

## MASTER COVENANTS, CONDITIONS, RESTRICTIONS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS . COVERING LOTS  
1 THROUGH 26, FAIRWAY RIDGE AT THE PINERY, A SUBDIVISION LOCATED IN THE  
COUNTY OF DOUGLAS, STATE OF COLORADO

DC9322877

Association WHEREAS, the Association desires to provide for the preservation of the values in the Subdivision of FAIRWAY RIDGE AT THE PINERY for the community that is to reside therein and, to such end, desires to subject said real property to the covenants, conditions and restrictions, and easements hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof, their heirs, successors, administrators, grantees, and assigns; and

WHEREAS, Association has deemed it desirable, for the efficient preservation of the values in said community, to create an entity which shall have the obligation and powers of administering the community and enforcing the covenants and restrictions; and

WHEREAS, Association has incorporated under the laws of the State of Colorado, as a non-profit corporation, THE FAIRWAY RIDGE AT THE PINERY HOMEOWNERS ASSOCIATION, for the purposes of exercising the functions aforesaid.

NOW, THEREFORE, the Association declares that the real property described as THE FAIRWAY RIDGE AT THE PINERY, Douglas County, Colorado, described more particularly on Exhibit "A" attached hereto, made a part hereof and incorporated herein by references, is and shall be held, transferred, sold, conveyed and occupied subject to the restrictions, limitations, uses, covenants and conditions which are for the purpose of protecting the value and desirability, and which shall run with the real property and be binding on all parties having any right, title or interest in the said properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to. The Fairway Ridge at the Pinery Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation,

Section 3. "Properties" shall mean and refer to that real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association,

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of dedicated roadways and drainageways as part of any described lot.

Association

Section 6. "Outbuilding" shall mean and refer to any enclosed covered structure not directly attached to the . dwelling which it services.

Section 7. "Common Area" shall mean all real property (including the improvements thereto) owned or leased by the Association for the common use and enjoyment of the owners. The Common Area shall be conveyed to the Association prior to or in conjunction with the conveyance of the first Lot to any owner.

Section 8. " Architectural Control Committee" or " Architectural Committee" shall mean The Pinery Architectural Control Committee, Inc., A Colorado Non-Profit Corporation.

Section 9. "General Common Property" shall mean and refer to all land, improvements and other properties heretofore or hereafter owned or in the possession of or *maintained* by the Association, and shall include, but not be limited to, parcels described on Exhibit B attached hereto and incorporated herein by this reference.

Section 10. "Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 11. "Residence" shall mean and refer to any single family detached dwelling located within the Property.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1 - Membership. Every Owner of a Lot which is subject to assessment hereunder shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot.

Section 2 - Classes of Membership. The Association shall have one class of voting membership:

Members shall be all Owners of Lots Association. Each Member shall be entitled to one vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

Association ARTICLE III

### COVENANTS FOR MAINTENANCE AND ASSESSMENT

Section 1 - Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot within the Property, by acceptance of a deed therefore, whether or not it shall be so expressed therein, or by acceptance of any other conveyance thereof (except a conveyance in connection with the establishment of a mortgage) shall be deemed to covenant and agree to pay to the Association: (1) annual assessments; (2) special assessments for capital improvements or maintenance thereof; (3) special assessments in connection with an Owner's failure to perform the required exterior maintenance or improvement of his property; and (4) special assessments to provide for costs incurred by virtue of unforeseen emergencies.. The annual assessments or charges may, at the discretion of the Association, include a reserve for: future capital improvements to the General Common Property; replacement of and repairs to the improvements located on the General Common Property; and exterior maintenance as provided for in Section 5 of this Article III. All assessments herein provided for shall be assessed by the Association. The Association may levy different assessments against different classes of Owners; provided, however, that such assessments shall be uniform within any class. The annual assessment shall be levied on an annual basis, and a special assessment may be levied from time to time when and as determined by the Association in accordance with its Bylaws. All the assessments described above, together with such interest thereon, reasonable attorney's fees and costs of the collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, subject to foreclosure in accordance with applicable law, but any such lien shall be subordinate to any valid first mortgages or first deeds of trust affecting such property. Each such assessment, together with interest, late charges, reasonable attorney's fees and costs of collection thereof shall also be the personal obligation of the person or persons who are the Owner(s) of such property at the time when the assessment falls due, and in the event that there is more than one Owner thereof, such obligations shall be joint and several. The Association or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the owner of the Lot and a description of the Lot. Such a notice shall be signed by one of

the officers of the Association or by the managing agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of Douglas, Colorado. The lien for each unpaid assessment shall attach to each Lot at the beginning of each assessment period and shall continue to be lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Association's lien on each Lot for assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Section 2 - Purpose of and Use of Annual Assessments or Charges. The annual assessments or charges levied under this Article III as provided for in Section 1 above shall be used exclusively for the purposes of promoting the recreation, health, safety and welfare of the residents of the Property, and in particular: (1) for the acquisition of improvements to and maintenance of the General Common Property (including, but not limited to, the payment of taxes and insurance thereof, and the repair, replacement and addition thereof, the cost of labor, equipment, materials, management and supervision thereof; and (2) for the provision of services to the Owners, including, but not limited to, garbage and trash collection, security services, and for such other needs of the Association and Owners as may arise, including a reasonable provision for contingencies and replacements. It shall be the obligation of the Association to at all times keep all of the Common Areas in good condition and to properly maintain the same.

Section 3 - Maximum Annual Assessment. The maximum annual assessment shall be \$600.00 per "Assessment Unit". For purposes of this Declaration, an "Assessment Unit" shall mean a Lot.

(a) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment shall be increased effective each annual assessment year in conformance with the rise, if any, of the Consumer Price Index published by the U. S. Department of Labor, Washington, D.C., for All items and Major Group Figures for All Urban Consumers (1967 = 100), for the one-year period ending with the preceding month of December. This annual increase in the maximum annual assessment shall occur automatically upon the commencement of being taken with respect thereto by the Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Association.

(b) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased above that established by the

Consumer Price Index formula, for the next succeeding annual assessment year and at the end of each such annual assessment period, for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) of the Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of such meeting setting forth the purpose therefore.

(d) The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

(e) The Association shall maintain an adequate reserve fund out of the annual assessments for the maintenance, repair and replacement of those elements or portions of the General Common Property that must be maintained, repaired or replaced on a periodic basis.

Section 4 - Special Assessment for Capital Improvements and Emergencies. In addition to the annual assessments described 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 any construction or reconstruction; any unexpected repair or replacement of a described capital improvement upon the General Common Property, including the necessary fixtures and personal property related thereto; and any construction or reconstruction and restoration, due to any emergencies. The special assessments provided for hereunder shall be limited to the annual sums described in Section 5 of this Article III.

Section 5 - Capital Contributions for Improvements, Repairs and Replacements. In addition to the annual or special assessments described above, the Association may levy in any assessment year, either as part of the annual assessment or the special assessment, an assessment to be set aside as a reserve for future capital expenditures, including major repairs to or replacements of improvements located on the General Common Property or for the future construction of improvements on the General Common Property. Any funds so collected shall be designated as capital contributions to the Association by the members thereof and shall be segregated and placed in a separate bank account of the Association to be utilized solely for the purposes aforesaid.

Section 6. Special Assessments for Failure to Properly Maintain a lot. In the event that the owner of any Lot shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Architectural Control Committee, the Association shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the same and the exterior of the buildings and any other improvements erected thereon in the manner contemplated by the above provisions. The cost of such exterior maintenance shall thereupon be added to and become part of the annual assessments to which such parcel is subject as aforesaid and shall likewise be a lien on such parcel, which assessment may be collected as provided in Sections 1 and 8 of this Article III.

Section 7 - Due Date of Commencement and Determination of Annual Assessments and Assessment Deposit. The annual assessments provided herein shall commence and be paid on such dates as is specified in the Bylaws of in the Association or in any Supplementary Declaration hereto affecting a particular parcel of property brought within the scheme of this Declaration. Assessments shall be on a full calendar year basis. At least thirty (30) days in advance of each calendar year, the Association shall fix the amount of the annual assessment against each Lot by estimating the net charges and expenses to be incurred by the Association for the purposes set forth in this Declaration. The annual assessment shall be due and payable in quarterly installments with an amount equivalent to three (3) months' assessments deposited with the Association at the time of the first conveyance of any lot to any purchaser thereof, and which deposit shall not bear interest and may be retained by the Association as working capital and as security for the payment of annual and special assessments. The annual and special assessments shall be in such amounts as are fixed by the Association as aforesaid, and shall be without limitation. Separate due dates may be established by the Association for special assessments, as defined hereunder, as long as such dates are set thirty (30) days in advance of such special assessments and shall be paid in a manner determined by the Association. Written notice of the annual and any special assessments shall be sent to every Owner subject thereto as soon as the amounts are determined.

Section 8 - Effect of Non-Payment of Assessments and Personal Liability of Owner. If an assessment is not paid on the date when due (being the date specified in Section 7 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the property of the Owner which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to the lien rights, it shall be the personal obligation of the then Owner to pay such assessments and such personal obligation shall continue even though the Owner's interest in the property shall be transferred.

If the assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Association may bring legal action against the Owner personally obligated to pay the same, or foreclose the lien against the property and there shall be added to the amount of such assessment all costs incurred by the Association in foreclosing the lien or in collecting the amount owing, including any reasonable attorney's fees.

Section 9 - Assessment Liens Relationship to First Mortgages and Other Assessments. As provided aforesaid, the lien of the assessments provided for herein shall be prior to all other liens and encumbrances except for those enumerated in C.R.S. 38-33.3-316. These Declarations incorporate and adopt the provisions of C.A.S. 38-33.3-101. et seq.

Section 10 - Uniform Rate of Assessment. Annual and special assessments must be fixed at a uniform rate for all Assessment Units sufficient to meet the expected needs of the Association. Notwithstanding anything to the contrary contained in this Declaration

#### ARTICLE IV

##### ARCHITECTURAL CONTROL COMMITTEE

Section 1 - Composition. The Architectural Control Committee for the Subdivision, shall be The Pinery Architectural Control Committee ("PACC"). All rules, regulations and procedures adopted by the PACC are hereby incorporated and adopted and all owners, including Association, shall adhere to the procedures adopted by the PACC. The PACC shall be required to abide by these Covenants and the Architectural Standards adopted by Association.

#### ARTICLE V ENFORCEMENT

Section 1 - Abatement and Suit. The provisions herein contained shall run with the land, and be binding upon and inure to the benefit of the Association and the Owners of every Lot hereinafter provided by Association acting for itself, the Architectural Control Committee, or as trustee on behalf of all of the Owners of Lots. Each Owner by acquiring an interest in the Property appoints irrevocably the Association as such Owner's attorney-in-fact for such purposes; provided, however, that if an Owner notifies Association in writing of a claimed violation of the provisions herein contained and Association fails to take action to such notification, then, in that event only, an Owner may separately, at such Owner's own cost and expense, enforce the provisions herein. Violation of any of the provisions herein contained shall give the Association, or the Architectural Control Committee, the right: (1) to enter upon the portion of the Property wherein said violation or breach exists and summarily to abate and remove, at the expense of the Owner, any structure, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof; (2) to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of the provisions herein to enjoin or prevent them from doing so; (3) to cause said violation to be remedied or to recover damages for said violation; and (4) to impose a monetary penalty on the offending Owner of \$25.00 per day that the violation remains extant after ten (10) days notice to said Owner.

Section 2 - Deemed to Constitute a Nuisance. Every violation of this Declaration or any part thereof is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed therefore by law or equity against any Owner shall be applicable against every such violation and may be exercised by Association or any Owners pursuant to Section 1 of this Article V.

In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing party or parties shall pay the reasonable attorney's fees and costs of the prevailing party or parties in the amount as may be fixed by the Court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

The failure of the Association or of the Architectural Control Committee to enforce any of the provisions of this Declaration herein contained shall in no event be deemed to be a waiver of the right to do so for subsequent violations or of the right to enforce any other provisions thereof, and the above-named entities shall not be liable therefore.

Section 4 - Certificate of Compliance. Upon payment of a reasonable fee, not to exceed \$40.00, and upon a written request of any Owner, mortgagee, or prospective owner of any property covered by this Declaration, the Association shall issue an acknowledged certificate in recordable form setting forth the amounts of any unpaid assessments, if any, and setting forth generally whether or not to the best of the Association's knowledge, an Owner is in violation of any of the terms and conditions of this Declaration. The written statement shall be conclusive in favor of the persons who rely thereon in good faith. Such statement shall be furnished

within a reasonable time, but not to exceed twenty (20) days from the receipt of a written request for such written statement. In the event of a failure to furnish such statement within twenty (20) days, unless there is a recorded lien against the property, it shall be conclusively presumed that there are no unpaid assessments relating to such Lot as to which the request was made and that said Lot is in conformance with all the terms and conditions of this Declaration.

Section 5 - Rules and Regulations. The Association shall have the right to promulgate and adopt such reasonable rules and regulations as are required to carry out the purpose and intent of the protective covenants set forth in this Declaration; such additional rules and regulations shall be subject to the prior written approval of the Architectural Control Committee provided, however, that nothing contained herein shall be deemed to expand the powers of or grant additional powers to the Association beyond those provided for in this Declaration. The Architectural Control Committee shall have the right to adopt architectural standards, sign standards, construction regulations and such other rules and regulations as it deems necessary or appropriate, which rules, regulations and standards may be modified from time to time in the reasonable discretion of the Architectural Control Committee.

## ARTICLE VI LAND USE RESTRICTIONS

Section 1 - Residential Purposes only. Each and every one of the Lots shall be used for private residence purposes only. Only one single family residence structure shall be permitted to be constructed and maintained on each Lot. Garages must be part of the principal structure



or attached to the principal structure by arbor or breezeway and must conform to the architecture of the principal structure. No other structure, including, but not limited to, swimming pools, detached patios, and storage sheds, shall be permitted on any Lot without the express written approval of the Architectural Committee.

Section 2 - No Commercial Activities. No room or rooms in any residence or parts thereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing contained in this section, however, shall be construed as preventing the renting or leasing of any entire residence as a single unit. No commercial activities shall be carried on upon any lot or residence, excluding the sale of real estate properties within the subdivision and in-home offices not accessible to the public,

Section 3 - Roofs. Roofs covered with asphalt shingles or other similar composition materials or with material which is metallic in appearance shall be prohibited except when specifically approved by the Architectural Control Committee. Gravel and tar roofs are prohibited. It is the intent of these Declarations to permit roofs which conform to current roofing standards.

Section 4 - Animals. No horses, cattle, sheep, goats, pigs, rabbits, poultry, or other animals of any description shall be kept or maintained on any part of said Lots, except that residents may keep not more than two dogs and/or cats and litters thereof under the age of four months, or other animals which are bona fide and customary household pets so long as such pets are not kept for commercial purposes and do not make objectionable noises or otherwise constitute or inconvenience to any of the residence of adjacent property.

Section 5 - No Temporary Structures. No temporary house, trailer, tent, garage, or outbuilding shall be placed or erected upon any part of any Lot, no residence placed or erected upon any part of any Lot shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans as herein set forth. The work of construction, altering or remodeling any building or any part of the property shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 6 - Minimum Square Footage. Every principal residence constructed on a Lot shall have not less than those square feet of floor area identified in Section III, paragraph 3 of the Fairway Ridge at the Pinery Architectural Standards and Construction Regulations devoted to living purpose (exclusive of roofed or unroofed porches, terraces, basements, garages), and shall have a garage of sufficient size to house not less than two (2) cars and be at least 400 square feet in size. Any building constructed on any Lot which has wood exteriors on any portion thereof shall be stained so as to preserve the natural color or stained or colored neutral or earth tones in harmony with other structures in the Fairway Pine Subdivision. Furthermore, there shall be constructed on each Lot, at time of completion of construction of the principal residence, and kept in place thereafter, paved off-street parking space (which may be a driveway on the Lot) sufficient for two (2) cars, in addition to the space in the garage. No vehicles shall be parked on any Lot except on the paved areas. Vehicles shall not

be parked on any common driveway or private street.

Section 7 - Setbacks. Each building, structure, or other improvements other than a wall, fence, uncovered terrace or steps, which is erected or placed upon any Lot shall be located in accordance with the following minimum prescribed distances from Lot lines:

(a) Front Yard Setbacks for all Fairway Ridge at the Pinery sites: not less than 20 feet from the front line which faces the street. Corner Lots fronting on two streets shall be considered as having two street lines, and the set backs shall not be less than 20 feet from the front street lot line and 20 feet from the side street lot line.

(b) Rear Yard Setbacks: not less than 15 feet from any rear lot line.

(c) Side Yard Setbacks: not less than 7 1/2 feet from any side lot line, provided no foundation for a any structure may be closer than 20 feet from an adjacent structure, with the exception of improvements on Lots 20, 21, 22 and 23 where structures may not be closer than 15 feet because of the lot configuration created by the cul de sac adjacent to these lots.

Roofs, bay windows or chimneys may overhang the setback requirements by not more than two feet. However, no part of any building may be closer than 10 feet to an adjacent building.

The Architectural Control Committee may grant reasonable exceptions to the setback requirements hereinabove set forth where necessary to prevent an undue hardship on the owner of any Lot. Each Lot owner, however, shall be encouraged to locate any structure on a Lot in such manner as to centrally locate the structure on the Lot.

The provisions of this Section 7 shall not apply as to any Lot developed pursuant to a planned development plan approved by the governmental entity then having jurisdiction of said property.

Section 8 - Fencing. No fence or wall shall be constructed on any Lot without the prior written consent of the Architectural Control Committee. The Architectural Control Committee, as a general rule, shall refuse permission for boundary fences and walls which would obstruct views, but shall, as a general rule, be receptive to granting permission for privacy screens or walls screening patios, outdoor eating areas and the like which encompass substantially less than all of a rear, side," or front yard. No chain- line fences shall be allowed in the Subdivision. For purposes of this section, hedges shall be considered to be the same as fences and subject to the same restrictions. (The term "wall" as used in this section shall mean walls which are free-standing and intended to enclose the screen areas outside the house or garage.) All fences installed within the Subdivision shall be approved by the Architectural Control Committee. Material for the containment of any pets permitted by these Covenants and Restrictions may be added to the inside of perimeter fencing, subject to prior approval by the Architectural Control Committee. Fencing shall conform to the fencing standards which are set forth on Exhibit "D", attached hereto.

Section 9 - Permanent Structures. Any building placed, erected, or maintained upon any Lot in the tract shall be entirely constructed thereon, and the same shall not, nor shall any part thereof, be moved or placed thereon from elsewhere, except with the express written consent

of the Architectural Control Committee.

Section 10 - Signs and Other Objects. No advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot, other than a name plat of the occupant and a street number, except as approved by the Architectural Control Committee following residential occupancy of the improvement. For Sale signs are permitted. Elevated tanks of any kind shall not be erected, placed or permitted on any Lot except that such tanks may be placed on any Lot for use in connection with construction of a building thereon. After completion of construction, all types of refrigerating, cooling, or heating apparatus must be concealed in a manner which has the prior written approval of the Pinery Architectural Control Committee. Objects such as boats, campers, trailers, recreational vehicles, or trucks shall not be maintained, stored, or parked on any Lot or in the street for more than two (2) consecutive nights. After completion of construction, no garbage or trash cans or receptacles shall be maintained in such a manner so that they are exposed to the view of passers-by on any street. All aerial masts, radio, or television antennae mounted on the exterior of a structure are prohibited; except, one temporary flag pole with an American flag, not to exceed 3 feet by 4 feet, will be allowed on national holidays or other time frames approved by the Architectural Control Committee. No overhead utility lines shall be installed or maintained on any portion of the Lots covered by these restrictions.

Section 11. Maintenance. Each Lot, at all times, shall be kept in a clean, sightly, and wholesome condition. No trash, litter, junk, boxes, bottles, cans, implements, machinery, lumber, or other building materials shall be permitted to remain exposed upon any Lot so they are visible from any neighboring Lots or street, except as necessary during the period of construction as required by county code. In the event any structure is destroyed either wholly or partially by fire or any other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration or all remaining portions of the structure, including the foundations, and all debris shall be promptly removed from the property. Each occupied Lot shall, at all times, be kept clear of weeds and other unsightly growth, and the same shall be forthwith removed from the Lot by the Lot owner upon the demand of the Architectural Control Committee. After a residence has been constructed on any Lot, the remaining unpaved portion of the Lot shall promptly be planted to grass or other vegetation or covered with decorative materials and maintained in that condition so as to prevent the blowing of dust and dirt from the exposed soil. No artificial plants, artificial grasses or artificial flowers shall be placed in the Subdivision as exterior landscape materials. On each occupied Lot, live ground cover, as approved by the Pinery Architectural Control Committee, shall be maintained, with adequate watering to assure good color and appearance. The landscape plan approved shall include the area of the access right-of-way from the front lot line(s) to the edge of the asphalt paving in said right-of-way.

Section 12 - Resubdivision of Lots. No Lot or Lots shall be subdivided or resubdivided, except for the purpose of combining portions thereof with an adjoining Lot, without obtaining approval from the County of Douglas and the Architectural Committee and provided that no additional

building site is created thereby. Any ownership or single holding by any person comprising the whole of one Lot and part or parts of one or more adjoining Lots shall, for all purposes of this Declaration, be deemed as constituting a single Lot. Not less than one entire Lot as originally laid out shall be used as a building site without the prior written consent of the Architectural Control Committee.

Section 13 - Vehicle Repairs. No vehicle, RV camper, trailer, motorcycle, motorbike, moped, boat, or similar equipment shall be parked on any Lot or street adjacent thereto while it is undergoing repairs which immobilizes the vehicle for a period of more than one day, unless the vehicle (or other item undergoing repairs) is within an enclosed garage and not visible to passers-by during the entire period of such repairs.

Section 14 - Vehicle Parking, Trucks, trailers, mobile homes, truck campers, boats and commercial vehicles shall not be kept, placed or maintained upon any Lot, road, street, driveway or on the general common property in such a manner that such vehicle or boat is visible from neighboring Lots, General Common Property or roads. The provisions of this paragraph shall not apply to temporary construction shelters or facilities maintained during and used exclusively in connection with the construction of any dwelling or other improvement permitted by this Article. Commercial vehicles engaged in the delivery or pick-up of goods or services shall be exempted from the provisions of this paragraph providing that they do not remain within a Lot in excess of the reasonable period of time required to perform such commercial function. Notwithstanding the provisions of this Section 14, an exemption is made to this Article with regard to the temporary parking of mobile homes or mobile trailers of guests visiting a resident, provided that the vehicle remains on the Lot and is situated thereon for no more than seventy-two (72) hours.

## ARTICLE VII

### PROPERTY RIGHTS IN THE GENERAL COMMON PROPERTY

Section 1. Owner's Easements and Rights of Enjoyment. Subject to the provisions hereinafter set forth in this Article VII, every Owner of the Association shall have a non-exclusive right and easement of enjoyment in and to the General Common Property and the improvements located thereon, which easement shall be appurtenant to and shall pass with the title to every Lot within the Property. (Exhibit "B" attached hereto describes the general common property.)

Section 3 - Extent of Owners' Rights and Easements. The rights and easements of enjoyment created hereby

· shall be subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money

for the purpose of improving the General Common Property and, with written consent of the Members entitled to vote two thirds (2/3) of the votes of the Membership, to mortgage said property as security for any such loan; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the General Common Property against foreclosure; and

(c) The right of the Association to grant such easements and rights-of-way to such utility companies or public agencies or authorities as it shall deem necessary for the property service and maintenance of the Property and

(f) The right of the Association to adjust or grant private easements in addition to platted easements rights, if in the opinion of the Architectural Control Committee such adjustment or grant would be desirable; and

(g) The right of the Association to enter into lease agreements, either as lessee or lessor, with third parties or with each other, for such purposes and subject to such conditions as either or both of them shall deem appropriate; and

(h) The right of the Association to enter into contractual agreements to provide services similar to those provided by the Association to other non-profit homeowners associations; provided, however, that the Association shall be fully reimbursed for its costs and expenses in providing such services. The Association shall also have the right to enter into contractual agreements to exchange services with other non-profit homeowners associations ; and

(i) The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply; and

(j) The right of the Association to suspend the voting rights and the right to use any recreational facilities located upon the General Common Property of a Member for any period during which any assessment against his Lot remains unpaid and for any infraction of its published rules and regulations; and

(k) The right of the Association to dedicate or transfer all or any part of the General Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved in writing by two thirds (2/3) of the votes of the membership hereunder, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses and easements for public utilities, roads, and/or for other purposes consistent with the intended use of the General

Common Property and reasonably necessary or useful for the proper maintenance or operation of the Property shall not be deemed a transfer within the meaning of this Subsection (m);

(l) The right of the Association to close or limit the use of the General Common Property, or portions thereof, while maintaining, repairing and making replacements in the General Common Property; and

(m) The right of the Association to charge reasonable admission and/or other fees for the use of any recreational facilities located upon the General Common Property, which fees and charges shall be in addition to the annual common expense assessments levied by the Association.

Section 4 - Extension of Rights and Benefits. Every Member of the Association shall have the right, subject to rules and regulations , to extend the rights and easements of enjoyment vested in such Member under this Article to each of such Member's tenants, guests, household employees and to each family member who resides with such Member of the Association within the Property and to such other persons as may be permitted by the Association.

#### Article VIII

Section 1- Insurance on General Common Property. The Association shall maintain insurance covering all insurable improvements located or constructed upon the General Common Property. The Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance:

(a) A policy of property insurance covering all insurable improvements located on the General Common Property, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement." The Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and/or coverage on personal property owned by the Association. Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire or other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard all risk endorsement, where such is available, The deductible for such insurance shall not exceed \$10,000.00 or one percent (1%) of the face amount of the policy, whichever is less and the Association shall include sufficient funds to cover such deductibles in its operating reserve account.

(b) A comprehensive policy of public liability insurance covering all of the General Common Property, insuring the Association in an amount not less than \$1,000,000.00 covering bodily injury, including death of persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insurers for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the General Common Property, legal liability arising out of lawsuits related to employment contracts of the Association, and protection against liability for non-owned and hired automobile; such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

(c) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, trustee and employees of the Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Association as an obligee;

(2) Such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) If the General Common Property or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage on the General Common Property has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the General Common Property in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement cost of all building and other insurable property located within a designated flood hazard area.

(e) A policy providing errors and omissions of officers of the Association, in such amounts and containing such provisions as may from time to time be deemed necessary or desirable by

the Association.

(f) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, to the extent that such coverage is reasonably available, including but not limited to personal liability insurance to protect and officers of the Association from personal liability in relation to their duties and responsibilities in acting as officers on behalf of the Association.

All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to the insured, as well as to the First Mortgagees of each Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Lot, upon written request. The insurance shall be carried in blanket forms naming the Association as the insured, as trustee and attorney-in-fact for all Owners, and each Owner

shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Association.

Section 2 - Damage to General Common Property. In the event of damage to or destruction of all or a portion of the General Common Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such General Common Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association shall cause such General Common Property to be promptly repaired and reconstructed, using the insurance proceeds and the proceeds of a special assessment which, notwithstanding the provision of Article III, Section 4 to the contrary, may be levied without a vote of the Members. The amount of such assessment shall be equal to the amount by which the cost of repair or reconstruction exceeds the sum of the insurance proceeds available and shall be assessed equally for each Assessment Unit. The assessment provided for herein shall be a debt of each Owner and a lien on such Owner's Lot, and the improvements thereon, and shall be enforced and collected as provided for in Article III hereof.

Section 3 - Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Association, there is Other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Association policy, such Association policy shall be primary insurance not contributing with any of such other insurance.

Section 4 - Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Association to ascertain that the coverage provided by such policies adequately covers those risks incurred by the Association.



## ARTICLE X

### GENERAL PROVISIONS

Section 1 - Conflicts of Provisions, in case of any conflict between this Declaration, the Articles of incorporation or Bylaws of the Association, this Declaration shall control. in case of any conflict between Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 3 - Condemnation. In the event proceedings are initiated by any government or agency thereof seeking to take by eminent domain the General Common Property, any material part thereof or any interest therein, any improvement thereon, or any material interest therein, the Association shall give prompt interest in the General Common Property or improvement thereon sought to be so condemned, to all First Mortgagees of Lots, all insurers and guarantors of First Mortgages, all Members. The Association shall have full power and authority to defend in said proceedings, and, if practicable, to represent the Owners in any negotiations, settlements and agreements with a condemning authority for acquisition of the General Common Property or part thereof as the attorney-in-fact for the Owners (the Owners, by their acceptance of a deed of other instrument of conveyance, hereby constituting and appointing the Association their attorney-in-fact for such purposes), but the Association shall not enter into any such proceedings, settlement or agreements pursuant to which the General Common Property or any part thereof or any interest therein, or any improvement thereon or any part thereof or any interest therein is relinquished, without giving all First Mortgagees of Lots, all Members at least fifteen (15) days prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the General Common Property, the award made for such taking, if such award is sufficient to repair and restore the General Common Property, shall be applied by the Association to such repair and the General Common Property or if the full amount of such award is not expended to repair and restore the General Common Property, the Association shall disburse the net proceeds of such award to the Owners in accordance with the fair market value of their Lot, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his Lot in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Property shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an Owner of insurance proceeds or condemnation award for losses to or taking of General Common Property.

Section 5 - Duration and Amendment.

(a) This Declaration, every provision hereof, and every covenant, condition, restriction and reservation contained herein shall run with and bind the Property and shall continue in full force and effect for a period of twenty (20) years from the date hereof, and shall thereafter be automatically extended for successive periods of ten (10) years unless otherwise terminated or modified as hereinafter provided.

(b) This Declaration or any provision hereof, may not be terminated, extended, modified or amended, as to the whole of the Property or any portion thereof, without the written consent of a majority of the members of the Association, if any, at the time of such termination, extension, modification or amendment. A written notice of any proposed termination, extension, modification or amendment shall be sent by registered mail to every member of the Association at least thirty (30) days in advance of any action taken. If no response to the written notice is received by the Association approval by the non-responding proposed member of termination, extension, modification or amendment shall be conclusively presumed. Such termination, extension, modification or amendment shall be immediately effective after such written notice has been given upon recording a written instrument in the office of the Clerk and Recorder of Douglas County, Colorado, reflecting that the required consents have been obtained, which instrument is executed and acknowledged by the President or Vice President of the Association.

Section 6 - Registration by Owner of Mailing Address. Each Owner and First Mortgagee of a Lot and each insurer or guarantor of a First Mortgage shall register his mailing address with the Association, and, except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address.

Section 7 - Severability. All of the provisions contained in this Declaration shall be construed together, but if it shall at any time be held that any one of such provisions, or any part thereof, if or has become invalid, or for any reason is or has become unenforceable, no other provision, or any part thereof, shall be thereby affected or impaired.

Section 8 - Benefits and Burdens. The terms and provisions contained in this Declaration shall be bind and inure to the benefit of the Association and the Owners located within the Property and their Respective heirs, successors, personal representatives, and assigns.

Section 9 - Waiver. The failure of any person or equity designated herein to enforce any provision of this Declaration shall in no event be deemed to be a waiver of the right to do so for any subsequent violations. Moreover, the right to enforce any other provisions of this Declaration shall not be waived by such a failure, nor shall there be any liability therefore.

Section 10 - Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 11 - Dedication of General Common Property. in recording this Declaration has designated certain areas of land as General Common Property for the common use and enjoyment of Owners for recreation and other related activities. The General Common Property is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 12 - Applicability to law. These covenants shall conform to the provisions of C. A. S. 38.3 - Colorado Common Interest Ownership Act, as it may be amended.

EXHIBIT "A"

LOTS 1 THROUGH 26, FAIRWAY RIDGE AT THE PINERY, A SUBDIVISION LOCATED IN THE COUNTY OF DOUGLAS, STATE OF COLORADO.

EXHIBIT "B"

TRACTS "A", "B", "C" AND "D" OF THE PINERY FILING 21.

EXHIBIT "C"

NONE

EXHIBIT D

FENCING GUIDELINES

## FAIRWAY RIDGE FENCING GUIDELINES GENERAL

Each of the fence types need to be coordinated and controlled to assure a design unity. Standard fence designs have been approved and adopted for use. The designs include both open rail and opaque fences to meet prescribed applications. These standards should be used whenever possible, however, should a special use arise, variations should use the fence "theme" established by illustration in this guideline as a basis for their design.

### REVIEW/ APPROVAL

A scale drawing of proposed fencing to be installed shall be submitted to the Architectural Control Committee for written approval prior to fabrication and installation.

The drawing submitted should include:

- \* A site plan of the entire lot indicating walks, house, streets, and proposed placement of the fence. The fence should be dimensioned, and if more than one type of fence is proposed, the site plan should indicate a clean definition of each fence type's location.

If a standard fence style defined and illustrated in this guideline is used, the site plan need only reference it by name (number).

If a fence design is one other than a standard fence style the drawings submitted must also include:

- \* Typical elevation of fencing clearly labeling material types, sizes and colors.
- \* Typical section of the fence clearly indicating construction details.
- \* Specific reasons for requesting a variance from standard fence styles.

## FAIRWAY RIDGE FENCING GUIDELINES GENERAL

### OVERALL GUIDELINES

All fences shall meet these guidelines.

Each fence design must be developed within the context of the proposed architectural theme and landscape plan.

Where possible, fences should be limited. Other design elements may provide the same

functions. For example:

- \* Heavy landscaping and/or earth berms can be used to provide identity and enclosure.

- \* Dry stream beds and drainage swales can be used to establish boundaries.

More importantly, landscape elements should be considered where ever possible to soften fences and walls and provide variety to long fence lines. Fences should follow slope angle where there is a grade break. Grade breaks can be used as landscape accents in long lines.

The degree to which a fence is "open" or opaque is a function of its use. The need for privacy (opaque) must be balanced with requirements for light, air and views (transparent).

Long lines of unbroken fences and walls should be avoided. Fences and walls should always have a space in front for landscape. A sidewalk should never directly abut a fence, but must have a minimum of 36" of landscaped area separating them.

## FAIRWAY RIDGE FENCING GUIDELINES GENERAL

### FENCE DEFINITIONS

There are three types of fences to be considered in Fairway Ridge:

Development Fence, those fences and/or walls that define the Major Development plan boundary and area.

- \* Dwelling Unit Fences and Walls: those fences and/or walls that define an individual dwelling unit building.

- \* Privacy Fences: those fences which screen a patio or other outside feature.

### FENCE FUNCTIONS

Generally speaking, the three fence types serve the following functions:

- \* Development fences serve to define the overall boundary of a development, as major entry points, road and open space edges.

Dwelling unit fences are used to define individual properties, provide security and a sense of architectural enclosure,

- \* Privacy fences are used to screen outside features such as a patio or deck and create a private space adjacent to the dwelling unit. Use of privacy fencing is not encouraged and

should be limited to special situations.

#### PERIMETER FENCES

Fences installed along greenbelt areas or on corner lots must be of either Standard Type 1 or 2 transparent fencing. Fences along property lines that abut the golf course must be a Standard Type 1 fence and no more than 42" tall.

#### FAIRWAY RIDGE FENCING GUIDELINES GENERAL

##### PRIVACY FENCES

Privacy fences (5'-0" high) may be installed off of a rear patio or deck, but must be attached to the dwelling unit.

Privacy fences may be installed up to 20'-0" into the rear yard from the dwelling unit and may extend to the property line at the sideyard of the dwelling unit. The fence may not be within 20'-0" of the rear property line or anywhere within 8'-0" of the front of the dwelling unit.

##### DOG RUNS

An 8'-0" by 16'-9" (this is the maximum length and width and smaller dimensions are encouraged) designed dog run may be constructed on the sides or rear of any dwelling unit but must be attached to either the dwelling unit and/or a perimeter fence.

The run shall be constructed as a privacy fence (if it meets all other privacy fence requirements) or as a transparent rail fence. All wood materials shall be painted/stained to match the structure to which it is attached.

#### FAIRWAY RIDGE FENCING GUIDELINES STANDARD TYPE 1

#### FAIRWAY RIDGE FENCING GUIDELINES STANDARD TYPE 2