

**AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE PINERY, FILING NO. 20**

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- Exhibit A - The Community
- Exhibit B - Allocated Interests
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**AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE PINERY, FILING NO. 20**

THIS AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE PINERY, FILING NO. 20 is made and entered into by PINERY INVESTMENT CORPORATION, a Colorado corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant, is the owner of the real property that is subject to that certain Declaration of Covenants, Conditions, and Restrictions of the Pinery, Filing No. 20, recorded on April 25, 1995 in Book 1259 at Page 394, Reception No. 9518073, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended ("Original Declaration"); and

WHEREAS, the Declarant desires hereby to amend the Original Declaration, as amended, in its entirety and restate the Original Declaration, as amended, in accordance with the terms and provisions as provided in this Amendment In Its Entirety and Restatement of Declaration of Covenants, Conditions and Restrictions of The Pinery, Filing No. 20, such that the Original Declaration, as amended, shall cease to exist in that form and shall continue only in the form of this document; and

WHEREAS, the Declarant desires to subject and place upon that certain property described on Exhibit A attached hereto and incorporated herein by this reference certain covenants, conditions, restrictions, easements, reservations, rights-of-way, obligations, liabilities and other charges set forth herein for the purpose of protecting the value and desirability of the Community and for the purpose of furthering a plan for the improvement, sale and ownership of said property, to the end that a harmonious and attractive development of said property may be accomplished and the health, comfort, safety, convenience and general welfare of owners in said property, or any portion thereof, may be promoted and safeguarded; and

WHEREAS, a common interest community may be created pursuant to the Act (as hereinafter defined) only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and in the name of the Association, and in the grantor's index in the name of each person executing the declaration. No common interest community is created until the plat or map for the Common Interest Community is recorded.

NOW, THEREFORE, the Declarant hereby declares that the Original Declaration, as amended, is amended in its entirety and restated by this Amendment In Its Entirety and Restatement of Declaration of Covenants, Conditions and Restrictions of The Pinery, Filing No. 20, and that as a result the Original Declaration, as amended, shall cease to exist in the form in which it was previously recorded and shall continue in existence only in the form of this document. Declarant further declares that the Community shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, easements, rights-of-way, obligations, liabilities, charges and other provisions set forth herein, which are for the purpose of protecting the value and desirability of, and which shall run with, the Community and be binding on all parties having any right, title, or interest in the Community or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each owner thereof.

- ARTICLE I
DEFINITIONS

1. "Act" means the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101, et al., as amended.

2. "Agencies" shall mean and collectively refer to the Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), 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 in the future perform) functions similar to those currently performed by any of such entities.

3. "Allocated Interests" means the Common Expense Liability and votes in the Association allocated to each Lot. The Allocated Interest for each Lot shall be a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots within the Common Interest Community. At the time of recording of this Declaration, the Allocated Interest of each Lot shall be as set forth on Exhibit B attached hereto and incorporated herein by this reference.

4. "Architectural Review Committee" or "Committee" means the committee appointed by the Declarant or by the Association to review and approve or disapprove plans for Improvements, as more fully provided in this Declaration.

5. "Association" means Pinery 20 Homeowners Association, Inc., a unit owners' association organized under section 38-33.3-301 of the Act.

6. "Builder" means any Member other than Declarant who acquires one or more Lots for the purpose of constructing a residence thereon, and who is designated as a Builder by Declarant in its sole discretion from time to time (including the right to withdraw such designation), with such designation to be made by a written instrument duly recorded in the office of the Clerk and Recorder of the County of Douglas, Colorado.

7. "Common Elements" means any real estate owned, leased or maintained by the Association other than a Lot. The Common Elements to be initially owned by the Association are described on Exhibit C attached hereto and incorporated herein by this reference.

8. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot and which Common Expense Liability for each Lot shall be equal to the Allocated Interests of such Lot.

9. "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

10. "Community" means real estate described in this Declaration, as supplemented and amended from time to time, with respect to which a Person, by virtue of such Person's ownership of a Lot, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in this Declaration. The Community is a planned community under the Act.

11. "Declarant" means Pinery Investment Corporation, a Colorado corporation, and any other Person(s) acting in concert, to whom the Declarant, by recorded document, expressly assigns one or more of the Declarant's rights under this Declaration (which shall be the extent of the Declarant's rights to which such assignee succeeds), and who:

(a) As part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Lot not previously disposed of to a purchaser; or

(b) Reserves or succeeds to any Special Declarant Right.

12. "Declaration" means this Amendment In Its Entirety and Restatement of Declaration of Covenants, Conditions and Restrictions of The Pinery, Filing No. 20 and any other recorded instruments, however denominated, that create this Community, including any supplements and amendments to those instruments and also including, but not limited to, plats and maps.

13. "Executive Board" or "Board" means the body, regardless of name, designated in this Declaration and the Bylaws of the Association to act on behalf of the Association.

14. "Improvements" means all exterior improvements, structures, and any appurtenances thereto or components thereof of every type or kind, and all landscaping features, including, but not limited to, buildings, outbuildings, swimming pools, tennis courts, patios, patio covers, awnings, solar collectors, painting or other finish materials on any visible structure, additions, walkways, sprinkler systems, garages, carports, driveways, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, trees, shrubs, flowers, vegetables, sod, gravel, bark, exterior light fixtures, poles, signs, exterior tanks, and exterior air conditioning, cooling, heating and water softening equipment.

15. "Lot" means each platted lot shown upon any recorded subdivision map of the real property described on the attached Exhibit A, as the same may be resubdivided or replatted from time to time, or any other real property as may hereafter be brought within the jurisdiction of the Association, with the exception of the Common Elements and any publicly dedicated property.

16. "Lots that May Be Included" means 64 Lots, which shall be the maximum number of Lots that may be subject to this Declaration.

17. "Member" means each Owner; membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

18. "Owner" means the Declarant, a Builder, or other Person who owns a Lot, but does not include a Person having an interest in a Lot solely as security for an obligation.

19. "PACC" means Pinery Architectural Control Committee.

20. "Period of Declarant Control" means a length of time expiring seven (7) years after initial recording of this Declaration in the county in which the Community is located; provided, that the Period of Declarant Control shall terminate no later than either sixty (60) days after conveyance of seventy-five percent (75%) of the Lots that May Be Included to Owners other than a Declarant or two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business.

21. "Person" means a natural person, a corporation, a partnership, an association, a trust, a limited liability company, a joint venture, or any other entity recognized under the laws of the State of Colorado or any combination thereof.

22. "Security Interest" means an interest in real estate or personal property created by contract or conveyance which secures payment or performance of any obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of leases or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

23. "Security Interest Holder" means any Person named as a mortgagee or beneficiary, or in a similar capacity, under any Security Interest or any successor to the interest of any such Person under such Security Interest.

24. "Special Declarant Rights" means rights reserved for the benefit of a Declarant to perform the following acts: to build and complete Improvements in the Community; to maintain sales offices, construction offices, management offices, and signs advertising the Community and sale of Lots; to use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community; to make the Community subject to a master association; to merge or consolidate a Community of the same form of ownership; or to appoint or remove any officer of the Association or any Executive Board member during any Period of Declarant Control. All of the Special Declarant Rights may be exercised by the Declarant with respect to any portion of the property now or hereafter within the Community. Declarant may exercise any or all of these Special Declarant Rights at any time and from time to time. Such rights shall terminate automatically on the earlier of the following events: (a) conveyance of the last Lot by Declarant to an Owner other than Declarant; or (b) seven (7) years from the date of recordation of this Declaration, except with respect to the appointment of officers and directors which may only be exercised in accordance with Article III hereof.

ARTICLE II MEMBERSHIP AND VOTING RIGHTS

1. Membership. The membership of the Association at all times shall consist exclusively of all Owners or, following termination of the Community, of all former Owners entitled to distributions of proceeds under the Act or their heirs, personal representatives, successors or assigns. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

2. One Class of Membership. The Association shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Lot owned in accordance with the Allocated Interest attributable to each Lot, except that no votes allocated

to a Lot owned by the Association may be cast. The total number of votes which may be cast in connection with any matter shall be equal to the total number of Lots then existing within the Association. Except as otherwise provided in Article III of this Declaration, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and members of the Executive Board, and may remove all officers and members of the Executive Board which have been appointed by the Declarant. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

ARTICLE III
EXECUTIVE BOARD MEMBERS AND OFFICER

1. Authority of Executive Board. Except as provided in this Declaration or the Association Bylaws, the Executive Board may act in all instances on behalf of the Association.

2. Election of Part of Executive Board During Period of Declarant Control. No later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots that May Be Included to Owners other than Declarant or a Builder, at least one (1) member and not less than twenty-five percent (25%) of the members of the Executive Board must be elected by Owners other than the Declarant or a Builder. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots that May Be Included to Owners other than Declarant or a Builder, not less than thirty-three and one-third percent (33 1/3%) of the members of the Executive Board must be elected by Owners other than the Declarant or a Builder.

3. Authority of Declarant. Except as otherwise provided in this Article, during the Period of Declarant Control, the Declarant or Persons appointed by the Declarant may appoint all officers and directors and may remove all officers and directors of the Executive Board appointed by it.

4. Termination of Period of Declarant Control. Not later than the termination of the Period of Declarant Control, the Owners shall elect an Executive Board of at least three members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Executive Board shall elect the officers. Such Executive Board members and officers shall take office upon election.

5. Delivery of Documents by Declarant. After the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, if and to the extent required by the Act.

6. Budget. Within thirty (30) days after adoption of any proposed budget for the Community, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the Association budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) days nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting the Owners casting at least sixty-seven percent (67%) of the Association votes reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation for Assessments. Each Owner, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees and shall be personally obligated to pay to the Association: annual assessments or charges, special assessments, and other charges, fines, fees, interest, late charges, and other amounts, all as provided in this Declaration; with such assessments and other amounts to be established and collected as hereinafter provided. Fees, charges, late charges, attorney fees, fines, interest and other amounts that are charged pursuant to this Declaration are enforceable as assessments under this Article. The 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 against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant with all amounts due, from time to time, payable in full when due without notice or demand (except as otherwise expressly provided in this Declaration), and without set-off or deduction. All Owners of each Lot shall be jointly and severally liable to the Association for the payment of all assessments, fees, charges and other amounts attributable to their Lot. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due. 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 a Lot for assessment 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 to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Lots, and for all of those purposes and activities which may be required of the Association or which the Association may be empowered to pursue pursuant to this Declaration or the Articles of Incorporation or Bylaws of the Association, or by law.

3. Initial Annual Assessment. Until the effective date of an Association budget ratified by the Owners with a different amount for the annual assessment, as provided above, the amount of the annual assessment against each Lot shall not exceed Three Hundred Sixty and no/100 Dollars (\$360.00) per Lot per annum.

4. Rate of Assessment. Annual and special assessments shall be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association. The annual assessments shall include an adequate reserve fund for the maintenance, repair and replacement of those items that must be maintained, repaired or replaced on a periodic basis, and for the payment of insurance deductibles. Except as specifically otherwise provided in this Declaration, all assessments shall be assessed against all the Lots in accordance with the Allocated Interests set forth in this Declaration. If the Common Expense Liability is reallocated, Common Expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Common Expense Liability.

5. Date of Commencement of Annual Assessments. Until the Association makes an annual assessment, which shall commence at such time as the Executive Board may determine in its discretion, the Declarant shall pay all Common Expenses. After any annual assessment has been made by the Association, assessments shall initially not be greater than the amount set forth in Section 3 of this Article, and thereafter shall be based on a budget adopted by the Association as provided in this Declaration. A budget shall be so adopted by the Association no less frequently than annually. The annual assessments shall be due and payable in monthly installments, in advance, or on such other dates, and with such frequency (which may be other than monthly, but not less frequently than annually), as the Executive Board determines in its discretion from time to time, provided that the first annual assessment shall be adjusted to reflect the time remaining in the first Association

fiscal year. Any Owner purchasing a Lot between annual due dates shall pay a pro rata share of the last payment due.

6. Special Assessments. In addition to the annual assessments authorized in this Article, the Executive Board may levy, in any fiscal 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 a capital Improvement upon any portion of real property for which the Association has repair and/or reconstruction obligations, including fixtures and personal property related thereto, or for repair or reconstruction of any damaged or destroyed Improvements located on said real property, or for the funding of any operating deficit incurred by the Association. Any such special assessment shall be set against each Lot in accordance with the Allocated Interests set forth in this Declaration.

7. Lien for Assessments.

(a) The Association has a statutory lien on a Lot for any assessment levied against that Lot or fines imposed against its Owner. The amount of the lien shall include all those items set forth in this Section from the time such items become due. If an assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations.

(b) Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessments is required. However, the Executive Board or managing agent of the Association may prepare, and record in the county in which the applicable Lot is located, a written notice setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. If a lien is filed, the costs and expenses thereof shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. The Association's lien may be foreclosed in like manner as a mortgage on real estate.

(c) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within six (6) years after the full amount of assessments become due.

8. Priority of Association Lien.

(a) A lien under this Article IV is prior to all other liens and encumbrances on a Lot except:

(1) Liens and encumbrances recorded before the recordation of the Declaration;

(2) A Security Interest on the Lot which was recorded or perfected before the date on which the assessment sought to be enforced became delinquent; and

(3) Liens for real estate taxes and other governmental assessments or charges against the Lot.

(b) A lien under this Section is also prior to the Security Interests described in the preceding subsection (a)(2) to the extent of an amount equal to the annual assessments based on a periodic budget adopted by the Association as provided above, which would have become due, in the absence of any acceleration, during the six (6) months immediately preceding institution by either the Association or any party holding a lien senior to any part of the Association lien created under this Section of an action or nonjudicial foreclosure either to enforce or extinguish the lien.

(c) This Section does not affect the priority of mechanics' or material men's liens or the priority of liens for other assessments made by the Association. A lien under this Article is not subject to the provisions of part 2 of Article 41 of Title 38, C.R.S., as amended, or to the provisions of Section 15-11-201, C.R.S. 1973, as amended.

9. Receiver. In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Common Expense assessments.

10. Certificate of Status of Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request delivered personally or by certified mail, first class postage prepaid, return receipt, to the Association's registered agent, a written statement setting forth the amount of unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) calendar days after receipt of the request and is binding on the Association, the Executive Board, and every Owner. If no statement is furnished to the Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid assessments which were due as of the date of the request. The Association shall have the right to charge a reasonable fee for the issuance of such certificates.

11. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof may bear interest from the due date at the rate of twenty-one percent (21%) per annum, or at such lesser rate as may be set from time to time by the Executive Board, and the Executive Board may charge a late charge thereon in an amount not in excess of \$25.00 per month. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. If a judgment or decree is obtained, including without limitation in a foreclosure action, such judgment or decree shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action, and may include interest and late charges as above provided. No Owner may be exempt from liability for payment of the assessments by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Lot against which the assessments are made. This Article does not prohibit actions or suits to recover sums for which this Declaration creates a lien, nor does this Article prohibit the Association from taking a deed in lieu of foreclosure.

12. Surplus Funds. Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of or provision for reserves shall be retained by the Association as unallocated reserves and need not be paid to the Owners in proportion to their Common Expense Liability or credited to them to reduce their future Common Expense assessments.

13. Working Capital Fund. The Association, Declarant or a Builder shall require the first Owner (other than Declarant or a Builder) of any Lot who purchases that Lot from Declarant or a Builder to make a non-refundable contribution to the Association in an amount equal to two (2) times the then current monthly installment of the annual assessment (regardless of whether or not annual assessments have commenced as provided in Section 5 of this Article). Said contribution shall be collected and transferred to the Association at the time of closing of the sale by Declarant or a Builder of each Lot and shall, until use, be maintained in a segregated account with other such working capital funds for the use and benefit of the Association, including, without limitation, to meet unforeseen expenditures or to purchase equipment, property or services. Such contribution to the working capital fund shall not relieve an Owner from making regular payments of assessments as the same become due. Upon the transfer of his Lot, an Owner shall be entitled to a credit from his transferee (but not from the Association) for the aforesaid contribution to working capital fund.

14. Mandatory Annual Contribution for Entry Feature Maintenance. A mandatory Sixty and No/100 Dollar (\$60.00) annual assessment per Lot shall be collected by the Association from the Owner of each Lot and contributed by the Association to The Pinery

Homeowners Association for maintenance, repair and replacement of the entry features at Pinery Parkway and State Highway 83. This contribution per Lot shall be included in the annual assessment referenced in Section 3 of this Article and as part of the annual assessments and Common Expenses of the Association, all to be as provided in the annual budget adopted by the Association as hereinabove provided.

ARTICLE V
ARCHITECTURAL REVIEW COMMITTEE

1. Composition of Committee. The Architectural Review Committee shall consist of two (2) or more persons appointed by the Executive Board; provided, however, that until all of the Lots have been conveyed to the first Owner thereof (other than Declarant or a Builder), Declarant may appoint the Architectural Review Committee. The power to "appoint," as provided herein, shall include without limitation the power to: constitute the initial membership of the Architectural Review Committee; appoint member(s) to the Architectural Review Committee on the occurrence of any vacancy therein, for whatever reason; and remove any member of the Architectural Review Committee, with or without cause, at any time, and appoint the successor thereof. Each such appointment may be made for such term(s) of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the appointor.

2. Review by Committee. No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Review Committee; provided, however, that the Declarant shall be exempt from seeking or obtaining Architectural Review Committee approval during Declarant's development of, construction on, or sale of any Lot or residence on any Lot. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Architectural Review Committee shall require that the applicant(s) reimburse the Committee for the expenses incurred by the Committee in the review and approval process.

3. Procedures. The Architectural Review Committee shall approve or disapprove all requests for approval within sixty (60) days after the complete submission of the plans, specifications and other materials and information which the Committee may require in conjunction therewith. If the Architectural Review Committee fails to approve or disapprove any request within sixty (60) days after the complete submission of the plans, specifications, materials and other information with respect

thereto, approval shall not be required and this Article shall be deemed to have been fully complied with.

4. Vote and Appeal. A majority vote of the Architectural Review Committee is required to approve a request for approval pursuant to this Article, unless the Committee has appointed a representative to act for it, in which case the decision of such representative shall control. In the event a representative acting on behalf of the Architectural Review Committee denies a request for architectural approval, then the applicant therefor shall have the right to an appeal of such decision to the full Committee, upon a request therefor submitted to the Committee within seven (7) days after such denial by the Committee's representative.

5. Records. The Architectural Review Committee shall maintain written records of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

6. Liability. The Architectural Review Committee and the members thereof, as well as any representative of the Committee appointed to act on its behalf, shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

7. Variance. The Architectural Review Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article IX hereof, in order to overcome practical difficulties or prevent unnecessary hardships arising by reason of the application of any such conditions and restrictions. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

8. Waivers. The approval or consent of the Architectural Review Committee, any representative thereof, or the Executive Board, to any application for architectural approval shall not be deemed to constitute a waiver of any right to withhold or deny approval or consent by the Committee, any representative thereof, or the Executive Board, as to any application or other matters whatsoever as to which approval or consent may subsequently or additionally be required.

9. Architectural Standards. In consideration, review and approval or disapproval of applications which have been

submitted to the Architectural Review Committee, the Committee shall take into account and apply those certain Architectural Standards and Construction Regulations, as amended, applicable to the Community, and The Pinery Builder's Packet revised December 1, 1994 issued by PACC.

10. PACC Plan Review. Each house plan submitted to the Architectural Review Committee for approval shall also be submitted to the PACC for review. PACC review shall be based on the standards in effect as of December 1, 1994 (except that the provisions of Article IX, Section 23 below shall control as to setbacks), and by reference such standards are hereby incorporated into this document. No revisions to the standards of the PACC, revised December 1, 1994, shall be applied as a new standard(s) affecting the Community.

ARTICLE VI INSURANCE

1. Insurance. The Association shall maintain the following types of insurance on the Common Elements, to the extent that such insurance is reasonably available, considering the availability, cost and risk coverage provided by such insurance, and the cost of said coverage shall be paid by the Association as Common Expenses. Notwithstanding any of the specific insurance requirements specified in this Article, the Association may also consider, in determining the types and amount of insurance it needs to obtain, the then-existing requirements of any of the Agencies with respect to their insurance, guaranty, or purchase of Security Interests.

(a) Property insurance for broad form covered causes of loss; except that the total amount of insurance must not be less than the full insurable replacement cost of all the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies.

(b) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements, insuring the Association in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring the Executive Board, the Association, any managing agent, and their respective employees, agents and all Persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and member of the Executive Board. The Owners shall also be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall

cover claims of one or more insured parties against other insured parties.

(c) A policy providing comprehensive fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and/or any independent contractor employed by the Association for the purpose of managing the Community and/or any Owner who controls or disburses funds of the Association, in an amount at least equal to the estimated maximum of funds, including maintenance reserves, in the custody of the Association at any given time; provided, however, that such fidelity coverage or fidelity bonds shall not be in an amount less than two (2) months aggregate assessments on the Lots, plus such reserve funds as calculated from the current budget of the Association. The Association may carry fidelity insurance in amounts greater than required hereinabove and may require any independent contractor employed for the purposes of managing the Community to carry more fidelity insurance coverage than required hereinabove. In the event the Association has delegated some or all of its responsibility for the handling of funds to a managing agent, the Association may require the managing agent to purchase, at its own expense, a policy of fidelity insurance or bonds which fully complies with the provisions of this subparagraph (c).

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

2. General Provisions of Insurance Policies. All policies of insurance carried by the Association shall be carried in blanket policy form naming the Association as insured, or its designee 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 Owner's membership in the Association. The policy or policies shall contain a standard non-contributory Security Interest Holder's clause in favor of each Security Interest Holder and a provision that it cannot be cancelled or materially altered by either the insured or the insurance company until thirty (30) days' prior written notice thereof is given to the insured and each Security Interest Holder, insurer or guarantor of a Security Interest. The Association shall furnish a certified copy or duplicate original of such policy or renewal thereof, with proof of premium payment and a certificate identifying the interest of the Owner in question, to any party in interest, including Security Interest Holders, upon request. Any

such Owner's policy shall also contain waivers of subrogation. All policies shall contain waivers of any defense based on invalidity arising from any acts or neglect of an Owner where such Owner is not under the control of the Association.

3. Deductibles. The Association may adopt and establish written non-discriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment.

(a) To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all deductibles paid by the Association. In the event that more than any one (1) Lot is damaged by a loss, the Association, in its reasonable discretion, may assess each Owner a pro rata share of any deductible paid by the Association.

(b) Any loss to any Lot or to any parcels of real property for which the Association has the duty to maintain, repair and/or reconstruct, which falls within the deductible portion of such policy, shall be borne by the Person who is responsible for the repair and maintenance of the property which is damaged or destroyed. In the event of a joint duty of repair and maintenance of the damaged or destroyed property, then the deductible may be apportioned among the parties sharing in such joint duty or may be partly or wholly borne by the Association, at the election of the Executive Board. Notwithstanding the foregoing, after notice and hearing, the Association may determine that a loss, either in the form of a deductible to be paid by the Association or an uninsured loss, resulted from the act or negligence of an Owner. Upon said determination by the Association, any such loss or portion thereof may be assessed to the Owner in question and the Association may collect the amount from said Owner in the same manner as any assessment.

4. Payment of Insurance Proceeds. Any loss covered by an insurance policy described in Section 1 of this Article must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any Security Interest Holder. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners and Security Interest Holders as their interests may appear. Subject to the provisions of Section 1 of Article VII of this Declaration, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners and Security Interest Holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Community is terminated.

5. 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. An Owner shall be liable to the Association for the amount of any diminution of insurance proceeds to the Association as a result of policies of insurance of an Owner, and the Association may collect the amount from said Owner in the same manner as any assessment. Any such Owner's policy shall also contain waivers of subrogation.

6. Acceptable Insurance Companies. Each hazard insurance policy purchased by the Association must be written by a hazard insurance carrier which is authorized by law to do business in the State of Colorado. The Association shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the mortgagor or mortgagee's designee, or (b) under the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or any Owner from collecting insurance proceeds.

7. Insurance to be Maintained by Owners. An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit. Insurance coverage on each Lot and the Improvements thereon, and the furnishings and other items of personal property belonging to an Owner, and public liability insurance coverage on each Lot, shall be the responsibility of the Owner of such Lot.

8. Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Executive Board to ascertain that the coverage provided by such policies adequately covers those risks intended to be insured by the Association. In making the aforesaid determination, the Executive Board or the managing agent of the Association may obtain a written appraisal from a duly qualified real estate or insurance appraiser, or seek other advice or assistance. Any Security Interest Holder shall be furnished with a copy of such appraisal upon request.

9. Notice of Cancellation. If the insurance described in Section 1 of this Article is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefor having been obtained, the Association promptly shall cause notice of that fact to be hand delivered, or sent prepaid by United States mail, to all Owners.

ARTICLE VII
DAMAGE OR DESTRUCTION

1. Damage or Destruction.

(a) Any portion of the Community for which casualty insurance is required to be carried by the Association under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

(1) The Community is terminated;

(2) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(3) Eighty percent (80%) of the Owners, including every Owner of a Lot that will not be rebuilt (if applicable), vote not to rebuild.

(b) The cost of repair or replacement that is covered by insurance carried by the Association, but which is in excess of insurance proceeds and reserves, is a Common Expense. If the entire Community is not repaired or replaced, the insurance proceeds attributable thereto must be used to restore the damaged area to a condition compatible with the remainder of the Community and, except to the extent that other Persons will be distributees, the remainder of the proceeds must be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Expense Liability of all the Lots.

2. Lots. Any damage to or destruction of any structure located on a Lot shall, except as hereafter provided, be promptly repaired and reconstructed by the Owner thereof using insurance proceeds and personal funds of such Owner. "Repaired and reconstructed," as used in this Section 2, shall mean restoring the structure to substantially the same condition in which it existed immediately prior to such damage or destruction, including having the same boundaries as before. However, if a residence located on a Lot shall be destroyed or so damaged that the residence is no longer habitable, then the Owner of such Lot shall, within a reasonable time not to exceed 120 days after the event resulting in such damage or destruction, either commence and diligently pursue repair or reconstruction of the residence or demolish the same. Demolition of a residence shall include removal of any foundation slab, basement walls and floors, regrading of the Lot to a level condition, and the installation of such landscaping as may be required by the Architectural Review Committee pursuant to a plan submitted to said Committee by the Owner of said Lot. If the Owner of a Lot does not either commence repair, reconstruction or demolition activities within a reasonable time, as provided above,

and diligently pursue the same in conformance with the plans approved by the Architectural Review Committee, then the Association may, in its reasonable discretion, after providing the notice required in Article VIII, Section 2 hereof, enter upon the Lot for the purpose of demolishing the residence and then landscape the Lot in conformance with approved plans. The cost related to such demolition and landscaping shall be the personal obligation of the Owner of the Lot on which such work is performed and shall be subject to all the terms and provisions applicable to assessments as provided in Article IV hereof, including without limitation, interest, late charges and lien rights.

ARTICLE VIII
EXTERIOR MAINTENANCE

1. General.

(a) Maintenance, repair or replacement of the Common Elements, and all-Improvements located thereon, and of any drainage structure or facilities, or other public Improvements required by the local governmental entity as a condition of development of the Community or any part thereof, shall be the responsibility of the Association unless such improvements have been dedicated to and accepted by the local governmental entity for the purpose of maintenance, repair or replacement or unless such maintenance, repair or replacement has been authorized by law to be performed by a special district or other municipal or quasi-municipal entity. Further, the Association may provide such other maintenance and repair as the Executive Board deems appropriate from time to time. The costs to be expended for such maintenance and repair shall, subject to Section 4 of this Article, be collected by the Association as assessments pursuant to Article IV hereof.

(b) Without limiting the generality of subsection (a) above, the Association shall maintain, repair and replace all tracts conveyed to the Association as Common Elements, and all landscaping thereon.

(c) The maintenance, repair and replacement of each Lot, including, but not limited to, the interior and exterior of the residence and the other Improvements constructed thereon, shall be the responsibility of the Owner thereof. The Association and each Owner, and their agents and contractors, are hereby granted an easement for the purpose of maintenance and repair of the Owner's Lot on, over, across, under and through any adjacent Lot upon reasonable notice to the Owner thereof. Any damage occurring to such adjacent Lot or the Improvements thereon in performing such repairs or maintenance shall be the responsibility of the party performing or authorizing such repairs or maintenance.

2. Association's Right to Repair, Maintain, Restore and Demolish. In the event any Owner shall fail to perform his maintenance, repair and/or reconstruction obligations in a manner satisfactory to the Executive Board, the Association may, if said failure continues for a thirty (30) day period after written notice to said Owners by the Board, enter upon said Lot subsequent to the expiration of said thirty (30) day time period to perform any or all of such maintenance, repair or restoration or, pursuant to Article VII, Section 2 hereof, to demolish a residence. The cost of such maintenance, repair, reconstruction and/or demolition shall be the personal obligation of the Owner of the Lot on which such work is performed, and shall be subject to all of the terms and provisions applicable to assessments as provided in Article IV hereof, including, without limitation, interest, late charges and lien rights.

3. Access Easement. Each Owner shall afford to the Association and the other Owners, and to their agents or employees, access through such Owner's Lot reasonably necessary for maintenance, repair and replacement of any Common Elements and any other property or Improvements maintained, repaired or replaced by the Association. If damage is inflicted, or a strong likelihood exists that it will be inflicted, on the Common Elements, any other property, or any Lot, the Owner responsible for the damage, or expense to avoid damage, or the Association if it is responsible, is liable for the cost of prompt repair. Further, each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for performing maintenance, repair and/or reconstruction as provided in this Article during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot, except that in emergency situations entry upon a Lot may be made at any time provided that the Owner or occupants of each affected Lot shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to such easements as provided for in this Section.

4. Owner's Negligence. Notwithstanding anything to the contrary contained in this Declaration, in the event that the need for maintenance, repair or reconstruction of the Common Elements, any property which the Association maintains, repairs or reconstructs, any Lot, or any Improvements located thereon, is caused by the willful or negligent act or omission of any Owner, or by the willful or negligent act or omission of any member of such Owner's family or by a guest or invitee of such Owner, the cost of such repair, maintenance, reconstruction or expense to avoid such damage shall be the personal obligation of such Owner; and any costs, expenses and fees incurred by the Association for such maintenance, repair or reconstruction shall be added to the assessment to which such Owner's Lot is subject and shall be subject to all of the terms and provisions of Article IV of this Declaration.

A determination of the negligence or willful act or omission of any Owner, or any member of an Owner's family or a guest or invitee of any Owner, and the amount of the Owner's liability therefor, shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination which assigns liability to any Owner pursuant to the terms of this Section may be appealed by said Owner to a court of law.

ARTICLE IX
RESTRICTIONS

1. General Plan. It is the intention of the Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Lots, all in order to enhance the value, desirability, and attractiveness of the Lots and subserve and promote the sale thereof.

2. Restrictions Imposed. This Community is subject to the recorded easements, licenses and other matters listed on Exhibit D attached hereto and incorporated herein by this reference. In addition, the Declarant declares that all of the Lots shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated, subject to the following provisions, conditions, limitations, restrictions, agreements and covenants, as well as those contained elsewhere in this Declaration.

3. Residential Use. Subject to Section 4 of this Article, Lots shall be used for residential use only, including uses which are customarily incident thereto, and shall not be used at any time for business, commercial or professional purposes; provided, however, that an Owner may use his Lot for professional or home occupation(s) so long as the applicable zoning permits such use, there is no external evidence thereof, and no unreasonable inconvenience to other residents of the Lots is created thereby.

4. Declarant's and Builder's Use. Notwithstanding anything to the contrary contained in this Declaration, it shall be expressly permissible and proper for Declarant and a Builder, their respective employees, agents, and contractors, to perform such reasonable activities, and to maintain upon portions of the Lots such facilities as Declarant or such Builder deems reasonably necessary or incidental to the development, construction and sale of Lots, and development and construction of Improvements, specifically including, without limiting the generality of the foregoing, maintaining management offices, signs, model units, construction offices, trailers and sales offices, in such numbers, of such sizes, and at such locations as Declarant determines in its reasonable discretion from time to time.

5. Household Pets. No animals, livestock, birds, poultry, reptiles or insects of any kind shall be raised, bred, kept or boarded in or on the Lots; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Lots. The Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance, or that an Owner is otherwise in violation of the provisions of this Section, and to take such action(s) as it may deem appropriate to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such pets, as well as any costs incurred by the Association as a result of such pets, and any such costs and damages shall be subject to all of the Association's rights with respect to the collection and enforcement of assessments as provided in Article IV hereof. The feeding of pets outside is discouraged unless feeding takes place in an enclosed area, such as a dog run (if permitted as herein provided) or a garage.

6. Temporary Structures; Unsightly Conditions. Except as hereinafter provided, no structure of a temporary character, including, but not limited to, a house trailer, tent, shack, storage shed, or outbuilding shall be placed or erected upon any Lot; provided, however, that during the actual construction, alteration, repair or remodeling of a structure or other Improvements, necessary temporary structures for storage of materials may be erected and maintained by a Builder or a Person doing such work. The work of constructing, altering or remodeling any structure or other Improvements shall be prosecuted diligently from the commencement thereof until the completion thereof. Further, no unsightly conditions, structures, facilities, equipment or objects shall be so located on any Lot as to be visible from a street or from any other Lot.

7. Miscellaneous Improvements.

(a) No advertising or signs of any character shall be erected, placed, permitted, or maintained on any Lot other than a name plate of the occupant and a street number, and except for a "For Sale," "Open House" or "For Rent" sign of not more than five (5) square feet. Notwithstanding the foregoing, reasonable signs, advertising, or billboards used by the Declarant or a Builder in connection with the sale or rental of the Lots, or otherwise in connection with development of or construction on the Lots, shall be permissible.

(b) No clotheslines, chain-linked (or other) dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street or from the ground level of any other Lot.

(c) No types of refrigerating, cooling or heating apparatus shall be permitted on a roof and no such apparatus shall be permitted elsewhere on a Lot, except when appropriately screened and approved by the Architectural Review Committee.

(d) Except as may otherwise be permitted by the Architectural Review Committee, no exterior radio antenna, television antenna, satellite dish, or other antenna, shall be placed, erected or maintained on any Lot, except inside a residence or otherwise concealed from view. Notwithstanding the foregoing, however: any such devices may be erected or installed by the Declarant or any Builder during their respective sales or construction upon the Lots; upon application, the Committee shall consider for approval satellite dishes of less than twenty-five inches (25") in diameter if the satellite dish is to be located on the side or rear of a residence no more than five feet (5') above grade, and if such satellite dish will be appropriately screened from view.

(e) No fences shall be permitted except with the prior written approval of the Architectural Review Committee. Without limiting the generality of the foregoing, the Committee may at any time, from time to time, promulgate and publish guidelines, rules or regulations regarding the permitted types, locations, materials, and other matters having to do with fences.

(f) No wind generators of any kind shall be constructed, installed, erected or maintained on the Lots.

(g) Any exterior lighting installed or maintained on the Lots shall either be indirect or of such controlled focus and intensity so as not to disturb the residents of adjacent or nearby property.

8. Vehicular Parking, Storage and Repairs.

(a) No house trailer, camping trailer, boat trailer, hauling trailer, boat, or accessories thereto, truck (larger than 3/4 ton), self-contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on the Lots unless such parking or storage is within the garage area of any Lot or suitably screened from view in accordance with the requirements of the Architectural Review Committee, except that any such vehicle may be otherwise parked as a temporary expedient for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial

vehicles which are necessary for construction or for the maintenance of the Lots or any Improvements located thereon.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on any Lot. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, or other similar vehicle, which has not been driven under its own propulsion for a period of seventy-two (72) hours or longer, or which does not have an operable propulsion system installed therein or which is not then currently licensed and registered; provided, however, that otherwise permitted vehicles parked by Owners while on vacation (for a maximum of two (2) weeks) or during a period of illness shall not be deemed to be abandoned.

(c) In the event the Association shall determine that a vehicle is parked or stored on any Lot in violation of subsections (a) or (b) of this Section, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the vehicle is not removed within a reasonable time thereafter, as determined by the Association in its discretion from time to time, the Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(d) 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 or conducted on any Lot unless it is done within completely enclosed structure(s) which screen the sight and sound of the activity from the street and from adjoining property. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, motor-driven cycle, or other vehicle, together with those activities normally incident and necessary to such washing and polishing.

9. Nuisances. No nuisance shall be permitted on any Lot nor any use, activity or practice which interferes with the peaceful enjoyment or possession and proper use of any Lot, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant or a Builder which are reasonably necessary to the development and construction of, and sales activities on, the Lots; provided, however, that such activities of the Declarant or a Builder shall not unreasonably interfere with any Owner's use and enjoyment of his Lot, or with any Owner's ingress and egress to or from his Lot and a public way. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot which is or may become a nuisance or cause embarrassment,

disturbance or annoyance to others. Further, no unlawful use shall be permitted or made of any Lot or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Lots, or any portion thereof, shall be observed.

10. No Hazardous Activities. No activities shall be conducted on any Lot or within Improvements constructed on any Lot 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 Lot and no open fires shall be lighted or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes or within an interior fireplace.

11. No Annoying Light, Sounds or Odors. No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be permitted from any Lot which is noxious or offensive to others.

12. Restrictions on Trash and Materials. No refuse, garbage, trash, lumber, grass, shrubs or tree clippings, plant waste, metal, bulk materials, scrap or debris of any kind shall be kept, stored, or allowed to accumulate except inside the residence on any Lot nor shall any such items be deposited on a street, unless placed in a suitable, tightly-covered container that is suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

13. Minor Violations of Setback Restrictions. If upon the erection of any structure, it is disclosed by survey that a minor violation or infringement of setback lines has occurred, such violation or infringement shall be deemed waived by the Owners of each Lot immediately adjoining the structure which is in violation of the setback, and such waiver shall be binding upon all other Owners. However, nothing contained in this Section shall prevent the prosecution of a suit for any other violation of the restrictions, covenants, or other provisions contained in this Declaration. A "minor violation," for the purpose of this Section, is a violation of not more than one and one-half (1 1/2) feet beyond the required setback lines or Lot lines. This provision shall apply only to the original structures and shall not be applicable to any alterations or repairs to, or replacements of, any of such structures.

14. Rules and Regulations. Rules and regulations concerning and governing the Lots, Common Elements, and/or this Community may be adopted, amended or repealed from time to time by

the Executive Board, and the Executive Board 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.

15. Lots to be Maintained. Each Lot shall at all times be kept in a clean and sightly condition by the Owner of the Lot. No trash, litter, junk, boxes, containers, bottles, implements or machinery shall be permitted to remain upon any Lot except as necessary during the period of construction or as provided in Section 12 of this Article.

16. Leases. The term "lease," as used herein, shall include any agreement for the leasing or rental of a Lot, or any portion thereof, and shall specifically include, without limitation, month-to-month rentals and subleases. Any Owner shall have the right to lease his Lot, or any portion thereof, as long as all leases are in writing and provide that the terms of the lease and lessee's occupancy of the leased premises are subject in all respects to the provisions of this Declaration, and the Articles of Incorporation, Bylaws and rules and regulations of the Association.

17. Management Agreements and Other Contracts. Any agreement for professional management of the Association's business or other contract providing for the services of the Declarant shall have a maximum term of three (3) years and any such agreement shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon not more than ninety (90) days' prior written notice.

18. Maintenance of Grade and Drainage. Each Owner shall maintain the grading upon his Lot, and the Association shall maintain the grading upon such real property which the Association has a duty to maintain, at the slope and pitch fixed by the final grading thereof, including landscaping and maintenance of the slopes. Each Owner and the Association agree, for themselves and their successors and assigns, that they will not in any way interfere with the established drainage pattern over any real property which they have a duty to maintain, from adjoining or other real property. In the event that it is necessary or desirable to change the established drainage over any Lot or other real property which an Owner or the Association has a duty to maintain, then the party responsible for the maintenance of such real property shall submit a plan to the Architectural Review Committee for its review and approval, in accordance with the provisions of Article V of this Declaration. For purposes of this Section, "established drainage" is defined as the drainage which exists at the time final grading of a Lot is completed.

19. Use of Common Elements. An easement is hereby granted to the Declarant through the Common Elements as may be reasonably necessary for the purpose of discharging any of Declarant's obligations or exercising any Special Declarant Rights. Subject to the immediately preceding sentence:

(a) No use shall be made of the Common Elements which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Elements.

(b) No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Common Elements to all Members, nor shall any Owner place any structure whatsoever upon the Common Elements.

(c) The use of the Common Elements shall be subject to such rules and regulations as may be adopted from time to time by the Executive Board. -

(d) No use shall ever be made of the Common Elements which will deny ingress and egress to those Owners having access to their Lots only over Common Elements, and the right of ingress and egress to said Lots is hereby expressly granted.

20. Yard and Street Lighting.

(a) The Owner of each Lot shall install and maintain, at their sole cost and expense, a yard light on their Lot in accordance with the specifications, requirements and standards of the Architectural Review Committee, and with the prior written approval of the Committee. Each such yard light shall be maintained, repaired, serviced and operated by the Owner of the Lot on which such yard light is located, so that the light is lit during each night of the year from sunset on one day until sunrise on the following day. The Executive Board or the Architectural Review Committee, or both of them, may from time to time adopt recommendations, rules, regulations, directives, requirements, and may take such action as they deem appropriate from time to time, with respect to such yard lights and the maintenance, repair, service and operation thereof.

(b) All Lots are subject to and bound by Intermountain Rural Electric Association (herein "IREA") tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting in this Community, if any, together with rates, rules and regulations therein provided and subject to all future amendments and changes thereto. The Owner of each Lot shall pay as billed a portion of the cost of public street lighting in this Community, if any, according to IREA rates, rules and regulations, including

future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

21. Feeding of Wildlife. Feeding of wildlife is discouraged, except for winter feeding of birds.

22. Landscaping. Landscaping should include plants that are not particularly palatable to wildlife.

23. Minimum Setback. All dwellings will be setback a minimum of twenty (20) feet from the front property line, seven and one-half (7.5) feet from the side lot line, except on side lot lines next to a street where the setback shall be fifteen (15) feet from the R.O.W., and thirty (30) feet from the rear lot line. A minimum of twenty (20) feet will be maintained between adjacent houses.

24. Notice and Release as to Golf Course. Each Owner acknowledges that their Lot is adjacent to or in close proximity to a golf course. Each Owner further acknowledges that neither they, their family members, tenants, guests or invitees, have any rights in or to such golf course, or other amenities located on the golf course property, or any tournaments or other activities that may occur on the golf course property, by virtue of the location of their Lot or their ownership of the Lot, unless such Owner has made separate arrangements with the owners of the golf course. As a result of the location of their lot, however, the Owner of each Lot acknowledges that the Lot, the Improvements located thereon, and any person or property on the Lot, may be subject to damage or injury as a result of trespass and/or errant golf balls. Each Owner hereby releases the Declarant, its officers, directors, shareholders, agents and employees, from any and all losses, claims, liabilities, expenses, or damages, arising directly or indirectly from the proximity of the golf course to the Lot and any injuries or damages arising directly or indirectly therefrom (including without limitation from golf balls originating from the golf course). Each Owner hereby further covenants not to sue the Declarant, its officers, directors, shareholders, agents and employees, as a result of any of the foregoing matters.

ARTICLE X OTHER EASEMENTS

1. Easement for Encroachments. To the extent that any Lot or Common Element encroaches on any other Lot or Common Element, a valid easement for the encroachment exists. The easement does not relieve an Owner of liability in case of willful misconduct nor relieve a Declarant or any other Person of liability for failure to adhere to the plans and maps.

2. Easements for Drainage and Utilities. Easements for the installation and maintenance of utilities, drainage facilities, public or private improvements and access thereto are reserved as shown on the recorded plats affecting the Lots and any amendments to such plats or as established by any other instrument of record. Declarant hereby reserves, to itself and to the Association, easements for drainage or drainage facilities across the eight (8) rear and five (5) side feet of each Lot. As more fully provided in Article IX, Section 18 of this Declaration, no Improvements shall be placed or permitted to remain on any Lot nor shall any change in grading be permitted to exist, which may change the direction of flow or obstruct or retard the flow of water through channels or swales within such rear and side yard drainage easements. Declarant reserves to itself and to the Association the right to enter in and upon each eight (8) foot rear and five (5) foot side yard drainage easements and at any time to construct, repair, replace or change drainage structures or to perform such grading, drainage or corrective work as Declarant or the Association may deem necessary or desirable in their sole discretion from time to time.

3. Easements Deemed Created. All conveyances of any Lot hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE XI
PROPERTY RIGHTS IN THE COMMON ELEMENTS

1. Owners' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article XI, every Owner shall have a non-exclusive right and easement for the purpose of access to their Lots and for use for all other purposes, in and to the Common Elements, and such easement shall be appurtenant to and shall pass with the title to every Lot.

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 to borrow money for the purpose of improving the Common Elements and to mortgage said property as security for any such loan; provided, however, that the Association may not subject any portion of the Common Elements to a Security Interest unless such is approved by Members casting at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant or a Builder; or

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

(c) The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to regulate and/or restrict vehicular parking and Improvements; and

(d) The right of the Association to suspend the voting rights of a Member for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of the Association Bylaws or the rules and regulations of the Association; and

(e) The right of the Association to dedicate or transfer all or any part of the Common Elements owned by the Association 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 by the Members entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Lots not owned by the Declarant or a Builder, and unless written notice of the proposed agreement and the proposed dedication or transfer 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 or for other purposes 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 (e); and

(f) The right of the Association, through its Executive Board, to enter into, make, perform or enforce any contracts, leases, agreements, licenses, easements and rights-of-way, for the use of real property or Improvements by Owners, other persons, their family members, guests and invitees, for any purpose(s) the Executive Board may deem to be useful, beneficial or otherwise appropriate; and

(g) The right of the Association to close or limit the use of the Common Elements while maintaining, repairing and making replacements in the Common Elements.

3. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Elements and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

4. Payment of Taxes or Insurance by Security Interest Holders. Security Interest Holders shall have the right, jointly

or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Elements and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Elements, and any Security Interest Holders making any such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE XII
GENERAL PROVISIONS

1. Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation, Bylaws or rules and regulations of the Association, as supplemented and amended, may be by any proceeding at law or in equity against any Person(s) (including, without limitation, the Association) violating or attempting to violate any such provision. The Association and any aggrieved Owner shall have the right to institute, maintain and prosecute any such proceedings, and the Association shall further have the right to levy and collect fines for the violation of any provision of any of the aforesaid documents. In any action instituted or maintained under this Section, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto, as well as any and all other sums awarded by the Court. Failure by the Association or any Owner to enforce any covenant, restriction or other provision herein contained, or any other provision of any of the aforesaid documents, shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability. All provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association are severable. Invalidation of any of the provisions of any such documents, by judgment, court order or otherwise, shall in no way affect or limit any other provisions which shall remain in full force and effect.

3. Conflict of Provisions. In case of any conflict between this Declaration and 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.

4. Conflict with Act. In the event that any of the terms or provisions of this Declaration are in conflict or inconsistent with the Act, the terms or provisions of the Act shall control and govern. In spite of any such conflict or inconsistency, all terms and provisions contained in this Declaration shall, to the extent possible, be construed in

accordance with the Act, and any conflict with or violation of the Act by any terms or provisions of this Declaration shall not affect, void, or render unenforceable any other term or provision of this Declaration but the same shall be in full force and effect in accordance with its terms.

5. Duration, Revocation, and Amendment.

(a) Each and every provision of this Declaration shall run with and bind the land for a term of twenty (20) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. Except as otherwise provided in this Declaration, this Declaration may be amended during the first twenty (20) year period, and during subsequent extensions thereof, by a vote or agreement of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

(b) No action to challenge the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded.

(c) Every amendment to the Declaration must be recorded in every county in which any portion of the Community is located, and is effective only upon recordation.

(d) Except to the extent expressly permitted or required by other provisions of this Declaration, no amendment may create or increase Special Declarant Rights, increase the number of Lots, or change the boundaries of any Lot or the Allocated Interests of a Lot, or the uses to which any Lot is restricted, in the absence of unanimous consent of the Owners.

(e) Amendments to the Declaration that are required by this Declaration to be recorded by the Association may be prepared, executed, recorded, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

6. Registration of Mailing Address. Each Owner and each Security Interest Holder, insurer or guarantor of a Security Interest shall register his mailing address with the Association, and except for annual statements and other routine notices, all other notices or demands intended to be served upon an Owner, or upon a Security Interest Holder, insurer or guarantor of a Security Interest, shall be sent by either registered or certified mail, postage prepaid, addressed in the name of such person or entity at such registered mailing address. However, if any Owner fails to notify the Association of a registered address, then any notice or demand may be delivered or sent, as aforesaid, to such Owner at the

address of such Owner's Lot. All notices, demands, or other notices intended to be served upon the Executive Board or the Association during the Period of Declarant Control shall be sent by registered or certified mail, postage prepaid, c/o Pinery Investment Corporation, 1440 South Emerson Street, Denver, Colorado 80210, unless such address is changed by the Association during the Period of Declarant Control; subsequent to termination of the Period of Declarant Control, the Association shall notify the Owners of a different address for notices.

7. Description of Lots. It shall not be necessary to use the term "unit" as a part of a legally sufficient description of a Lot.

8. Termination of Community. The Community may be terminated only as provided in the Act.

9. Transfer of Special Declarant Rights. A Special Declarant Right created or reserved under this Declaration may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the Community is located, and in accordance with the Act.

10. Eminent Domain. The taking by eminent domain of a Lot(s) or Common Element(s), or any portion of thereof, shall be done in accordance with applicable law, including without limitation the Act.

11. Association as Trustee. With respect to a third Person dealing with the Association in the Association's capacity as a trustee, the existence of trust powers and their proper exercise by the Association may be assumed without inquiry. A third Person is not bound to inquire whether the Association has the power to act as trustee or is properly exercising trust powers. A third Person, without actual knowledge that the Association is exceeding or improperly exercising its powers, is fully protected in dealing with the Association as if it possessed and properly exercised the powers it purports to exercise. A third Person is not bound to assure the proper application of trust assets paid or delivered to the Association in its capacity as trustee.

12. Dedication of Common Elements. Declarant in recording this Declaration has designated certain areas of land as Common Elements intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Elements owned by the Association 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.

STATE OF COLORADO)
COUNTY OF Arapahoe) ss.

The foregoing instrument was acknowledged before me this 5th day of Sept, 1995, by J. C. Chikard as CEO President of MEGABANK OF ARAPAHOE, N.A.

Witness my hand and official seal.

(S E A L)



Judith L. Vrchoja
Notary Public
My Commission expires: 5-18-96

EXHIBIT A
TO
AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE PINERY, FILING NO. 20

Lots 1 through 64, inclusive, and Tracts C, D, E, F, H, and I, all as shown on the Preliminary Plan/Final Plat, The Pinery, Filing No. 20, recorded on May 26, 1995, at Reception No. 9523438, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended.

EXHIBIT B
TO
AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE PINERY, FILING NO. 20

<u>Lot*</u>	<u>Allocated Interest</u>
Lot 1	1/64
Lot 2	1/64
Lot 3	1/64
Lot 4	1/64
Lot 5	1/64
Lot 6	1/64
Lot 7	1/64
Lot 8	1/64
Lot 9	1/64
Lot 10	1/64
Lot 11	1/64
Lot 12	1/64
Lot 13	1/64
Lot 14	1/64
Lot 15	1/64
Lot 16	1/64
Lot 17	1/64
Lot 18	1/64
Lot 19	1/64
Lot 20	1/64
Lot 21	1/64
Lot 22	1/64
Lot 23	1/64
Lot 24	1/64
Lot 25	1/64
Lot 26	1/64
Lot 27	1/64
Lot 28	1/64
Lot 29	1/64
Lot 30	1/64
Lot 31	1/64
Lot 32	1/64
Lot 33	1/64
Lot 34	1/64

* All Lots are contained in The Pinery, Filing No. 20, according to the Preliminary Plan/Final Plat thereof, recorded on May 26, 1995, at Reception No. 9523438, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended.

EXHIBIT B (CONTINUED)

<u>Lot*</u>	<u>Allocated Interest</u>
Lot 35	1/64
Lot 36	1/64
Lot 37	1/64
Lot 38	1/64
Lot 39	1/64
Lot 40	1/64
Lot 41	1/64
Lot 42	1/64
Lot 43	1/64
Lot 44	1/64
Lot 45	1/64
Lot 46	1/64
Lot 47	1/64
Lot 48	1/64
Lot 49	1/64
Lot 50	1/64
Lot 51	1/64
Lot 52	1/64
Lot 53	1/64
Lot 54	1/64
Lot 55	1/64
Lot 56	1/64
Lot 57	1/64
Lot 58	1/64
Lot 59	1/64
Lot 60	1/64
Lot 61	1/64
Lot 62	1/64
Lot 63	1/64
Lot 64	1/64

* All Lots are contained in The Pinery, Filing No. 20, according to the Preliminary Plan/Final Plat thereof, recorded on May 26, 1995, at Reception No. 9523438, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended.

EXHIBIT C
TO
AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE PINERY, FILING NO. 20

Tracts C, D, E, F, H and I, as shown on the Preliminary Plan/Final Plat of The Pinery, Filing No. 20, recorded on May 26, 1995, at Reception No. 9523438, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended.

EXHIBIT D
TO
AMENDMENT IN ITS ENTIRETY AND RESTATEMENT OF
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
THE PINERY, FILING NO. 20

The following items, if recorded, are recorded in the office of the Clerk and Recorder of Douglas County, Colorado:

1. Taxes and assessments for the year of recording of this Declaration, and for subsequent years, not yet due and payable.
2. RESERVATIONS BY THE UNION PACIFIC RAILWAY COMPANY COMPANY OF:
 - (1) ALL OIL, COAL AND OTHER MINERALS UNDERLYING SUBJECT PROPERTY,
 - (2) THE EXCLUSIVE RIGHT TO PROSPECT FOR, MINE AND REMOVE OIL, COAL AND OTHER MINERALS, AND
 - (3) THE RIGHT OF INGRESS AND EGRESS AND REGRESS TO PROSPECT FOR, MINE AND REMOVE OIL, COAL AND OTHER MINERALS, ALL AS CONTAINED IN DEED RECORDED January 11, 1898, IN BOOK 16 AT PAGE 374, AS CONVEYED AND LIMITED BY DEEDS RECORDED APRIL 15, 1971 IN BOOK 217 AT PAGE 147 AND MARCH 30, 1972 IN BOOK 228 AT PAGE 459.
3. ANY TAX, LIEN, FEE OR ASSESSMENT, BY REASON OF THE INCLUSION OF SUBJECT PROPERTY IN THE DOUGLAS COUNTY SOIL CONSERVATION DISTRICT, PARKER FIRE PROTECTION DISTRICT AND REGIONAL TRANSPORTATION DISTRICT.
4. TERMS, CONDITIONS AND PROVISIONS OF THE PINERY PD DEVELOPMENT GUIDE RECORDED September 25, 1985 IN BOOK 597 AT PAGE 725, AS AMENDED JULY 30, 1987 IN BOOK 737 AT PAGE 629, APRIL 3, 1990 IN BOOK 905 AT PAGE 36 AND AUGUST 25, 1994 UNDER RECEPTION NO. 9444547.
5. RIGHT OF WAY EASEMENT AS GRANTED TO THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY IN INSTRUMENT RECORDED September 30, 1970, IN BOOK 210 AT PAGE 17.
6. TERMS, CONDITIONS AND PROVISIONS OF FINDINGS OF FACT, CONCLUSIONS OF LAW, JUDGMENT AND DECREE IN THE MATTER OF THE APPLICATION FOR NONTRIBUTARY WATER RIGHTS OF SENIOR CORP. RECORDED January 06, 1986 IN BOOK 617 AT PAGE 580, 595, 610 AND 625.
7. TERMS, CONDITIONS AND PROVISIONS OF AGREEMENT CONCERNING NONTRIBUTARY WATER RECORDED November 13, 1987 IN BOOK 759 AT PAGE 220.
8. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED April 01, 1981, IN BOOK 409 AT PAGE 287 AND BY INSTRUMENT RECORDED MAY 25, 1984 IN BOOK 522 AT PAGE 715.

EXHIBIT D (CONTINUED)

9. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE CHERRY CREEK BASIN AUTHORITY, AS EVIDENCED BY INSTRUMENT RECORDED May 06, 1988, IN BOOK 790 AT PAGE 718.
10. EASEMENTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS ACCORDING TO THE RECORDED PLAT THEREOF AND RECORDED MAY 26, 1995 UNDER RECEPTION NO. 9523438 AND ACCORDING TO AFFIDAVIT OF CLARIFICATION RECORDED JUNE 8, 1995 IN BOOK 1267 AT PAGE 1926.
11. TERMS, CONDITIONS AND PROVISIONS OF SUBDIVISION IMPROVEMENTS AGREEMENT AS EVIDENCED BY ASSIGNMENT OF SUBDIVISION IMPROVEMENTS AGREEMENT RECORDED JUNE 19, 1995 IN BOOK 1269 AT PAGE 810.

I ATTEST THE ABOVE ON THIS 5TH DAY OF MAY, 1975

[Handwritten Signature]
DOY
P.L.S.
GATED
JOB NO. 1018
FOR AND BY
MERRICK

NOTES:

1. PERPETUAL NON-EXCLUSIVE EASEMENT FOR EQUESTRIAN, PEDESTRIAN AND BICYCLE PASSAGE OVER, ALONG AND ACROSS REAL PROPERTY AS DESCRIBED IN DEED RECORDED NOVEMBER 28, 1993 IN BOOK 1163, PAGE 424.
2. PERPETUAL NON-EXCLUSIVE EASEMENT FOR EQUESTRIAN, PEDESTRIAN AND BICYCLE PASSAGE OVER, ALONG AND ACROSS REAL PROPERTY AS DESCRIBED IN DEED RECORDED OCTOBER 18, 1993 IN BOOK 1154, PAGE 2402.
3. PERPETUAL NON-EXCLUSIVE EASEMENT FOR EQUESTRIAN, PEDESTRIAN AND BICYCLE PASSAGE OVER, ALONG AND ACROSS REAL PROPERTY AS DESCRIBED IN DEED RECORDED OCTOBER 3, 1991 IN BOOK 997, PAGE 273.
4. SLOPE EASEMENT RECORDED DECEMBER 18, 1992 IN BOOK 1102, PAGE 1841.
5. EASEMENT FOR DSSW & SW WELL NO B-018009-F AS SHOWN ON SURVEY OF CARROL & LANGE, INC., DATED DECEMBER 1988, NO. 0-120.
6. BASIS OF BEARINGS BEARINGS ARE BASED ON THE NORTHERLY LINE OF THE PINERY, FILING NO. 70, ALSO BEING THE NORTHERLY LINE OF THE NORTH-WEST QUARTER OF SECTION 11, TOWNSHIP 7 SOUTH, RANGE 68 WEST OF THE 6TH P.M. AS BEING N89°47'29"E.
7. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
8. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY MERRICK AND COMPANY TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY AND TITLE OF RECORD, MERRICK AND COMPANY RELIED UPON COMMITMENT NO. FA11124 PREPARED BY NORTH AMERICAN TITLE INSURANCE COMPANY, DATED MARCH 1, 1995 AT 7:30 A.M.
9. AT LEAST ONE-HALF OF THE MODEL HOMES BUILT FOR OR WITHIN THIS FILING SHALL INCORPORATE XERISCAPE PLANTINGS, ENHANCEMENTS AND TECHNIQUES IF LANDSCAPE PACKAGES ARE OFFERED ON INDIVIDUAL LOTS. A XERISCAPE OPTION PACKAGE WILL BE OFFERED.
10. SETBACKS FOR ALL HOMES WITHIN THIS FILING SHALL BE:
 - 30' REAR
 - 20' FRONT
 - 7.5' SIDE (WITH 20' BETWEEN STRUCTURES)
11. ACREAGE SUMMARY:

TRACTS:	7.611 AC
LOTS:	22.976 AC
ROW:	5.010 AC
TOTAL:	35.597 AC

DEVELOPER:
U.S. HOMES
4670 S GREENWOOD PLA
SUITE 310
ENGLEWOOD, CO 80111

 Engineers, Surveyors
MERRICK
Merrick & Company, Inc.
2450 S. Parker St. Aurora
Box Office Box 22025 Denver

COVENANTS REGARDING SOILS, GRADING AND DRAINAGE

THESE COVENANTS REGARDING SOILS, GRADING AND DRAINAGE ("Covenants") are made and entered into the day and year hereinafter set forth by Pinery Investment Corporation, a Colorado corporation ("PIC").

WITNESSETH:

THAT, WHEREAS, PIC is the owner of certain real property designated as Lots 1 through 64, inclusive, as shown on the Preliminary Plan/Final Plat, The Pinery, Filing No. 20, recorded on May 26, 1995, at Reception No. 9523438, in the office of the Clerk and Recorder of Douglas County, Colorado, as amended (each such lot is individually referred to as a "Lot" and all of the aforesaid lots are collectively referred to as the "Lots"); and

WHEREAS, PIC is developing and offering the Lots for sale, and anticipates that single-family dwelling units will be constructed thereon by one or more builders; and

WHEREAS, PIC desires to put each prospective builder and purchaser of a Lot on notice that:

1. The soils within the State of Colorado consist of both expansive soils and low-density soils, which will adversely affect the integrity of the dwelling unit constructed thereon if the dwelling unit and the lot on which it is constructed are not properly graded and maintained; and
2. Expansive soils contain clay minerals which have the characteristic of changing volume with the addition or subtraction of moisture, thereby resulting in swelling and/or shrinking soils; and
3. The addition of moisture to low-density soils causes a realignment of soil grains and results in consolidation and/or collapse of such soils; and

WHEREAS, PIC will be conveying each of the Lots with its expectation and understanding that the purchaser of each Lot from PIC, and each successive owner of such Lot, will fully comply with all of the requirements, terms, and other provisions of these covenants, and that PIC shall have no responsibility or liability for any damages that may be sustained or incurred as a result of the matters described in these Covenants.

NOW, THEREFORE, PIC, as the sole owner of the Lots, hereby states and declares that each of the Lots shall be held, transferred, sold, conveyed, leased, and occupied, subject to the following covenants, restrictions, and obligations:

1. Prior to PIC's conveyance of each Lot, PIC will grade such Lot in accordance with the Pinery Filing No. 20 Final Construction Plan, with Roadway and Storm Drainage, Sheets 1 through 17, dated October 26, 1994, and approved by Douglas County, Colorado on June 14, 1995 ("Approved Grading"). The owner of each Lot shall maintain the grading and drainage of the Lot in accordance with the Approved Grading. Any deviation from the Approved Grading by any builder or owner of a Lot shall constitute an assumption of liability and responsibility by such builder (if applicable) and by the owner of the Lot, for damages that may be caused, suffered or incurred as a result of such change(s).
2. Each owner of a Lot, and each builder and contractor on a Lot, shall consult and follow the recommendations of a professional engineer licensed in the State of Colorado and experienced with construction techniques in problem soils areas, in order to assure that, in addition to

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complying with the Approved Grading: the dwelling unit constructed on such Lot is constructed in accordance with the highest professional standards in order to minimize possible adverse affects of expansive or low-density soils; and additions and/or modifications to a dwelling unit, particularly to floor slab, porch or patio areas, or the installation of a swimming pool, will not adversely affect the structural integrity of the dwelling unit.

3. Neither the builder of a dwelling unit on any Lot, nor the owner of such Lot, shall impede or hinder in any way the drainage courses across such Lot which are provided for in the Approved Grading.
4. The owner of each Lot shall use his/her best efforts to insure that the moisture content of those soils supporting the foundation and slabs forming a part of the dwelling unit constructed on such Lot remain stable, and in so doing shall not introduce excessive water into the soils surrounding such dwelling unit. In compliance with the preceding sentence, each owner of a Lot covenants and agrees, among other things:
 - a. Not to install improvements, including without limitation, landscaping, walls, walks, driveways, parking pads, patios, fences, outbuildings, and additions to the dwelling unit, in such a way as to change the grading of the Lot from that shown on the Approved Grading.
 - b. To fill and compact with additional soil any backfilled areas adjacent to the foundation of the dwelling unit and utility trench(es) in which settlement occurs, to the extent necessary from time to time to maintain grading and drainage in accordance with the Approved Grading.
 - c. Not to water the lawn or other landscaping on the Lot excessively.
 - d. Not to plant flower beds (especially annuals), vegetable gardens and other landscaping which requires regular watering, adjacent to the foundation and slabs of the dwelling unit on the Lot.
 - e. If evergreen shrubbery and grass is located within five (5) feet of any foundation wall, to water such shrubbery and grass by "controlled hand-watering," and to avoid excessive watering.
 - f. To minimize or eliminate the installation of piping and heads for sprinkler systems within five (5) feet of foundation walls and slabs. A leaky pipe in these areas can go undetected for a long period of time and can cause extensive damage before discovery.
 - g. To install any gravel beds in a manner which will assure that water will not pond in the gravel areas, whether due to non-perforated edging or due to installation of the base of the gravel bed at a level lower than the adjacent lawn.
 - h. To install a moisture barrier (such as polyethylene) under any gravel beds.
 - i. To maintain gutters and downspouts which discharge water into extensions or splash blocks, to assure that: (i) the gutters and downspouts remain free and clear of all obstructions and debris; (ii) water that flows from the extension to the splash block is allowed to flow rapidly away from the foundation and/or slabs; and (iii) splash blocks are maintained under all sill cracks.

- j. Not to hose down garage slabs, since this allows excess water to seep into the edges of the slab.
 - k. To recaulk construction joints that may open up between portions of the exterior slabs, in order to seal out moisture.
5. PIC shall not be liable or responsible, in any way, to any extent, for any loss or damage to a dwelling unit, to any other property, to a Lot, or to any person, for failure by any owner or occupant of a Lot, or any builder or contractor on a Lot, to comply with these Covenants.
 6. These Covenants shall be and remain in full force and effect for a period of twenty (20) years after the date of recording of these Covenants, after which time they shall be automatically renewed for successive periods of ten (10) years each; provided, however, that these Covenants may at any time be amended, modified, changed or terminated, in whole or in part, by a written agreement duly executed by PIC and by the owner(s) of the Lot(s) affected by such amendment, modification, change or termination, and only upon recording of such document in Douglas County, Colorado.
 7. These Covenants, and each term and provision hereof, shall run with and be binding on each Lot, and shall be binding upon and inure to the benefit of PIC and each owner of a Lot, and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, PIC has hereunto set its hand and seal this 5th day of November, 1995.

PINERY INVESTMENT CORPORATION, a Colorado corporation

By: *Anthony M. Dursey*
Anthony M. Dursey, President

STATE OF COLORADO
Douglas COUNTY OF Douglas) ss.

The foregoing instrument was acknowledged before me this 5th day of Nov, 1995, by Anthony M. Dursey as President of PINERY INVESTMENT CORPORATION, a Colorado corporation.

Witness my hand and official seal.

(S E A L)

Charles H. Adams
Notary Public
My Commission Expires: 12-31-98

(E)
HP

**FIRST AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF THE PINERY. FILING NO. 20**

DC9527055

This First Amendment to Declaration of Covenants, Conditions, and Restrictions of The Pinery, Filing No. 20 ("Amendment") is made as of this 2 day of June, 1995, by Wintergreen Homes VI LLC, a Colorado limited liability company (hereinafter referred to as the "Declarant").

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, WHEREAS, U.S. Home Corporation, a Delaware corporation ("U.S. Home"), executed and has caused to be recorded a Declaration of Covenants, Conditions, and Restrictions of The Pinery, Filing No. 20 ("Declaration") on April 25, 1995, in Book 1259 at Page 394 at Reception No. 9518073 of the records of the Clerk and Recorder of the County of Douglas, Colorado, and

WHEREAS, Declarant has acquired fee simple title to that certain real property legally described on Exhibit A attached hereto and incorporated herein by this reference ("Property") and by such acquisition is (i) the Unit Owner of all of the Units (as defined in the Declaration), and (ii) is the successor in interest of U.S. Home's rights as Declarant under this Declaration; and

WHEREAS, pursuant to Section 4 of Article XIII of the Declaration, the Declaration may be amended by a vote or agreement of Unit Owners to which at least sixty-seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, the Declarant desires to amend portions of the Declaration pertaining to: (i) plan review by the Pinery Architectural Control Committee ("PACC") to conform to Motion No. M-995-074 passed by the Douglas County Board of County Commissioners on April 18, 1995; (ii) the correction of a typographical error; and (iii) the deletion of certain items from Exhibit D to the Declaration.

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Subparagraph (b) of Section 1 of Article VIII of the Declaration is deleted in its entirety and the following is substituted in lieu and in place thereof:

"(b) Without limiting the generality of subsection (a) hereinabove, the Association shall maintain, repair and replace all tracts dedicated to the Association as Common Elements, and all landscaping thereon."

2. Section 10 of Article V of the Declaration is deleted in its entirety and the following is substituted in lieu and in place thereof:

Robert S. Strahle
SENN LEWIS VISCIANO
& STRAHLE
1801 CALIFORNIA STREET, #400
DENVER, CO 80202

Doc 49977

9527055 -- 06/19/95 14:38 -- RSTR A CRAIN DOUGLAS CO. COLO. CLERK & RECORDER
\$20.00
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B1269 -- P0813

MS 20017

"10. PACC Plan Review. Each house plan submitted to the Architectural Review Committee for approval shall also be submitted to the PACC with appropriate review fees. PACC review shall be based on the standards in effect as of December 1, 1994, and by reference are hereby incorporated into this document. No revisions to the standards of the PACC, revised December 1, 1994, shall be applied as a new standard(s) affecting the Common Interest Community."

3. Exhibit D to the Declaration is hereby modified by deleting therefrom items numbered 19, 20, 21 and 22, which deletion reflects the fact that the easements referred therein for equestrian, pedestrian and bicycle passage, and for a slope easement, are not located on, over, across or under the real property described in Exhibit A attached to and incorporated in the Declaration and were erroneously included in both Exhibit D to the Declaration and in the Preliminary Plan/Final Plat, The Pinery, Filing No. 20, recorded on May 26, 1995, in Book _____, at Page _____, at Reception No. 9523438, of the records of the Clerk and Recorder of the County of Douglas, Colorado.

4. The provisions contained in this Amendment shall be in addition and supplemental to the provisions contained in the recorded Declaration. Except where the context otherwise requires, all defined terms in the Declaration shall have the same meaning in this Amendment.

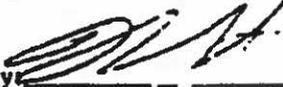
5. If any of the provisions of this instrument or any paragraph, sentence, clause, phrase, or word, or the application thereof in any circumstances shall be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration or this Amendment, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby. In the event of any conflict or ambiguity between the terms of the Declaration or the terms of this Amendment, the terms of this Amendment shall be binding and control.

6. Except as expressly amended or modified by this Amendment, the Declaration is hereby ratified and affirmed and shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned has duly executed and consented to this First Amendment of Declaration of Covenants, Conditions and Restrictions of The Pinery, Filing No. 20, as of the date first hereinabove written.

DECLARANT:

WINTERGREEN HOMES VI LLC,
a Colorado limited liability company



By _____
Name: Arthur Kleinstein
Title: Manager

-2-

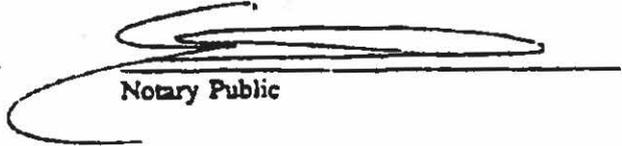
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STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

The foregoing instrument was acknowledged before me this 8 day of June, 1995,
by Arthur Kleinstein, as Manager of Wintergreen Homes VI LLC, a Colorado limited liability
company.

Witness my hand and official seal.

My commission expires: 5-31-96


Notary Public

E. L. MATTHEW
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 5-31-96

LEGAL DESCRIPTION

LOTS 1 THROUGH 64, INCLUSIVE, THE PINERY, FILING NO. 20, COUNTY
OF DOUGLAS, STATE OF COLORADO.

RECORDED
3-4-96
DOUGLAS Co

**FIRST AMENDMENT TO AMENDMENT IN ITS ENTIRETY
AND RESTATEMENT OF DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE PINERY, FILING NO. 20**

WITNESSETH:

THAT, WHEREAS, a certain Amendment In Its Entirety and Restatement of Declaration of Covenants, Conditions and Restrictions of The Pinery, Filing No. 20, has heretofore been recorded on September 7, 1995, in Book 1286 at Page 2332, in the office of the Clerk and Recorder of Douglas County, Colorado ("Amended Declaration") (terms which are defined in the Amended Declaration shall have the same meanings herein unless otherwise defined); and

WHEREAS, Article XII, Section 5(a) of the Amended Declaration permits amendment thereof by a vote or agreement of the Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated; and

WHEREAS, the undersigned Owner of Lots which are subject to the Amended Declaration desire hereby to amend the Amended Declaration in order to incorporate provisions which require the approval by the PACC of applications which have been submitted to the Architectural Review Committee for approval.

NOW, THEREFORE, the undersigned, constituting the Owner of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, hereby states, declares and amends the Amended Declaration, as follows:

1. Article V, Section 2 is deleted in its entirety and the following is substituted in its place:

" 2. Review by Committee. No Improvements shall be constructed, erected, placed, planted, applied or installed upon any Lot unless plans and specifications therefor shall have been first submitted to and approved in writing by the Architectural Review Committee and the PACC. The Architectural Review Committee shall exercise its reasonable judgment to the end that all Improvements conform to and harmonize with the existing surroundings, residences, landscaping and structures. In its review of such plans, specifications and other materials and information, the Architectural Review Committee shall require that the applicant(s) reimburse the Committee for the expenses incurred by the Committee in the review and approval process."

2. Article V, Section 10 is deleted in its entirety and the following is substituted in its place:

10. PACC Plan Review. Each house plan submitted to the Architectural Review Committee for approval shall also be submitted to the PACC with the appropriate review fees for approval. PACC approval shall be based on the current standards in effect as of December 1, 1994 (except that provisions of Article IX, Section 23 of this Declaration shall control as to setbacks), and by reference such standards are hereby incorporated into this document. No revisions to the current revised standards of the PACC, revised December 1, 1994, shall be applied as new standard(s) affecting the Community.

3. Except as amended hereby, the Amended Declaration shall be and remain in full force and effect without modification.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand and seal effective this ____ day of _____, 1996.

PINERY INVESTMENT CORPORATION, a Colorado corporation

By: _____
Noel West Lane III, Vice President

STATE OF COLORADO)
) ss.
_____ COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 19____, by Noel West Lane III as Vice President of PINERY INVESTMENT CORPORATION, a Colorado corporation.

Witness my hand and official seal.

S E A L)

Notary Public
My Commission expires: _____