A 2.50 INCH ALUMINUM SURVEY MONUMENT IN A RANGE BOX STAMPED PLS 25614 AND AT THE SOUTH ¼ CORNER BY A BLM BRASS SURVEY MONUMENT IN A RANGE BOX WITH A LINE BETWEEN CALCULATED TO BEAR S 89 DEGREES 29'22" W WITH ALL BEARINGS HEREIN RELATIVE THERETO:

BEGINNING AT THE SOUTH ¼ CORNER OF SAID SECTION 23;
THENCE S 89 DEGREES 29'22" W ALONG THE SOUTH LINE OF SAID SOUTHWEST ¼ A DISTANCE OF 1541.90 FEET TO A POINT ON THE WEST LINE OF A WYCO PIPELINE EASEMENT RECORDED AT BOOK 1199 PAGE FOR 441 OF THE WELD COUNTY RECORDS;
THENCE ALONG SAID PIPELINE EASEMENT THE FOLLOWING TWO COURSES;

THENCE N 02 DEGREES 17'40" E, A DISTANCE OF 1136.23 FEET;
THENCE N 02 DEGREES 16'21" W, A DISTANCE OF 1516.46 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTHWEST ¼ ;

THENCE N 89 DEGREES 42'41" E, ALONG THE NORTH LINE OF SAID SOUTHWEST ¼ A DISTANCE OF 1526.16 FEET;
THENCE S 00 DEGREES 39' 27" E, ALONG THE EAST LINE OF SAID SOUTHWEST ¼ A DISTANCE OF 2644.71 FEET TO THE POINT OF BEGINNING.