


AMENDMENT TO RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
HIGH PINES OWNERS ASSOCIATION, INC.

The Restated Declaration of Covenants, Conditions and Restrictions of High Pines Owners Association as recorded in the books and records of El Paso County, on 08/07/2002, at Reception Number 202130491, ARTICLE 1, DEFINITIONS, Section 17. Patio Home is hereby amended to read as follows:

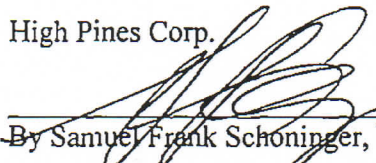
Section 17. Patio Home shall mean and refer to the residential dwelling improvement constructed and located upon a site within Exhibit B, together with all fixtures and improvements, and shall include any Patio Home which is annexed to the project.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the 12th day of September 2002.

Attest:


David Cook, Secretary

High Pines Corp.


By Samuel Frank Schoningher, President

STATE OF COLORADO)
) SS
COUNTY OF EL PASO)

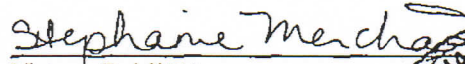
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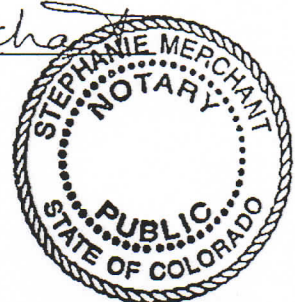
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The foregoing Restated Declaration of Covenants, Conditions and Restrictions High Pines Owners Association, Inc. was acknowledged before me this 12th day of Sept, 2002 by David Cook, Secretary and Samuel Frank Schoningher, President of High Pines, Corp., a Colorado corporation.

WITNESS my hand and official seal.

My commission expires: 5/5/03


Notary Public



My Commission Expires 05/05/2003



RESTATED
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OF
HIGH PINES OWNERS ASSOCIATION, INC.

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Office of County Clerk and Recorder
El Paso County, State of Colorado
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Copy of record in my Office.

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Date . . . 5-27-12
Wayne W. Williams
County Clerk & Recorder
El Paso County, Colorado
By *Yvette Briggs* Deputy



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RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

HIGH PINES OWNERS ASSOCIATION, INC.

THIS DECLARATION, made and entered into on the date signified at the end of this instrument, by High Pines, Corp., a Colorado Corporation hereinafter referred to as "Declarant."

This Declaration voids and fully replaces the High Pines Declaration of Protective Covenants recorded in the records of El Paso County, Colorado on 9/15/2000 at reception # 200111557

WITNESSETH:

WHEREAS, Declarant is the owner of certain parcels of real property located in the County of El Paso, State of Colorado, which are described in Exhibit A and Exhibit B attached and incorporated by this reference.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit A and B shall be held, sold, and conveyed subject to the following easements, reservations, restrictions, covenants, and conditions which are for the purpose of promoting the common recreation, health and safety of the owners of the properties and which shall run with the properties and be binding on all parties, their heirs, personal representatives, successors, and assigns having any right, title, or interest in the above-described properties or any part thereof, and shall inure to the benefit of each owner.

ARTICLE 1
DEFINITIONS

Section 1. Agencies shall mean and collectively refer to all appropriate governmental agencies including but not limited to: the Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), or any other governmental or quasi-governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities.

Section 2. Architectural Control Committee shall mean the committee of three or more persons appointed by the Declarant or Association to review and approve the plans for all improvements constructed on the Property.

Section 3. Assessment Unit shall mean a Lot or Patio Home.

Section 4. Association shall mean and refer to High Pines Owners Association, Inc., a Colorado non-profit corporation, its successors and assigns.

Section 5. Common Elements shall mean and refer to all Common Elements, if any, including General Common Elements and Limited Common Elements, as defined in this and any Supplement Declaration.

Section 6. Common Properties shall mean and refer to all property (including the improvements) maintained by the Association for the Common use and enjoyment of the Owners together with all roads (not including the private road Piney Hill Point and associated landscape strip as described in Exhibit B), street, rights-of-way, easements and detention basins (as described in Exhibit B).

Section 7. Declarant shall mean and refer to High Pines, Corp., a Colorado Corporation. Its successors and assigns, if such successors and assigns are specifically assigned any of Declarant's rights hereunder by instrument duly recorded in the El Paso County, Colorado, land records.

Section 8. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

Section 9. First Mortgage shall mean and refer to any unpaid and outstanding, mortgage, deed of trust or other security instrument recorded in the records of the Office of the Clerk and Recorder of the County of El Paso, Colorado, encumbering any Lot or Patio Home, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments). "First Mortgage", for purposes of this Declaration and with respect to notice of termination, subordination or modification of certain insurance policies shall also mean and refer to any executory land sales contract wherein the Administrator of Veterans Affairs, an Officer of the United States of America, is the seller whether such contract is recorded or not, and whether such contract is owned by the said Administrator or has been assigned by the said Administrator and is owned by the Administrator's assignee, or a remote assignee, and the land records in the Office of the Clerk and Recorder of the County of El Paso, Colorado, show the said Administrator as having the record title to the Lot or Patio Home.

Section 10. First Mortgagee shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage (including for purposes of and with respect to

notice of termination, subordination or modification of certain insurance policies), the Administrator of Veterans Affairs, an Officer of the United States of America, and his/her assigns under any executory land sales contract wherein the said Administrator is identified as the seller, whether or not such contract is recorded in the land records of the Clerk and Recorder for the County of El Paso, State of Colorado.

Section 11. Lot shall mean and refer to any plot of land except Common Property, which is shown upon any recorded subdivision map of the properties or any portion, with the exception of public streets, but together with all appurtenances and improvements.

Section 12. Manufactured Housing shall mean housing which is in part or entirely manufactured in a factory. This type of housing is built in single or multiple sections on a chassis which enables it to be transported to its occupancy site or is built in single or multiple sections for assembly at the site, and includes modular homes and panelized homes.

Section 13. Member shall mean and refer to each Owner of a Lot or Patio Home that is subject to Assessment, hereunder; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Patio Home.

Section 14. Mobile Home shall mean a dwelling that is built on a chassis designed for long-term residential occupancy, that is capable of being installed in a permanent or semi-permanent location, with or without a permanent foundation, and with major appliances and plumbing, gas, and electrical systems installed but needing the appropriate connections to make them operable, and that may be occasionally drawn over the public highways.

Section 15. Owner shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or Patio Home, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. Participating Builder shall mean an Owner other than Declarant which acquires a portion of the Properties from Declarant for the purpose of reselling or leasing the Residences or Lots thereon who is designated in writing by Declarant as a Participating Builder by instrument duly recorded in the El Paso County, Colorado land records.

Section 17. Patio Home shall mean and refer to the residential dwelling improvement constructed and located upon a site within Exhibit A, together with all fixtures and improvements, and shall include any Patio Home which is annexed to the project.

Section 18. Property shall mean a Lot as defined above together with the improvements thereon if any.

Section 19. Residence shall mean and refer to any dwelling or Patio Home located within the properties.

Section 20. Subassociation shall mean and refer to any Colorado non-profit corporation, its successors and assigns, organized and established by Declarant pursuant to or in connection with any Supplemental Declaration. Each Subassociation shall act by and through its Board of Directors and Officers.

Section 21. Supplemental Declaration shall mean and refer to each Declaration of Covenants, Conditions and Restrictions and each Patio Home Declaration, to which the properties or any portion thereof is now or may hereafter be subjected by Declarant as each such document may be amended from time to time, provided that each such Supplemental Declaration shall be recorded in the office of the Clerk and Recorder of the County of El Paso, State of Colorado.

ARTICLE II PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. **Owners' Easements of Enjoyment.** Subject to these provisions, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Properties and the improvements located thereon, and such easement shall be appurtenant to and shall pass with the title to every Lot and Patio Home.

Section 2. **Extent of Owners' 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 or Bylaws, to borrow money for the purpose of improving the property and, with written consent of the Members entitled to vote 67% of the votes of each class of Membership, to manage 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 Common Properties against foreclosure; and
- (c) The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply; and
- (d) The right of the Association as provided in its Articles and Bylaws to suspend the voting rights of a Member for any period during which any assessments against his/her Lot or Patio Home remain unpaid for a period of 60 days, or

more for any infraction of the Association's published rules and regulations;
and

- (e) The right of the Association to dedicate or transfer all or any part of the 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 67% of the votes of each class of membership hereunder, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least 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 Common Property and reasonably necessary or useful for the proper maintenance or operation of the Common Property shall not be deemed a transfer within the meaning of this Subsection (e); and
- (f) The right of the Association to close or limit the use of the Common Properties, or portions thereof, while maintaining, repairing and making replacements in the Common Properties.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his/her right of enjoyment to the Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot, or in his Patio Home.

Section 4. Payment of taxes or insurances by Mortgagees. First Mortgagees shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may have become a lien against the Common Properties and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Properties, and any First Mortgagee making any such payment shall be owed immediate reimbursement therefore from the Association.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner of a Lot or Patio Home, is subject to assessment hereunder, and shall be a Member of the Association without certificates or shares of stock. Members shall be appurtenant to and may not be separated from ownership of any Lot or Patio Home. The foregoing shall not include persons who hold a security interest or trust deed.

Section 2. Classes of Membership. The Association shall have three classes of voting membership:

Class A: Class A Members shall be all Owners of Lots, excluding Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot. If more than one grantee appears on the deed, the voting member shall be the first name unless the Association is notified in writing to the contrary, no less than two weeks prior to a vote.

Class B: Class B Members shall be all Owners of Patio Homes, excluding Declarant, and shall be entitled to one vote for each Patio Home Lot owned. For purposes hereof there shall be deemed to be 42 Patio Home Lots. When more than one person holds an interest in any Patio Home, all such persons shall be Members, and the vote of such Patio Home shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Patio Home.

Class C: the Class C Member shall be the Declarant and it shall be entitled to three votes for each Lot and Patio Home Lot owned.

Section 3. Reservation. Notwithstanding the foregoing voting rights, Declarant hereby reserves the right to appoint the Board of Directors of the Association for the period described. The Board of Directors shall have such powers and duties and shall serve for such terms of office as are set forth in the Articles of Incorporation and Bylaws of the Association. This reserved right shall terminate upon the first to occur of the following events:

- (a) 120 days following the date when 75% of all Lots and 75% of all Patio Homes have been conveyed by Declarant or a Participating Builder; provided, however, that if, during such 120-day period, additional real property is annexed, so that Declarant and all Participating Builders again own at least 25% of the Lots or 25% of the Patio Homes, such reserved right shall be deemed not to have terminated;
- (b) 10 years from the date upon which this Declaration is recorded in the office of the Clerk and Recorder of El Paso County, Colorado; or
- (c) on a date certain set forth in written notice from the Declarant to the Secretary of the Association of its intent to terminate this reserved right as of such date; provided, however, that in the event there is more than one Declarant, such notice must be signed by all such Declarants.

ARTICLE IV
COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot or Patio Home, including Declarant and any Participating Builders, by acceptance of a deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments, such assessments to be established and collected. The annual and special assessments, together with interest, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot or Patio Home, against which each such assessment is made. The lien may be enforced by foreclosure of the defaulting Owner's Lot or Patio Home by the Association in like manner as a mortgage on real property. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors 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 or Patio Home, and a description of the Lot or Patio Home. Such a notice shall be signed by one of the Board of Directors or by the Managing Agent of the Association and may be recorded in the office of the Clerk and Recorder of the County of El Paso, Colorado. A reasonable fee may be charged for the preparation of the notice. The lien for each unpaid assessment shall attach to each Lot or Patio Home, at the beginning of each assessment period and shall continue to be a lien against such Lot or Patio Home, until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot or Patio Home, against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees shall also be the personal obligation of each person who was the Owner of such Lot or Patio Home, at the time when the assessment became due. The Association's lien, on each Lot or Patio Home, 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 Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health and safety of the residents of the Properties, for the repair, replacement, and maintenance of certain landscaped rights-of-way and medians within or adjacent to public or private streets within or abutting the Properties which are the responsibility of the Association to maintain, and for the improvement, repair, replacement, and maintenance of the Common Properties and the appurtenances and improvements, including without limitation, maintenance of landscaping located on the Common

Properties, maintenance of greenbelt areas within the Common Properties, maintenance of any well site and/or the irrigation system within the Common Properties, pruning trees and hedges located upon the Common Properties, maintaining all common fences, lighting facilities and entryway signs located within the Common Properties, maintaining certain publicity dedicated easements located within the property, maintaining, repairing and improving the drainage system to include but not by way of limitation the Detention Basin(s) as fully described in the Private Detention Basin maintenance agreement recorded 09/15/2000 in the records of the clerk and Recorder for the County of El Paso, State of Colorado at reception #200111558, and maintaining, repairing and replacing all improvements and facilities located thereon and any other items as directed by the Board of Directors.

Section 3. Maximum Annual Assessment. Until commencement of the second annual assessment period, the maximum annual assessment shall be Three-Hundred Dollars (\$300.00) per "Assessment Unit", subject to the assessment rate on certain Lots and Patio Homes owned by Declarant or a Participating Builder, as provided.

- (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 each annual assessment year without the necessity of any action 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, shall be calculated by using a substantially comparable index designed by the Board of Directors of 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 annual assessment period for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.
- (c) Subject to the provisions relating to Declarant's and Participating Builders' obligations to subsidize the Association for certain shortfalls

in assessments, the Board of Directors of the Association may, at any time and from time to time, after consideration of the projected maintenance costs and other financial needs of the Association, and upon written notification to each Owner of the amount of the actual assessments to be levied, fix the actual assessment per each assessment Unit at an amount less than the maximum. In the event the Board of Directors of the association determines, at any time and from time to time, during any annual assessment period in which the Association shall have levied an assessment in an amount less than the maximum, that the rate of assessment then in effect is less than may be necessary to adequately fund all maintenance costs and other financial needs of the Association, then the Board of Directors of the Association may increase the actual assessment per each Assessment Unit upon written notification thereof to each Owner, provided that the amount of the actual per each assessment Unit shall not be increased to an amount in excess of the maximum annual assessment for that annual assessment period without an affirmative vote of at least 67% of the membership.

- (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 assessment for the maintenance, repair and replacement of those elements or portions of the Common Properties that must be maintained, repaired or replaced on a periodic basis.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, 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, reconstruction, repair, or replacement of any capital improvement upon the Common Properties, including fixtures and personal property related thereto, or for the funding of any operating deficit incurred by the Association. Any such Assessment shall have the assent of 67% of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose and shall be levied equally against each Assessment Unit.

Section 5. Notice and Quorum for Any Action Altering Maximum Annual Assessment or Authorizing Special Assessments for Capital Improvements. Written notice of any meeting called for these purposes shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. The first such meeting called shall require the presence of Members or of proxies entitled to cast 60% of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, other meetings may be called subject to the same notice requirement, and the

required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. 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; provided, however, that notwithstanding anything to the contrary contained in this Declaration, the rate of annual and special assessments set for the Lots or Patio Homes owned by the Declarant and/or Participating Builders which have not been issued a Certificate of Occupancy shall be fixed at one-quarter (1/4) of the assessment for the other Lots or Patio Homes. In the event that, prior to the termination of the Declarant's reserved right to appoint the Board of Directors of the Association, assessments for annual common expenses, exclusive of those amounts held by the Association for an adequate reserve fund and for working capital, fail to equal or exceed the actual expenses incurred by the Association during any particular annual assessment period because of such partial Declarant and/or Participating Builder assessment, then Declarant and all Participating Builders shall collectively pay a sufficient amount, up to the amount of full parity on such assessment, to the Association to meet any such shortfall so long as (a) written notice must be given by the Association within 60 days following the termination of the then current fiscal year of the Association at the time of the termination of the Declarant's reserved right to appoint the Board of Directors of the Association, but in no event more than one year following the termination of such reserved right to appoint the Board of Directors of the Association, and (b) Declarant and all Participating Builders shall have no obligation for any such shortfall caused by the expenditures for capital improvements, or by any decrease in assessments, including without limitation, the levying of any assessment in an amount less than the maximum for any common expense assessment period, which amount is established subsequent to the termination of the Declarant's reserved right to appoint the Board of Directors of the Association, unless the same has previously been approved in writing by Declarant; provided, however, that at the time any Lot or Patio Home owned by Declarant and/or Participating Builder and has been issued a certificate of occupancy, that Lot or Patio Home shall be assessed at the uniform rate of assessments for privately owned Lots or Patio Homes. In the event there are any Participating Builders or there is more than one Declarant, then, subject to the conditions hereinabove stated, each such Declarant and/or Participating Builder shall pay a pro rate share of the amount necessary to meet each shortfall in Association assessments, up to the amount of full parity on such assessments, such pro rate share to be based on the amount of assessments due at each lesser rate for Lots or Patio Homes owned by each Declarant and Participating Builder, compared with the amount of assessments due at such lesser rate from the Declarant and all Participating Builders during the applicable annual assessment period.

Section 7. Date of Commencement of Annual Assessments. The initial assessment shall commence on the first day of the month following the leasing, renting or other residential occupancy of the first Residence within the Properties and the second and

each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessment shall be made due and payable annually on such dates as determined by the Board of Directors of the Association, provided that the annual assessment shall be adjusted according to the number of months in the first annual assessment year. Any Owner purchasing a Lot or Patio Home between installment due dates shall pay a pro rata of the share of the last installment due.

Section 8. Effect of Nonpayment of Assessments-Remedies of the Association.

General. Any assessments, which are not paid when due, shall be delinquent. Any assessment, which is not received within 29 days following the due date, will incur a \$25.00 late charge on the 30th day. Each subsequent 30 days an additional late charge of \$25.00 will be assessed, said charges shall become an additional assessment against the Property owner, and the Board of Directors of the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot or Patio Home and/or may request and authorize action to be taken against such Owner. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with the expenses, late charge and costs of the action.

Section 9. Working Capital. The Association or Declarant shall require the first Owner of each Lot or Patio Home (other than Declarant or a Participating Builder), who purchases that Lot or Patio Home from Declarant or a Participating Builder, to make a non-refundable contribution to capital to the Association in an amount equal to one-sixth (1/6) of the annual common expense assessment effective at the time of conveyance of the Lot or Patio Home. All such contributions shall be held in a segregated account by the Association for its use and benefit as it deems desirable, including but not limited to the use to insure that the Board of Directors of the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Such contribution shall not relieve an Owner from making the regular payment of assessments as the same become due. Upon the transfer of A Lot or Patio Home, an Owner shall be entitled to a credit from the transferee in an amount equal to the unused portion of the first private Owner's payment into the working capital fund, this remains in the fund.

Section 10. Subordination of the Lien to Mortgages. The lien for assessments, including without limitation any fees, costs, late charges or interest which may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot or Patio Home shall not affect the liens for said assessment charges except that sale or transfer of any Lot or Patio Home, pursuant to foreclosure of any such First Mortgage or any such executory land sales contract, or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessments charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure; provided however, that any such delinquent assessment charges, including

Section 12. Underground Utility Lines. All electric, television, radio, and telephone lines installed and connections on Property and the Common Properties shall be placed underground, except that during the construction the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon the completion of construction.

Section 13. No Hazardous Activities. No activities shall be conducted on Property or Common Properties or within improvements which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property or Common Properties and no open fires shall be lighted or permitted except in a contained barbeque unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace, or except such campfires or picnic fires on property designated for such use by the Association.

Section 14. No Annoying Light, Sounds, or Odors. No light shall be emitted from Property or Common Properties which is unreasonably bright or cause unreasonable glare; No sound shall be emitted which is unreasonably loud or annoying; and no odor shall be emitted which is noxious or offensive to others.

Section 15. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, within Property or within the Common Properties, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup, as provided by the Association. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an unsightly manner.

Section 16. Rules and Regulations. Rules and regulations concerning and governing use of the Common Properties, may be adopted, amended and repealed, from time to time by the Board of Directors of the Association, and the Board of Directors may establish and enforce penalties for the infraction thereof, including, without limitation, the levying and collecting of fines for the violation of any of such rules and regulations, or for the violation of any provisions of this Declaration, the Articles of Incorporation or Bylaws of this Association; provided, however, that copies of such rules and regulations shall be furnished to Owners and shall be uniform and non-discriminatory except to the extent that such rules and regulations concern discretionary rights given to the Association or its Board of Directors in this Declaration, the Articles of Incorporation or Bylaws of the Association.

ARTICLE IX
EASEMENTS

interest, late charges, costs and reasonable attorney's fees, which are extinguished as provided herein may be reallocated and assessed to all Assessment Units as a common expense. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure shall relieve the Owner of any Lot or Patio Home from liability for any assessment charges thereafter becoming due, nor from the lien thereof; however that in the event of foreclosure of a First Mortgage or the taking of a deed in lieu thereof, such First Mortgage shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot or Patio Home in question by such First Mortgagee.

ARTICLE V

ARCHITECTURAL CONTROL COMMITTEE – SINGLE FAMILY LOTS

Section 1. **Applicability.** The Architectural Control Committee described in this Article V shall have jurisdiction over those single family Lots described in Exhibit A. It shall not have jurisdiction over the Patio Home Lots described in Exhibit B. Therefore, only Class A Members and the Class C Member shall be entitled to vote on any matter relating the Architectural Control Committee described in this Declaration.

Section 2. **Architectural Controls.** Initially the Declarant shall appoint three people to serve as the Architectural Control Committee (ACC). The term shall be for three years and shall be staggered. Such appointees shall serve until their resignation or removal by Declarant, and in the event of such removal, death, incapacity, or resignation of any one of such three appointees, the Declarant shall have full authority to designate a successor, who in like manner may be removed at any time by the Declarant.

Section 3. **Members Term's.** After completion of homes on more than half of the Lots, Declarant will remove one of its appointees. A successor, who must be a Lot Owner, shall be appointed by a majority vote of the High Pines Owners Association Board of Directors. Upon the completion of 75% of the homes, the Declarant shall remove a second appointee and the Board shall elect a second Owner in a like manner for a three year period. At the end of each three-year term for members appointed by the Board, the Board may reappoint the same member or a replacement member for a subsequent three-year term. Declarant or its representative may remain on the ACC until all Lots are sold and dwelling units are constructed on all Lots. However, at its option, Declarant may at any time relinquish full control of the ACC. At such times as all Lots are sold and dwelling units have been built on all Lots, Declarant shall remove its remaining appointee and the High Pines Owners Association shall appoint a third member in a like manner. A quorum at any meeting of the remaining ACC shall consist of two of the members thereof and any decision shall be reached by the vote of a majority of such members.

Section 4. Removal. An ACC member, other than Declarant or the Declarant's appointees may be removed by a vote of two-thirds of the then Owners present at a duly called meeting. In the event of such removal, death, or incapacity, of any one of the Boards appointees, the Board shall have full authority to designate a successor member to fulfill the remainder of the term. The ACC shall make and retain records of selections of its members for a period of 10 years. ACC members may receive reasonable compensation, reimbursement of expenses, and the cost of any professional or technical services it deems appropriate.

Section 5. Meetings. The ACC shall, review and examine submitted plans, and approve or disapprove all submissions, in writing. Should a properly submitted application not be disapproved within 90 days, it shall be deemed approved.

Section 6. Powers. The ACC shall have the discretion and right to resolve all questions of interpretation of these covenants in accordance with their general purpose and intent. The ACC shall monitor all construction on the Property, and shall have the right to enter any Lot for the purpose of inspecting and monitoring construction, as to conformance with these covenants and as to progress in accordance with approved plans. The ACC may require reasonable changes in Lot Owner's plans solely for aesthetic reasons. If any improvements are made to any Lots which do not comply with the covenants, restrictions and architectural guidelines or are commenced without approval of the ACC, the ACC, may require the removal of such improvements at the Owners expense. The ACC may subject the Owner(s) of the Lot to a fee of up to \$100.00 per day for every day the violation exists. Such a fee may be enforced and collected by the High Pines Owners Association Board as an assessment. The ACC and High Pines Owners Association Board shall have the right to enforce these covenants. The ACC may, from time to time, may issue guidelines and rules relating to the procedures, materials to be submitted and additional factors which may be considered in connection with the approval of any future improvements.

Section 7. Outside Consultants. From time to time the ACC may retain a non-voting professional or technical advisor (TA). This individual will be experienced in residential site planning, construction, and landscaping. In addition this person may assist with management, review and process applications and plans for the ACC, as well as monitor the construction progress of each project per the approved plans. This person's compensation will come from the application and processing fees. This person may provide consulting services to applicants prior to the applicant's formal submission of plans. The applicant will be responsible for this person's fee. To avoid any conflict of interest this person shall not consult for a fee with an applicant once plans have been formally submitted to the ACC for approval.

Section 8. Initial Fee. An initial non-refundable Construction Application Fee of \$150.00 to cover processing and application fees will accompany each initial formally submitted plan. The ACC may increase the application fee if deemed necessary to cover the

increase in cost for processing. Annually, unused application fees will be deposited into the High Pines Owners Association's general fund. Request for charges such as but not limited to additions, remodels or alterations shall be accompanied by an application form, a full set of plans and an application fee of one-half (1/2) the prevailing full application fee.

Section 9. Fee For Changes. If requests for changes, such as but not limited to additions, remodeling and alterations are made, with the original plans and the plans for said charges shall be submitted with the application. All applications shall be retained for a period of not less than three years after said improvements are completed. All plans shall comply with all area building codes, covenants and restrictions. The ACC has the power to grant reasonable exemptions from the covenants.

Section 10. Approval. Any request for approval of a proposed improvement shall be deemed approved unless notice of disapproval is sent to the applicant within 90 days of actual receipt of a properly completed application by the ACC unless such time it is extended by mutual agreement. The ACC shall return one set of documents showing the ACC's written determination and comments to the Owner.

Section 11. Application. The application should be submitted on an application form to be approved by the ACC with the following attachments: A plot/site plan and a landscape plan at the same house/structure plan, the required application fee and any other supplemental information that may be requested by the ACC, to carry out its purpose. The plot/site plan shall show the exact location on the lot of all proposed construction such as but not limited to the house, driveway, retaining wall, earthwork, grading, and exterior lighting in sufficient detail to enable the ACC to make valid judgments of the proposed improvements. The plot/site plan shall show existing topographic (contour) information at a contour interval of two feet maximum and trees existing and planned larger than two inches in diameter. The house/structure building submittal shall show details of floor plans, architectural elevation and exterior materials and color samples.

Section 12. Plans And Specifications. No buildings/structures, walls, gates, hedges, fences, mailboxes, driveways, windbreaks, swimming pools, flagpoles, exterior lights, antennas or other improvements of any kind shall be commenced, erected, converted, placed, added to, maintained, or altered on any lot until the complete construction plans and specifications, to include design, height, material and color samples to be used and a site/plot plan showing the exact location of the structure(s) as set forth above and have been approved in writing by the ACC as to materials, harmony of external designs with existing structure(s) and adjoining lots, location with respect to other structures planned, and as to topography and finished grade elevation. This requirement applies both to new construction and to subsequent changes, additions, repainting and major repairs or renovations. The ACC may require site changes, if in its opinion, the proposed site location would unduly interfere with existing trees, with drainage of the Property, or the use and enjoyment of adjoining lots.

ARTICLE VI
ARCHITECTURAL DESIGN AND REQUIREMENTS

Section 1. **Applicability.** The Architectural Design and Requirements described in this Article shall apply to those single family Lots described in Exhibit A. It shall not apply to the Patio Home Lots described in Exhibit B. Therefore, only Class A Members and the Class C Member shall be entitled to vote on any matter relating the Architectural Design and Requirements described in this Declaration.

Section 2. **Height and Size.** The maximum height allowed for any building shall be two and one-half (2 1/2) stories and shall not exceed thirty-six 36 feet in height from the mean undisturbed topography of the building site, and in any event shall not exceed the height restrictions of the El Paso County Land Use Code for this zoning. For purpose of these covenants, houses with basement windows above or partial above ground level or houses with garden level or basement entrances on one side may, at the discretion of the ACC, be considered as single or multi-story structures, depending on appearance, size, location and amount of total finished floor area. The enclosed total area of any dwelling structure exclusive of decks, patios, porches, and garages shall not be less than a total of 3000 square feet. The enclosed ground level area of the main dwelling structure, exclusive of decks, patios, porches, and garages shall not be less than a total of 2000 square feet for a single story dwelling. The ACC may grant requests for minor variances in size or height criteria when other factors, which enhance the duality of the structure conclusively, justify such variance.

Section 3. **Garages.** Garages are required for all dwellings and shall have a depth of not less than 20 feet with a width of not less than 20 feet.

Section 4. **Colors.** Structural color scheme shall be subdued, unobtrusive, natural or earth color. Color samples must be submitted with the application.

Section 5. **Foundation Walls.** Foundation stem walls and retaining walls shall be covered in the material as covers the exterior of the dwelling or such other material as approved by the ACC.

Section 6. **Driveways.** Driveways shall be constructed of concrete or hot mix asphalt shall be no less than 14 feet wide.

Section 7. **Chimneys.** Spark arrestors shall be required on all chimneys. Open fires are prohibited.

Section 8. **Roofing.** Roof materials and color shall be consistent with the architecture, color and exterior wall material of any structure. Slate, concrete tiles or high-grade

composition tile roofs are required. The ACC may allow variations from this requirement in those cases where such variation would be harmonious with the surrounding area. New high-quality materials with shake, tile or slate appearances may be considered at the sole discretion of the ACC. The roof shall extend at least 18 inches from the vertical walls. The minimum roof pitch on all buildings shall not be flatter than a ratio of three vertical feet to 12 horizontal feet. Flat roofs or nearly flat roofs are prohibited. Roof mounted solar collectors shall be flush mounted and must be approved by the ACC prior to installation.

Section 9. Energy Features. Energy efficient designs are encouraged through well-sealed and insulated construction and the use of passive solar design techniques. Solar collectors, when utilized, shall be an unobtrusive part of a house or garage structure so that reflections and appearances do not unreasonably defeat the intent of these covenants to maintain a natural environment. Wind driven electric generators or windmills are prohibited.

Section 10. Extreme Design. At the discretion of the ACC, extreme type design may be disapproved.

Section 12. Landscaping. All soils disturbed during the building process must be regarded as natural grade. Plans showing drainage and tree and shrub plants must accompany all submittals requesting a landscape improvement that disturbs any part of the lot. A maximum of 5000 square feet of irrigated, landscaped area is allowed per lot. Trees to be cut or removed must have the approval of the ACC. No person may dam any drainage feature or otherwise prevent the free flow of water through culverts on the Property. No fence, wall, hedge, tree, shrub or tree planting or other structure which unduly obstructs line-of-sight shall be placed or permitted to remain on any corner formed by the intersection of a street with another street.

Section 13. Water and Sanitation. There shall be no water wells drilled, placed or maintained and no sewage disposal system placed on any Lot. Any dwelling house constructed on any lot shall be connected to the Woodmoor Water & Sanitation District #1 before that residence is occupied. All Lot owners are subject to the tap fees, availability of service fees, and all regulations associated with the Woodmoor Water & Sanitation District #1.

Section 14. Earth Work, Grading and Mail Boxes. Concrete headwalls are required on both sides of all culverts where culverts are required by the drainage plan. All earthwork and grading shall be performed in such a manner that disturbance to the lot is minimized. No finished grade shall be more than four feet above or below the existing natural grade. All graded earth cuts or hills shall be sloped no steeper than a ratio of three feet horizontal to one foot vertical. No retaining wall shall be constructed in excess of four feet in height. All retaining walls shall be constructed of wood timbers, concrete or concrete block provided said concrete or concrete-block is covered with stucco, stone, or

brick. Retaining walls shall be shown on the owner's submitted plans. Mailbox enclosures shall conform to the established design for the subdivision and must incorporate a space for newspapers. No separate receptacle shall be allowed for newspapers and other deliveries.

Section 15. Clotheslines, Antennae, Satellite Dishes and Tanks. No clothesline, radio, television antennae, satellite dish with a diameter in excess of 30 inches, ham radio antennae, fuel/water tank, swimming pool filter tank or similar tank may be placed, erected or maintained on any Lot outside an approved building or in a position which permits any part of it to be visible from any surface position outside the Lot which contains it. Reasonable relief may be granted by the ACC.

Section 16. Windows, Awnings and Siding. No reflective materials including but not limited to aluminum foil, reflective screens or glass, mirrored or similar type items shall be permitted to be installed or placed on the outside or inside of any windows or any other part of a lot which can be seen from outside the property. No sheets, newspapers, or similar items shall be installed or placed on of any windows or any other pan of a lot which can be seen from any other lot or outside of the Property unless otherwise approved in writing by the ACC. No metal siding is permitted.

ARTICLE VII INSURANCE

Section 1. Insurance on Common Property. The Association shall maintain insurance covering all insurable improvements located or constructed upon the 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 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 "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 and other perils normally covered by the standard extended coverage endorsement;

- (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.
- (b) A comprehensive policy of public liability insurance covering all of the Common Property, insuring the Association in an amount not less than \$1,000,000 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 insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Property, legal liability arising out of law suits related to employment contracts of the Association, and protection against liability for non-owned and hired automobile; such coverage may also include, if applicable, 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, directors, trustees 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 all such fidelity coverage or bonds shall name the Association as an obligee. Such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of person who serve without compensation from any definition of "employee" or similar expression.
- (d) If the Common Property or any portion thereof, is located within an area identified by the Federal Emergency Management Agency as requiring flood insurance coverage on the Common Property and has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Properties 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 designated flood hazard area; or
 - (2) 100% of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.
- (e) A policy providing errors and omissions of officers and directors of the Association, in such amounts and containing such provisions as may from time to time be deemed necessary or desirable by the Board of Directors of the Association.

ARTICLE VIII
RESTRICTIONS

Section 1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, and use of Property and Common Properties, in order to enhance the value, desirability, and attractiveness of the Property.

Section 2. Restrictions Imposed. The Declarant hereby declares that Property shall be held and shall henceforth be sold, conveyed, used, improved, owned, and hypothecated upon, subject to the following provisions, conditions, limitations, restrictions, agreements, and covenants.

Section 3. Use of Property and Common Property.

- (a) No use shall be made of the Property or Common Properties which will in any manner violate the statutes, rules or regulations of any governmental authority having jurisdiction over the Property.
- (b) No Owner shall place any structure whatsoever upon the Common Properties, except as provided herein, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Properties to all Members
- (c) The use of the Common Properties shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.
- (d) No use shall ever be made of Property which will deny ingress and egress to those Owners having access to a public street or to their Lots or Patio Homes, only over Common Properties, and said rights of ingress and egress to all Lots and Patio Homes are expressly granted.

Section 4. Declarant's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and any Participating Builder, their employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Common Properties, such facilities as Declarant or such Participating Builder deems reasonably necessary or incidental to the construction and sale of Lots or Patio Homes and development, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards and equipment, signs, model units, sales offices, parking areas and lighting facilities. Notwithstanding the foregoing, Declarant shall not perform any activity or maintain any facility on any portion of the Common Properties in such a way as to unreasonably interfere with or disturb any Owner, or to unreasonably interfere with use, enjoyment or access of such Owner,

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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 30 days' prior written notice to the insured, as well as to the First Mortgagees of each Lot or Patio Home. Duplicate originals of all policies and renewals thereof, together with proof of payment of premium, shall be delivered to any first mortgagee of a Lot or Patio Home 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 Common Property. In the event of damage to or destruction of all or a portion of the 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 Common Property damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association shall cause such Common Property to be promptly repaired and reconstructed, using the insurance proceeds and the proceeds of a special assessment which 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 or Patio Home and the improvements thereon, and shall be enforced and collected as provided.

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 Owners 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 Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

Owner's family members, guests or invitees of and to any Lot or Patio Home, parking areas, any facilities existing upon the Common Properties, and to a public right of way.

Section 5. Household Pets. No animals, livestock, poultry or bees, of any kind, shall be raised, bred, kept or boarded in or on the Common Property; provided, however, that the Owners of Lots or Patio Homes may take household pets upon the Common Properties if such animals are controlled on a leash or similar device, subject to the obligation of each such Owner to immediately remove and dispose of all of such animal's solid bodily wastes and to the rules and regulations of the Association. Specifically excluded are mice and fox.

Section 6. Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, garage, or outbuilding shall be place or erected upon Property at any time prior to its being fully completed in accordance with approved plans, nor shall any improvements located on the Property, when completed, be in any manner used until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however that during the actual construction or alteration of improvements, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering, or remodeling any improvement on Property shall be prosecuted diligently from the commencement thereof until the completion.

Section 7. Manufactured, Mobile Homes and Metal Finish. No manufactured housing, mobile home, or home having an exterior finish composed of metal of any kind shall be permitted.

Section 8. Signs and Advertising. No signs, advertising, billboards, unsightly objects or nuisances of any kind shall be placed, erected or permitted to remain in or on Property or Common Properties, without the prior written approval of the Association. Notwithstanding the foregoing, reasonable signs, advertisings, or billboards used by the Declarant or any Participating Builder in connection with its sale or rental of Lots or Patio Homes or otherwise in connection with its development of the Properties, shall be permissible, provided that such use by the Declarant shall not interfere with the Owners' use and enjoyment of the Common Properties, with their Lot or Patio Home or with their ingress and egress from a public way to the Common Properties, or their Lot or Patio Home.

Section 9. Miscellaneous Structures. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon Property or Common Properties.

Section 10. Vehicular Parking, Storage and Repair.

- (a) No portion of the Common Properties or the Property, including but not limited to streets, drives, or parking areas, unless specifically designated by the Association, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than 1 ton, or self contained motorized recreational vehicle, except as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles, which are necessary for the construction or maintenance of the Properties, Lots, or Patio Homes or any improvements.
- (b) No abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on Property or Common Properties. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, housetrailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two weeks or longer, or which does not have an operable propulsion system installed therein; however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice shall be delivered to the owner by conspicuously placing written notice upon the vehicle, and if the abandoned or inoperable vehicle is not removed within 72 hours, the Association shall have the right to remove the vehicle at the sole expense of the owner.
- (c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats, may be performed on Common Properties.

Section 11. Nuisances. No nuisances shall be permitted on Property or Common Properties, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of Property or Common Properties, or any portion thereof. The term "nuisance" shall not include any activities of Declarant or any Participating Builder which are reasonably necessary to development of and construction. Such activities of the Declarant or a Participating Builder shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, or Patio Home, or with any Owner's ingress and egress to or from his Lot, or Patio Home and a public way. Property and Common Properties shall be kept in a clean and sanitary condition, and no rubbish, refuse, litter, junk or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive or unlawful use shall be permitted or made of Property or Common Properties. All valid laws, ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

Section 1. Easement for Encroachments. If any portion of a residence or Improvements encroach upon the Common Properties, including any future encroachments arising or resulting from the repair or reconstruction of a residence subsequent to their damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such encroachment.

Section 2. Maintenance Easement. An easement is hereby granted to the Association, its officers, agents, employees and assigns upon, across, over, in and under the Common Properties and a right to make such use of the Common Properties, as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration.

Section 3. Utilities. There is hereby created a blanket easement upon, across, over and under the Common Properties, for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, cable and satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Common Properties and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone and television wires, circuits, cables, conduits, and meters. In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Properties, without conflicting with the terms hereof; provided, however, that such right and authority shall cease and determine upon conveyance by Declarant of the last Lot to the first Owner (other than Declarant). The easement provided for in this section shall in no way affect, avoid, extinguish or modify any other recorded easement(s) on the Common Properties.

Section 4. Rights of Declarant and Participating Builders Incident to Construction. An easement is hereby retained by and granted to Declarant and any Participating Builder for access, ingress, and egress over, in, upon, under, and across the Common Properties, including but not limited to the right to store materials thereon and to make sure other use thereof as may be reasonably necessary or incidental to Declarant's or any such Participating Builder's construction on the Properties; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to unreasonably interfere with the occupancy, use, enjoyment or access by an Owner, his family members, guests, or invitees, to or of that Owner's Lot, or Patio Home or any improvements upon the Common Properties.

Section 5. Easements Deemed Created. All conveyances of Lots or Patio Homes hereafter made, whether by the Declarant or otherwise, shall be constructed to grant and

reserve such easements, even though no specific reference to such easements or this Declaration appear in the instrument of such conveyance.

ARTICLE X
FIRST MORTGAGEES

Section 1. Member and First Mortgagee Approval. Notwithstanding anything to the contrary set forth elsewhere in this Declaration, the Association shall not, unless it has obtained the prior written consent of at least 67% of each class of Members, and 67% of the First Mortgagees of Lots, and 67% of the First Mortgagees of Patio Homes (based upon one vote for each First Mortgage owned);

- (1) by act or omission, change, waive, or abandon any scheme of architectural control, or enforcement thereof, as set forth in this Declaration, regarding the design or maintenance of the Common Properties,
- (2) Fail to maintain full current replacement cost, fire and extended insurance coverage on the Common Properties,
- (3) Use hazard insurance proceeds for Common Properties losses for purposes other than to repair, replace, or reconstruct such Common Properties,
- (4) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer any property owned, directly or indirectly, by the Association for the benefit of the Owners (excluding the granting of permits, licenses and easements for public utilities, roads or other purposes consistent with the intended use of such Common Properties and reasonably necessary or useful for the proper maintenance or operation of the Properties or the Association),
- (5) Change the method of determining the obligations, assessments, due, or other charges which may be levied against an Owner;
- (6) Add or amend any material provisions of this Declaration, the Articles of Incorporation or Bylaws of the Association, which establish, provide for, govern or regulate any of the following, provided that such additions or amendments shall not be considered material if they are for the purpose of correcting technical errors or for clarification only;
 - (A) voting rights;
 - (B) assessments, assessment liens or subordination of such liens;
 - (C) reserves for maintenance, repair and replacement of those elements of the Common Properties which must be maintained, repaired or replaced on a periodic basis;

- (D) insurance, including but not limited to fidelity bonds;
 - (E) rights to use of the Common Properties;
 - (F) responsibility for maintenance and repair of any portion of the Common Properties;
 - (G) expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties;
 - (H) boundaries of any Lot, Residence, or Patio Home;
 - (I) interests in the Common Properties;
 - (J) convertibility of Lots, Residences, or Patio Homes into Common Properties or of Common Properties into Lots, Residence, or Patio Homes;
 - (K) leasing of Residences;
 - (L) imposition of any right of first refusal or similar restriction on the right of any Owner to sell, transfer or otherwise convey his/her Lot or Patio Home;
 - (M) any provisions which are for the express benefit of First Mortgagees, or insurers or guarantors of First Mortgages; or
- (7) terminate professional management and assume self-management of the Association when professional management has previously been required by any First Mortgagee or Insurer or guarantor of such a First Mortgage;
 - (8) terminate the legal status of the Properties as a planned unit development, provided that this subsection shall not apply to amendments to this Declaration, the Articles of Incorporation or Bylaws of the Association made as a result of destruction, damage or condemnation of the Properties or improvements thereon;
 - (9) restore or repair the Properties, or any portion thereof, including but not limited to improvements located thereon, after a partial condemnation or damage due to an insurable hazard, other than substantially in accordance with this Declaration and the most recent plans and specifications for the Properties and the construction of improvements thereon;
 - (10) terminate the legal status of the Properties after substantial destruction or a substantial taking in condemnation of the Properties.

Section 2. Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the Residence address of the Property which is subject to such First Mortgage or insurer or guarantor of a First Mortgage, shall be entitled to timely written notice of:

- (a) any condemnation loss or casualty loss which affects a material portion of the Properties;
- (b) any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot, or Patio Home subject to a first mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of 60 days;
- (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) any proposed action which would require the consent of a specified percentage of First Mortgagees as provided.

Section 3. Financial Statement. The Association shall provide a financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, to any First Mortgagee, or any insurer or guarantor of a First Mortgage, within a reasonable time after written request therefore by any such party.

ARTICLE XI GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any provision of this Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 3. 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 the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

Section 4. **Annexation.** (a) Additional real property, Common Area and/or Common Elements may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members.

- (a) Notwithstanding the foregoing, the Declarant may annex to this Declaration additional property, until that date which is ten (10) years after the date on which this Declaration is recorded in the office of the Clerk and Recorder of El Paso County, Colorado, without consent of any Owner or First Mortgagee, subject to a determination by the VA or HUD that the annexation is in accord with the general plan heretofore approved by them, if applicable, as follows:
- (i) The Declarant may annex additional Lots, Patio Homes, Common Area and/or other property, except Patio Homes and Common Element which annexation(s) shall be effected, if at all, by the recording an annexation of additional land in the office of the Clerk and Recorder of the County of El Paso, Colorado, which document shall provide for annexation to this Declaration of the property described in such annexation of additional land and may include such other provisions as deemed appropriate by the Declarant, including but not limited to a designation of whether and which portions of the Common Properties so annexed consist of Lots, Patio Homes, Common Properties, Common Areas and/or other property. All provisions of this Declaration, including but not limited to those provisions regarding obligations to pay assessments to the Association and any right to cast votes as members of the Association, shall apply to annexed property immediately upon recording an annexation of additional land with respect thereto, as aforesaid.
- (ii) The Declarant may annex additional Patio Homes and/or Common Elements which annexation(s) shall be affected, if at all, in two stages: (A) first, by the recording in El Paso County, Colorado of a Statement of Intention to Annex, which document shall declare the number of additional Patio Homes which Declarant intends to annex to this Declaration, shall provide that, upon the recordation thereof, each Patio Home enumerated in such document shall be and constitute a "Patio Home" as defined in this Declaration, but only for purposes of voting the Association membership votes appurtenant thereto and determining the total number of Association votes, and for purposes of the payment of assessments and the obligations incident thereto, as provided, and shall further provide that, upon the recording of a supplemental Map of such property in the office of the Clerk and Recorder of El Paso County, Colorado, showing the Patio Home described in such Statement of Intention to Annex. All of the property described in such supplemental

Map shall be annexed for all purposes to this Declaration: and (B) second, upon the recording of such supplemental Map, as aforesaid, all of this property described therein shall thereupon, for all purposes, be annexed to this Declaration and be subject to all provisions contained herein.

- (iii) In the event any annexed property is not owned by the Declarant at the time of annexation, all annexation documents shall contain the signatures of all owners of such property in addition to the signature of Declarant.

Section 5. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Properties, any material part thereof of any interest therein, any improvement thereon, or any material interest therein, the Association shall give prompt notice, including a description of the part of or interest in the Common Properties or improvement thereon sought to be so condemned, to all first mortgages of Lots, or Patio Homes, all insurers and guarantors of First Mortgages, all Members, and to the Declarant. 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 Common Properties or part, as the attorney-in-fact for the Owners (the Owners, by their acceptance of a deed or 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 Common Properties or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein, is relinquished, without giving all First Mortgages of Lots, or Patio Homes, all Members, and Declarant at least 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 Common Properties, the award made for such taking, if such award is sufficient to repair and restore the Common Properties, shall be applied by the Association to such repair and restoration. If such award is insufficient to repair and restore the Common Properties, or if the full amount of such award is not expended to repair and restore the Common Properties, the Association shall disburse the net proceeds of such award to the Owners in accordance with the fair market value of their Lot, or Patio Home, provided that the Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his/her Lot, or Patio Home in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Properties 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 Common Properties.

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Section 6. Duration, Revocation, and Amendment.

- (a) Each and every provision of this Declaration shall run with and bind the land in perpetuity, Except as otherwise provided herein, this Declaration may be amended by an instrument approved in writing by not less than 67% of the Members of each class. Such amendment shall be effective when duly recorded in the County of El Paso, Colorado.
- (b) Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to and of the then, subject to the following sentence of this Section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, or First Mortgagees of Lots, or Patio Homes. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to termination of the Declarant's reserved right to appoint the Board of Directors of the Association as provided herein, and if required each such amendment must contain thereon the written approval of the VA or HUD, if applicable.
- (c) Declarant hereby reserves and is granted the right and power to record technical amendments to this Declaration at any time prior to the termination of the Declarant's reserve right to appoint the Board of Directors of the Association for the purposes of correcting spelling, grammar, dates or as is otherwise necessary to clarify the meaning of the provisions of the Declaration.

Section 7. Registration by Owner of Mailing Address. Each Owner and First Mortgagee of a Lot, or Patio Home, and each insurer or guarantor of a First Mortgage, shall register his/her 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 First Class U.S. mail or registered or certified mail, postage prepaid, addresses in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid, to the High Pines Owner's Association, Inc. 19 North Tejon, Suite 209, Colorado Springs, CO 80903 until such address is changed by the Association.

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Section 8. FHA/VA Approval. As long as there is a Class B Membership, the following actions may be required the prior approval of the Federal Housing Administration of the U.S. Department of Housing and Urban Development or the Veterans Administration: annexation of additional properties, dedication of Common Properties, and amendment of this Declaration.

Section 9. Dedication of Common Properties. Declarant in recording this Declaration, has designated certain areas of land as Common Properties intended for the common use and enjoyment of Owners for recreation and other related activities. This 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.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal as of the day and year first above written.

Attest:

David Cook
David Cook, Secretary

High Pines Corp

Samuel Frank Schoninger
By Samuel Frank Schoninger, President

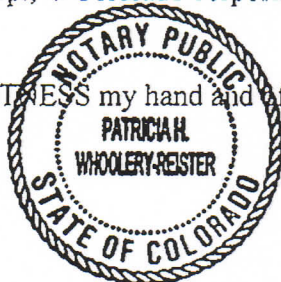
STATE OF COLORADO)

) SS

COUNTY OF EL PASO)

The foregoing Restated Declaration of Covenants, Conditions and Restrictions High Pines Owners Association, Inc. was acknowledged before me this 16th day of August 2002 by David Cook, Secretary and Samuel Frank Schoninger, President of High Pines, Corp., a Colorado corporation.

WITNESS my hand and official seal.



Patricia H. Woolery-Reister
Notary Public

My commission expires:

MY COMMISSION EXPIRES 01/08/2005

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EXHIBIT A

FINAL PLAT HIGH PINES, RECORDED IN THE BOOKS AND RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO ON 09/15/2000, AT RECEPTION NUMBER 200111559, PLAT FILE NUMBER 10672; AS MODIFIED BY FINAL PLAT HIGH PINES PATIO HOMES FILING NO.1 AS REPLATTED, RECORDED IN THE BOOKS AND RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO ON 12/22/2000, AT RECEPTION NUMBER 200154185, PLAT FILE NUMBER 10768 AND INCLUDING HIGH PINES PATIO HOMES FILING NO.1 LOT 4.

EXHIBIT B

FINAL PLAT HIGH PINES PATIO HOMES FILING NO.1, AS REPLATTED, RECORDED IN THE BOOKS AND RECORDS OF THE COUNTY OF EL PASO, STATE OF COLORADO ON 12/22/2000, AT RECEPTION NUMBER 200154185, PLAT FILE NUMBER 10768; EXCLUDING LOT 4 WHICH IS A SINGLE FAMILY LOT WITHIN THE JURISDICTION OF THE HIGH PINES OWNERS ASSOCIATION AND NOT A PATIO HOME SITE.