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ARDIS W. SCHMITT
EL PASO COUNTY CLERK & RECORDER

DECLARATION

of

Conditions, Covenants, Restrictions, Easements and Charges

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Affecting the Real Property known as

Pinon Valley Filing No. 6

THIS DECLARATION made by Pinon Valley Company, a Colorado corporation, hereinafter called Declarant.

WITNESSETH:

WHEREAS, Declarant is the Owner of certain real property located in the County of El Paso, as described in Exhibit A attached hereto and by this reference incorporated herein (hereinafter the "Subdivision") and desires to provide for the preservation of the values and amenities of the Subdivision and to provide for maintenance of certain Subdivision amenities and for the convenience of its residents and to this end desires to subject the Subdivision to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of said property and for each Owner thereof and shall inure to the benefit of and pass with said property, and each and every parcel thereof, and shall apply to and bind the successors in interest of any Owner thereof;

NOW, THEREFORE, Declarant declares that the real property described in Exhibit A attached hereto is and shall be held, transferred, sold, conveyed and occupied subject to the conditions, covenants, restrictions, easements, charges and liens hereinafter set forth (referred to herein as the "Declaration" or these "Covenants").

ARTICLE I

COVENANTS TO PRESERVE THE RESIDENTIAL CHARACTER AND QUALITY OF THE SUBDIVISION

Section 101. Single Family Residential Use. All Lots in the Subdivision shall be used exclusively for private single family residential purposes. No dwelling erected or

maintained within the Subdivision shall be used or occupied for any purpose other than for a single-family dwelling. No business or commercial use or activity shall be carried on or within any Lot.

Section 102. Single Family Residential Construction. No structure shall be erected within the Subdivision except single-family dwellings and those accessory buildings and accessory structures which have been approved by Declarant. No more than one dwelling may be erected on any Lot. No structure other than a dwelling, no accessory building other than a guest house or servants' quarters, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. All accessory buildings and structures must be compatible and in harmony with the dwelling on the Lot.

Section 103. Prohibited Temporary Structures. Except as permitted in Section 108, temporary living or camping quarters or other temporary structures shall not be permitted on any Lot at any time. Tents and treehouses shall not be permitted on any Lot without the permission of Declarant and in any event shall not be visible from any street or adjoining property and shall not be used for habitation.

Section 104. New Construction. All construction shall be new. Declarant may in limited cases permit use of used materials such as antique items. No building previously used at another location nor any building or structure originally constructed as a mobile dwelling or structure may be moved onto a Lot except as expressly provided for in Section 108.

Section 105. Building Materials. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement, unless enclosed within a building so as not to be visible from any neighboring property or adjacent streets.

Section 106. No Construction Occupancy. A structure shall not be occupied in the course of original construction until substantially completed.

Section 107. Completion of Construction. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed. The exterior of all buildings or other structures must be completed within one (1) year after the commencement of construction except where such completion is

impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty (60) days without written permission of Declarant, the unfinished structure or unfinished portion thereof shall be deemed a nuisance and may forthwith be removed by Declarant at the cost of the Owner of the Lot.

Section 108. Temporary Structures; Model Homes. Temporary structures for use in connection with construction within the Subdivision or in connection with sales of new homes or Lots may be erected or maintained in the Subdivision by Declarant and those authorized by Declarant. Model homes may be used and exhibited by Declarant and those authorized by Declarant. The appearance and placement of temporary buildings permitted for construction or sales purposes must be approved by Declarant. Such temporary buildings shall be promptly removed when no longer used for the designed purposes.

Section 109. Construction Debris. When construction commences on Lot, a trash container area will be provided, properly used and maintained. During the progress of construction, the Owner of a Lot shall be responsible for insuring that the Lot is kept free of debris and trash, all of which shall be deposited in the trash container area. No construction materials, debris or trash shall be allowed on the property of others and any materials, trash or debris blown off the Lot shall be promptly cleaned up.

Section 110. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible, and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the five foot (5') strips along and adjoining the side boundary lines of each Lot and each of the seven foot (7') strips along and adjoining the rear boundary lines of each Lot, for use of all or part of such areas or lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage, and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes. Easements in addition to those above described may have been or may hereafter be granted by duly recorded conveyance. In addition, there are utility easements shown on the recorded plat of the Subdivision, including a utility easement

over, under and across the northerly fifteen (15) feet of Lots 1, 4, 5, 6, 109, 110, 111 and 112. Declarant hereby reserves for itself and the Association an easement along the westerly fifteen (15) feet of Lots 6-26, inclusive, the northerly ten (10) feet of Lots 4 and 5 and the southerly ten (10) feet of Lots 26 and 27 for the purpose of installing, repairing, replacing and maintaining sidewalks, landscaping, fencing and other improvements in the landscape easements as shown on the recorded plat of the Subdivision. Declarant further reserves for itself and the Association an easement along the easterly five feet of Lots 91-106, inclusive, and 112 for the purpose of installing a fence along the westerly boundary of the trail easement as shown on the plat of the Subdivision. Declarant also reserves the right for itself and the builders in the Subdivision to install and maintain signs in the easements shown on the plat of the Subdivision on the corners of Lots 6 and 26 at their intersection with Atherton Way and Mule Deer Drive and Centennial Boulevard, respectively, to identify the Subdivision and the builder during such period of time as homes are being built in the Subdivision. Such signs shall be maintained by the Declarant or the builder and shall be removed upon substantial completion of homes on all Lots in the Subdivision. The rights reserved herein to Declarant, the Association and builders in the Subdivision shall include reasonable rights of entry upon the affected Lots to permit installation, maintenance, replacement and repair of the fences, landscaping, sidewalks and signs, as applicable.

Section 111. Underground Utilities. All utilities, including, electrical, telephone and cable television service, except lighting standards and customary service devices for access, control, or use of utilities, shall be installed underground.

Section 112. Garage and Driveway. The structures on each Lot shall include an attached two-car or three-car fully enclosed garage or such equivalent garage arrangements as may be approved by Declarant. The site improvements on each Lot shall include adequate driveway or other similar off-street space for temporary parking of two (2) private passenger motor vehicles. All driveways shall be improved with asphalt, brick paver or concrete paving unless otherwise approved by Declarant.

Section 113. Setbacks. Except with Declarant's approval no building, porch, eave, overhang, projection or other part of a building shall be located within twenty five (25) feet

of a front Lot line, within twenty five (25) feet of a rear Lot line or within five (5) feet of a side Lot line, or, where the side Lot adjoins a public street within twenty five (25) feet of such side Lot line adjoining a public street. Unless a variance is obtained from the City, the total side yard setbacks for both side yards must be at least twenty (20) feet. Declarant's approval for a variance to the setback requirements may be given only (a) for fireplace projections integral with the building (b) for eaves and overhangs or (c) for construction which extends less than ten (10) feet into the setback areas adjoining public streets or less than five (5) feet into any other setback area and which Declarant determines to be consistent with or required by the Lot terrain or Lot shape and consistent with superior design. No fence, hedge, tree, shrubbery or landscaping be installed or maintained on a corner lot that will obstruct visibility at an intersection.

Section 114. Compliance with Building Codes. All construction must also conform to the building codes, zoning codes and subdivision regulations of the City of Colorado Springs, Colorado, which regulations may vary from the provisions of these Covenants; provided, however, if these Covenants are more restrictive than such governmental codes and regulations, then the more restrictive provisions of these Covenants shall control.

Section 115. Minimum Floor Area. No dwelling shall be erected which exclusive of basements, porches, patios, covered but unenclosed areas, garages and any attached accessory building, has a gross livable finished floor area less than as follows: (1) if a ranch or single story structure 1,200 square feet and (2) if other than a ranch or single story structure, then 1,500 square feet. If the dwelling is a multi-level structure, then it shall have a "footprint" on the ground level excluding garage that shall be not less than 850 square feet of gross livable finished floor area.

Section 116. Height. No dwelling or other structure shall exceed thirty (30) feet in height from the highest natural elevation on the Lot that falls within the footprint of the foundation of the residence on the Lot, except with the prior permission of Declarant.

Section 117. General Architectural Standards. Architectural standards are established to the end that the Subdivision may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. Contemporary, Southwestern and

Western styles typical of the Pikes Peak region are desirable. All buildings must be designed to fit the natural contours of the Lot without excessive grading. Declarant shall have the right and authority to establish and amend specific architectural standards from time to time.

Section 118. General Building Standards. All buildings shall conform to the following material and appearance standards:

- a) Exterior materials shall be natural wood, brick, stone, stucco, masonite or natural material approved by Declarant.
- b) Aluminum, vinyl or wood windows are permitted. All aluminum windows shall be anodized and painted or coated a color to blend with or complement the color of the building.
- c) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.
- d) All roof areas shall be of wood shakes, wood shingles, tile, composition, or such other material as may be approved by Declarant.

Declarant shall have the right and authority to establish and amend specific building standards from time to time.

Section 119. Fences. Fencing of front yards is not permitted. Fencing of a yard adjacent to a street is only permitted with the permission of Declarant. If the Declarant approves a fence adjacent to a street, the finished side of any fence adjacent to a street shall face the street. All fences shall be of natural rough cedar wood construction. Fences may not exceed six feet in height. Chain link and wire fences shall not be permitted.

Section 120. Landscaping. Within six (6) months after completion of a dwelling or within any extension of that period granted by Declarant, all yards and open spaces, except as prevented by subsequent construction activities, shall be landscaped and thereafter maintained in lawn or landscape. The use of gravel, small rocks, and paving as primary landscape materials is not desirable. At least fifty percent (50%) of the front and rear yard of the Lot shall be a manicured bluegrass lawn, unless the Declarant otherwise approves. In the event that the sidewalk on or adjacent to the Lot is detached

from the curb, then the strip of land between the sidewalk and curb shall be manicured bluegrass lawn and, if approved by Declarant, one or more trees may be installed in the strip of land.

Section 121. Aerials, Solar Devices and Antennas. No aerial, solar device, satellite dish or antenna for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building nor shall they be maintained at any location so as to be visible from neighboring property or adjacent streets.

Section 122. Maintenance of Structures. Each Owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns and landscaping, walks and driveways, in good condition and shall cause them to be repaired as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off. Periodic exterior maintenance also includes repair and maintenance of gutters, downspouts, roofs, paving, lawn, shrubs, trees, other landscape material, fences, signage, mail boxes and outdoor lighting. All lawns, trees and landscaping shall be mowed, watered and trimmed as necessary to avoid becoming unsightly or a nuisance.

Section 123. Destroyed or Damaged Structure. Any dwelling or building that is destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be restored or rebuilt; all debris must be removed and the Lot promptly restored to a sightly condition. Rebuilding or restoration shall be completed with reasonable promptness and in any event within six (6) months.

Section 124. No Unsightly Condition. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or in the specific area.

Section 125. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage.

Section 126. Maintenance Equipment. All maintenance equipment, including yard and garden equipment, shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 127. Clothes Lines. All outdoor clothes poles, clothes lines and other facilities for drying or airing of clothing or household goods shall be placed or screened by fence or shrubbery so as not to be visible from neighboring property or adjacent streets.

Section 128. Garbage and Trash. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse, or receptacles or containers therefore, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collections days.

Section 129. No Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities shall be permitted on any Lot or in any living unit. No annoying lights, sound or odors shall be permitted to emanate from any property.

Section 130. No Oil or Water Wells. No derrick or other structure designed for use in or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under said property.

Section 131. No Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any structure or within any Lot.

Section 132. Weed Control. All yards and open spaces and the entire area of every Lot on which no building has been constructed, shall be kept free from plants or weeds infected with noxious insects or plant diseases and from weeds which in the opinion of Declarant are unsightly or likely to cause the spread of infection or weeds to neighboring property and free from brush or other growth or trash which in the opinion of Declarant causes undue danger of fire or is unsightly. In order to effect insect, weed

and fire control or to remove nuisances or unsightly conditions, Declarant has the right at its election to enter upon any Lot and to mow, cut, prune, clear and remove from the premises brush, weeds or other unsightly growth which in the opinion of Declarant detracts from the overall beauty, setting and safety of the area, and to remove any trash.

Section 133. Grading. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading except after first obtaining the prior consent and approval of Declarant. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture. Special attention should be paid to the revegetation of approved grades and cuts to eliminate erosion.

Section 134. Animals. No animals except an aggregate of three (3) domesticated dogs or cats and except domesticated birds and fish and other small domestic animals permanently confined indoors shall be maintained within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of Declarant makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes. Animals shall not be permitted to roam in the subdivision and shall only be permitted off the Lot of the Owner of the animal if on a leash.

Section 135. Vehicle Parking. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit, or truck shall be parked on any street or within any Lot except in a completely enclosed structure, or in a fully screened manner approved by Declarant so as not to be visible from any neighboring property or street. No vehicles of any type shall be parked overnight on any streets in the Subdivision. Commercial vehicle does not include a private passenger vehicle commonly described as a pickup. Automobiles may be parked overnight on a Lot only if parked in the garage on the Lot or in the driveway immediately adjacent to the dwelling. Parking in the driveway adjacent to the street is not permitted. Parking of automobiles on the side of a dwelling is not permitted unless it is in a completely enclosed structure or in a fully screened manner approved by Declarant so as not to be visible from any neighboring property or street.

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Section 136. Junk Vehicles. No stripped down, wrecked, unlicensed, inoperable or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any Lot in such manner as to be visible from any neighboring property or street.

Section 137. Vehicle Maintenance. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or devise may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 138. Signs. The only signs permitted on any Lot or structure shall be:

1. One sign of customary size for offering of the signed property for sale or for rent;
2. One sign of customary size for identification of the occupant and address of any dwelling;
3. Such signs for sale, administration and directional purposes during development and construction as are authorized or installed by Declarant, including the right of Declarant and Builders authorized by Declarant to install and maintain signs on Lots 6 and 26 during construction as set forth in Section 110 of this Declaration;
4. Such signs as may be necessary to advise of rules and regulations or to caution or warn of danger; and
5. Such signs as may be required by law.

There shall not be used or displayed on any Lot or structure any signs except those mentioned above nor shall any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental be permitted. All permitted signs must be professionally painted, lettered and constructed.

ARTICLE II

RESERVED RIGHTS OF THE DECLARANT

Section 201. Architectural Control by the Declarant. No structure shall be commenced, erected, placed, moved onto a Lot, permitted to remain on any Lot or

altered in any way so as to change materially its exterior appearance, except in accordance with plans, specifications and other information submitted to Declarant and approved by Declarant not more than two (2) years before start of the construction, alteration or installation. Matters which require the approval of Declarant include but are not limited to: the exterior appearance, material, color, height, location of each structure, drive, walk, fence, mailbox, grading of site, and site lighting.

a. In granting or withholding approval Declarant shall heed the standards specified in these Covenants and shall also consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surrounding uses, the degree, if any, to which the proposed structure will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in a residential area from considerate neighbors.

b. All plans, samples and other materials to be submitted to Declarant shall be submitted in duplicate. The minimum scale of such plans shall be 1/20th inch equals one foot. The plot plan in said minimum scale shall show the location of all buildings, drives, walks, fences and any other structures. Proposed new contours throughout the Lot and abutting street elevations on all sides shall also be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. If requested, a soils report for the building site shall be supplied to Declarant.

c. A written statement of the approval or disapproval or other action by Declarant, signed by an officer of Declarant, shall establish the action of Declarant and shall protect any person relying on the statement. If Declarant does not execute such a statement within thirty (30) days after delivery of all the required materials to Declarant's principal office, the material so delivered shall stand approved for the purpose of these Covenants; provided, however, that such approval shall not be an approval of any matter that is in violation of or contrary to specific provisions of these Covenants. Declarant shall be entitled to retain one copy of all approved plans as part of Declarant's files and records.

d. Declarant shall have the right to adopt and amend guidelines concerning architectural and other building standards consistent with this Declaration.

e. In discharging its rights and obligations hereunder, the Declarant makes no representations or warranties to the Owner or any other person or entity concerning the construction of the structures on the Lot, and the Declarant shall have no liability or responsibility for defective construction or other similar matters.

Section 202. Variances. Declarant shall have authority to grant for a Lot or building site a variance from the terms of one or more of the Sections of Article I of these Covenants subject to terms and conditions established by Declarant that will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of those Sections will result in unnecessary hardship. Following an application for a variance:

a) Declarant shall within thirty (30) days after the submission of the request for the variance either grant or deny the variance.

b) A variance granted hereunder shall run with the Lot or building site for which granted.

c) If a variance is denied, another application for a similar variance for the same Lot may not be made for a period of one (1) year without the written permission of Declarant.

d) A variance shall not be granted unless Declarant shall find that all of the following conditions exist:

i. The variance will not authorize the operation of a use other than private, single-family residential use;

ii. Owing to the exceptional and extraordinary circumstances, literal enforcement of the Sections above enumerated will result in unnecessary hardship;

iii. The variance will not substantially or permanently injure the use of other property in the Subdivision;

iv. The variance will not alter the essential character of the subdivision;

v. The variance will not weaken the general purposes of these Covenants;

vi. The variance will be in harmony with the spirit and purpose of these Covenants;

vii. The circumstances leading the applicant to seek a variance are unique to the Lot or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

Section 203. Declarant's Successors and Assigns.

a) Ten years after Declarant first conveys a Lot in the Subdivision to a purchaser or at such earlier time as Declarant may choose, Declarant shall transfer all of its functions, rights and powers of granting or withholding approval, permission or consent and its other responsibilities, functions, rights, and powers under Articles I and II of these Covenants to an Architectural Control Committee of three (3) members, each of whom shall be an Owner of a Lot in the Subdivision; or the Owner of a lot in such other single-family residential subdivisions in the same general area as are determined by Declarant to contain lots substantially similar in size, character and value to Lots in the Subdivision; or an officer, director or employee of Declarant; or a member of the Association. Prior to the time when Declarant is obligated to effect such transfer to an Architectural Control Committee, Declarant may transfer some, but not all, of its rights, powers and functions to an Architectural Control Committee.

b) After the Declarant has transferred its rights, powers and responsibilities pursuant to Section 203(a), any one or more members of the Architectural Control Committee may from time to time be removed and their successor or successors designated by the Association or if there is no Association, by an instrument signed and acknowledged by the Owners of at least 50% of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.

c) The Architectural Control Committee may delegate to one or more of its members any or all of the functions and powers of the committee and until each delegation is revoked or modified the action of the member to whom such delegation is made shall constitute the action of the committee for the purposes of these Covenants.

d) The committee may take action without a meeting by a written statement signed by the members of the committee or by their delegate.

e) Vacancies in the Architectural Control Committee may be filled by action of the remaining member or members of the committee, subject always to the power of the Owners to remove and designate members of the Architectural Control Committee pursuant to Section 203(b).

Section 204. Officers and Agents Excused from Liability. Declarant, the officers and directors, members and agents of Declarant, and the members of the Architectural Control Committee shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

Section 205. Declarant Can Remedy Violations. Until the time for establishment of the Architectural Control Committee as provided by Section 203(a) Declarant may, and after its establishment the Architectural Control Committee or Declarant, including an assignee or delegate, may give notice to the Owner of the Lot where a violation of these Covenants occurs or which is occupied by the persons causing or responsible for the violation, which notice shall state the nature of the violation, and the intent of the Committee or Declarant to invoke this Section unless within a period stated in the notice (not less than five (5) calendar days), the violation is cured and terminated or appropriate measures to cure and terminate are begun and are thereafter continuously prosecuted with diligence. If the violation is not cured and terminated as required by the notice, the Committee or Declarant (whichever gives the notice) may cause the violation to be cured and terminated at the expense of the Owner or Owners so notified, and entry on Owner's property as necessary for such purpose shall not be deemed a trespass. Each Owner of a Lot hereby grants a license to the Declarant and the Committee for the purpose of entering on a Lot to remedy violations or breaches of these Covenants. The cost so incurred by the Committee or Declarant shall be paid by the Lot Owner and the person responsible for the breach and if not paid within thirty (30) days after such Owner has been sent notice of the amount due, such amount, plus interest at the rate of eighteen per cent (18%) per annum and costs of collection, shall be a lien on the ownership interest in the Lot (including improvements thereon) and shall in all respects be the personal obligation of the Owner. The Committee or Declarant may bring an action at law for recovery of the costs so incurred by it, plus interest and costs of collection against

the Owner and may bring an action to foreclose the lien against the Lot and improvements subject to the lien and there shall be added to the amount of such obligation the costs of collection and the judgment in any such action shall include interest as above provided and the costs of collection. The foregoing specified rights and remedies shall not limit the right of any Lot Owner to enforce these Covenants pursuant to Section 606 or as otherwise may be provided by law or equity; provided, however, that only the Declarant and the Committee shall have the right to proceed under this Section 205. In the event that the Declarant or Committee elect to exercise the right to enter upon a Lot to remedy a violation of these Covenants, they shall not be liable to the Owner of the Lot for any loss or damage occasioned by the entry on the Lot unless damage is caused to the Lot or improvements thereon that is unrelated to the remediation of the breach of the Covenants and is caused by the willful and wanton acts of the Declarant or Committee. In no event shall there be any liability for damage to a structure that is in violation of these Covenants.

Section 206. Declarant's Rights to Complete Development of the Property. No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development of property within the boundaries of the Property or nearby areas and to subdivide, resubdivide, or rezone any portion of such property; to grant licenses, easements, reservations and rights-of-way; to construct or alter improvements on any property owned by Declarant within the Property; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within the Property; or to post signs incidental to development, construction, promotion, marketing, sales or leasing of property within the boundaries of the Property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approvals to excavate, cut, fill or grade any property owned by Declarant; to make changes or modifications to this Declaration by means of an amendment to this Declaration or addition hereto; to change any landscaping, grading, drainage, vegetation, or view; or to construct, alter, demolish or replace any improvements on any property owned by Declarant, or to use any structure on any property owned by Declarant as a construction, model home or real estate sales

or leasing office in connection with the sale of any property within the boundaries of the Property, nor shall anything herein be deemed to require Declarant or builders designated by Declarant to seek or obtain the approval of the Architectural Control Committee or of the Association for any such activity or improvement to property by Declarant or builders designated by Declarant on any property owned by Declarant or owned by builders designated by Declarant. Nothing in this section shall limit or impair the reserved rights of Declarant as may be elsewhere provided in this Declaration or in the Association Documents, which rights are incorporated in this section by this reference.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 301. Formation. The Association may be formed at any time, either before or after the recordation of these Covenants. The Association shall be formed as a Colorado non-profit corporation. The liability of Owners for the payment of assessments shall commence upon substantial completion of a residence on a Lot and the conveyance of such Lot to a person other than the builder of the residence, whichever later occurs. The annual assessment for the first year that a Lot is subject to assessment shall be prorated from the commencement date of the assessment to the end of the calendar year in which the assessment commences.

Section 302. Membership. The following shall be members of the Association: The Declarant and every Owner of a Lot which is subject to assessment hereunder. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership.

Section 303. Classes of Membership. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Declarant until there ceases to be a Class B Member, and each membership shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be

exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant or its assigns, who shall be entitled to four (4) votes for each Lot which it owns. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, which ever occurs earliest:

(a) Ten (10) years after the date of the recordation of these Covenants; or

(b) when the total votes outstanding in the Class A membership equals or exceeds the total votes outstanding in the Class B membership.

Any corporation, partnership or other legal entity who is an Owner may designate a person to act in its behalf to exercise all rights of a Member or Owner, including without limitation, the right to serve as a member of the Board of Directors of the Association.

Section 304. Nonliability of Association and Others. The Board of Directors, the officers and committees of the Association and the Declarant, including without limitation, the officers, directors, employees, agents, and representatives of the Declarant, but not including its independent contractors or managing agents, shall not be liable in damages or otherwise to any person whatsoever for any act or omission done as an officer, director, agent or representative on behalf of the Association, except for willful misconduct done in bad faith or gross negligence and shall be indemnified from all such liability as provided in the Association's By-Laws.

Section 305. Management of Association; By-Laws; Rules and Regulations. The affairs of the Association shall be managed by its Board of Directors who shall be elected in accordance with the By-Laws of the Association. The Association shall have the authority to adopt and amend its By-Laws, but such By-Laws may not be in conflict with this Declaration. In the event of a conflict among the documents pertaining to the Association, the following priority shall apply: (i) the Declaration, (ii) the Association Articles of Incorporation and then (iii) the By-Laws.

ARTICLE IV
COVENANT FOR ASSESSMENTS

Section 401. Creation of the Obligation for Assessments. Each Owner, for each Lot owned by acceptance of a deed therefor, or interest therein, whether or not it shall be so expressed in such deed or instrument creating the interest in the Lot, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all assessments, charges, fees, fines, and other sums which are described in these Covenants and which shall be both a personal obligation of the Owner and a lien against his Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all assessments, charges, fees and other sums attributable to them and/or their Lot. The personal obligation for delinquent assessments and sums shall not pass to an Owner's successors in title or interest unless expressly assumed by them. No Owner may waive or otherwise escape personal liability for the payment of the assessments, charges, fees and other sums provided for herein by abandonment or leasing of his Lot, or by asserting any claims against the Association, the Declarant or any other person or entity.

Section 402. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and for the improvement and maintenance of the easement, landscaping, sidewalks, fences in the easement along Centennial Boulevard immediately adjacent to the Subdivision.

Section 403. Annual Assessments. The annual assessment shall specifically include, but shall not be limited to the following common expenses:

- (a) expenses of management;
- (b) premiums for all insurance which the Association maintains as required or permitted under these Covenants;
- (c) maintenance which is the responsibility of the Association as provided in Article V, § 501;
- (d) wages for Association employees;
- (e) legal and accounting fees;

- (f) any deficit remaining from a previous assessment year;
- (g) a working capital fund;
- (h) the creation of reasonable contingency reserves, surpluses and sinking funds;
- (i) trash removal; and
- (j) any other costs, expenses and fees which may be incurred or may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of these Covenants.

The Association shall also have authority, to the extent it deems proper, to provide any other services requested by particular Owners, but only on a contract basis under which those Owners pay the cost thereof.

Section 404. Fixing Assessments. For the calendar year 1994, the annual assessment shall be Sixty Dollars (\$60.00) per Lot. Each year thereafter the Association's Board of Directors may fix the annual assessment at an amount deemed sufficient to meet the needs of the Association; provided, however, that the annual assessment shall never exceed \$300, exclusive of optional user fees and any insurance premiums paid by the Association. Any increase in the annual assessment that exceeds the previous years annual assessment by more than twenty five percent (25%) shall require a majority vote of the Members of the Association.

Section 405. Rate of Assessment. Except as provided herein, the annual assessments must be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association, provided however, that a Lot shall only be subject to assessment at such time as set forth in Section 301.

Section 406. Assessment Procedure.

(a) Annual Assessments. No later than thirty (30) days before the beginning of each annual assessment period, the Board of Directors of the Association shall set the total annual assessment based upon advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during the following assessment year. The annual assessment shall be payable in one annual installment in advance at the start of each calendar year. The Association shall

cause to be prepared, delivered or mailed to each Owner, at least thirty (30) days in advance of each annual assessment period, a payment statement setting forth the annual assessment. The annual assessment shall be payable within thirty days after the notice of assessment. The annual assessment for that portion of the first year after a Lot is subject to assessment shall be payable within thirty (30) days after the Lot becomes subject to assessment.

(b) Special Assessments and Other Sums. In the event that the Association incurs any expense or liability as a result of the willful, negligent or wrongful act of an Owner, his family, tenants or guests, or any breach by any of such parties of any of the provisions of these Covenants, the Association's By-Laws or the Association's rules and regulations, and the same is not paid for by insurance, the cost thereof shall be deemed to be a special assessment against such Owner and his Lot and shall be enforceable as provided herein. Such sum shall be payable within thirty (30) days after written notice to the Owners by the Association.

(c) Notice. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of his Lot for such assessment, but if notice is not given, the date when payments shall be due shall be deferred to a date thirty (30) days after such notice given.

Section 407. Certificate of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 408. Effect of Nonpayment of Assessments-Remedies of the Association.

(a) General. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid when due, the Association may impose a late charge/administrative fee for each delinquent monthly assessment. The amount of the late charge shall be as set forth in the bylaws of the Association, or if no late charge is otherwise stated, the late charge shall equal \$25.00. Any assessment not paid within thirty (30) days after the due date thereof shall bear interest from the due date at the rate

of eighteen percent (18%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against such Owner's Lot, and/or may suspend the delinquent Owner's right to vote. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorneys' fee to be fixed by the court, together with the expenses, late charges and costs of the action.

(b) Lien. Any unpaid assessment, charge, fee or other sums assessed against an Owner or his Lot, including without limitation with interest thereon at the rate of eighteen percent (18%) per annum, an administrative charge per unpaid monthly assessment or other sum, court costs and all other collection costs, and reasonable attorneys' fees, shall be a charge on the interest of the Owner in that Lot and shall be a continuing lien, in favor of the Association, upon the Lot against which each such assessment, charge, fee or other sum is made. All payments on account shall be first applied to interest, the late charge, any collection costs or fees, and then to the assessment payment first due. The Board may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot and the Owners interest therein, the name of the Association and the amount of delinquent assessments and other charges, including collection costs, then owing. The lien statement shall be duly signed and acknowledged by an officer or authorized agent of the Association, and notice thereof shall be mailed to the Owner of the Lot, at the address of the Lot or at such other address as the Association may have in its records for the Owner of the Lot. Such a claim of lien shall also secure all assessments, charges, fees and sums which come due thereafter until the lien, together with all costs, attorneys' fees, administrative charges and interest have been fully paid or otherwise satisfied. Thirty (30) days following the mailing of such notice, the Board may proceed to foreclose the statement of lien in the same manner as provided for in the foreclosure of mortgages in the State of Colorado. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from suing the Owner personally liable therefor or from thereafter again foreclosing or attempting to foreclose its lien for any

subsequent assessments, charges, fees or other sums, which are not fully paid when due.

(c) Authority. Each such Owner, by his acceptance of a deed a Lot, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey the same, if acquired by the Association at the foreclosure sale or by deed in lieu of foreclosure.

Section 409. Working Capital. At the time that a Lot becomes subject to assessment, the Owner shall pay to the Association an amount equal to one-sixth (1/6) of the annual assessment, which sum shall be held by the Association as and for working capital. Such sums shall not be refundable to such Owner but, if the Association decides that such sums are not required for working capital, shall be placed in the general revenues. Furthermore, such sum shall not relieve an Owner from making the regular payment of assessments as the same become due.

Section 410. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any bona fide First Mortgage given in good faith and for value. Sale or transfer of any Lot shall not affect the lien for said assessment charges except that transfer of title to of any Lot pursuant to foreclosure of any such First Mortgage or any proceeding in lieu thereof, including deed in lieu of foreclosure, shall extinguish the lien of assessment charges which became due prior to any such transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure. No such transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure shall relieve any Lot from liability for any assessment charges

thereafter becoming due, nor for the lien thereof, provided, however, that in the event of a foreclosure of a First Mortgage or the taking of a deed in lieu thereof, the holder of the First Mortgage shall not be liable for the unpaid charges and assessments that accrue prior to vesting of title in the holder of the First Mortgage.

Section 411. Notice to Mortgagees and Inspection of Books. Upon written request, a First Mortgagee shall be entitled to written notification from the Association of any default in the performance by the Owner of any obligation under these Covenants and/or the By-Laws of the Association, which is not cured within sixty (60) days, after the Board of Directors has actual knowledge thereof, and the First Mortgagee may, at its option but without any obligation, cure such default. The Association shall grant to each First Mortgagee the right to examine the books and records of the Association at any reasonable time.

Section 412. Homestead. The lien of the Association assessments shall be superior to any homestead or other exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to these Covenants shall constitute a waiver of the homestead exemption as against said assessment lien.

Section 413. Exempt Property. All Property dedicated to and accepted by local public authority shall be exempt from the assessments created herein.

ARTICLE V MAINTENANCE

Section 501. Association Maintenance. The Association shall be responsible for the repair, replacement and maintenance of the easement adjacent to the Subdivision along Centennial Boulevard, including any sidewalks, landscaping and fences located in such easements. Declarant shall initially install the fence, sidewalk, and landscaping in the Centennial Boulevard easement and the Association shall thereafter be responsible for maintenance, repair and replacement thereof. Declarant may initially perform such repair, maintenance and replacement for some period of time, but the expense incurred

by Declarant in such repair, maintenance and replacement shall be reimbursed to Declarant by the Association, together with interest at the rate of 10% per annum.

Section 502. Owner Maintenance. The Owners of Lots 91-106, inclusive, and 112 shall be required to maintain the fence along the trail easement adjacent to such Lots with each Owner being obligated to maintain that portion of the fence that is located upon such Owner's Lot.

Section 503. Trail Easement. Neither the Owners nor the Association shall have any obligation or duty to maintain the trail easement along the easterly five feet of the Subdivision as shown on the plat of the Subdivision.

ARTICLE VI

GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 601. Definitions. The following words and expressions as used in these Covenants have the meaning indicated below unless the context clearly requires another meaning:

a. Accessory Building: Patios, decks, swimming pools, dressing rooms for swimming pools, separate guests house without kitchen, separate servants' quarters without kitchen and other buildings customarily used in connection with the single-family residence.

b. Agencies: "Agencies" shall mean and collectively refer to the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration of the Department of Housing and Urban Development ("FHA"), the Veterans Administration ("VA"), the Colorado Housing Finance Authority ("CHFA") or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities specifically listed herein.

c. Association: The Green Valley Ranch Homeowners Association, a Colorado nonprofit corporation formed or to be formed in accordance with its Articles of Incorporation and Bylaws.

- d. Building Site: A Lot as established by the recorded plat.
- e. Cost of Collections: All expenses and charges incurred, including attorney's fees.
- f. This Declaration and These Covenants: This declaration and the provisions contained in it.
- g. Declarant: Pinon Valley Company, a Colorado corporation as well as the successors and assigns of Declarant, whether by assignment by Declarant or merger of Declarant with another entity. After a transfer pursuant to Section 203(a), Declarant means the transferee.
- h. Declarant's principal office: The principal office maintained by Declarant in El Paso County, Colorado, and if there is not such office, then Declarant's registered office for service of process, and if there is none then the location at which service of process could be made according to the laws and rules governing civil actions in District Courts in Colorado.
- i. First Mortgage: "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of El Paso, Colorado, pertaining to a Lot and having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).
- j. First Mortgagee: "First Mortgagee" shall mean and refer to any person or entity named as a mortgagee or beneficiary under any First Mortgage.
- k. Lot: Each area designated as a Lot in the recorded plat of the Subdivision.
- l. Lot Lines: Front, side and rear Lot lines shall be the same as defined in the zoning regulations of the City of Colorado Springs in effect from time to time; in the absence of such a definition a front Lot line is each boundary line between the Lot and any public street which affords the principal access to the Lot; a side Lot line is any boundary line which meets and forms an angle with the front Lot line. Other Lot lines are rear Lot lines.

m. Owner: The person or entity having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time.

n. Recordation. Means recordation in the real property records of the Clerk and Recorder of El Paso County, Colorado.

o. Structure: Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, deck, swimming pool, tennis court, fence, wall or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

p. The Subdivision: The Property as described in Exhibit A attached hereto.

q. Enumerations Inclusive: A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

r. Gender and Number: Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

Section 602. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the Section and shall not be taken into account in construing the Section.

Section 603. Covenants Run with the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 604. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing

with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 605. These Covenants May Not be Waived. Except as these Covenants may be amended or terminated in the manner hereinafter set forth they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to defend against enforcement of these Covenants on the grounds of waiver, laches or estoppel.

Section 606. Right to Enforce the Covenants. These Covenants are for the benefit of the Owners jointly and severally, and Declarant, and may be enforced by an action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, Declarant, the Architectural Control Committee, the Association or any combination of them. All costs, including reasonable attorney's fees, incurred by Declarant, the Association or the Architectural Control Committee in connection with any successful enforcement proceeding initiated by Declarant, the Association or the Architectural Control Committee (alone or in combination with Owners) shall be paid by the party determined to have violated the Covenants. Whenever a right is given to the Declarant to do certain things in these Covenants, it shall be the right, but not the obligation of the Declarant to do such things.

Section 607. Duration of Restrictions. These Covenants shall remain in force until twenty five (25) years after the date of the recordation of these Covenants in the El Paso County Records, and shall be automatically renewed for successive periods of ten (10) years unless before the expiration of the initial twenty five (25) years or before the end of any ten-year extension there is filed for record with the County Clerk and Recorder of

El Paso County an instrument stating that extension is not desired, signed and acknowledged by the Owners of at least two thirds (2/3) of the Lots in the Subdivision, in which event these Covenants shall terminate as of the end of the initial twenty five year term or ten year extension, as applicable.

Section 608. Amendment.

a. Amendment by Owners. From time to time any Section of these Covenants may be amended or new Sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least two-thirds (2/3) of the Lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County.

b. Amendment by Declarant. Until the earlier of (i) the conveyance by Declarant of the last Lot owned by Declarant to a person or entity who is not a successor Declarant or (ii) ten years after the recordation of these Covenants in the El Paso County Records, Declarant reserves the right to amend these Covenants to include adding new Sections to these Covenants.

c. Agency Amendments. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to any of the Agencies, then, subject to the following sentence of this section, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Lot within the Property owned by Declarant to the first Owner (other than Declarant).

d. Required Consent of Declarant to Amendment. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for

consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot within the Subdivision has been conveyed by Declarant to the first Owner other than Declarant.

Section 609. Property Rights Remain. Section 110 concerns property rights which can be changed only by conveyances, releases or other appropriate legal instruments executed by those to whom such property rights belong.

Section 610. Severability. If any Section or Sections of these Covenants shall be held invalid or become unenforceable, the other Sections of these Covenants shall in no way be affected or impaired but shall remain in full force and effect.

Section 611. Action in Writing. Notices, approval, consents, extensions, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action. Permission, consent or approval of Declarant or the Architectural Control Committee under these Covenants is not effective unless in writing.

Section 612. Notices. Any writing described in Section 611, including but not limited to any communication from Declarant, the Association or the Architectural Control Committee to an Owner, shall be sufficiently served if delivered by mail or otherwise: a) to the dwelling situate on the Lot owned by that Owner; or b) if there is no dwelling, then to the address furnished by the Owner to Declarant or the Architectural Control Committee and if the Owner has not furnished an address, then to the most recent address of which Declarant or the Architectural Control Committee has a record.

Section 613. Interpretation of Covenants. These Covenants are intended to be interpreted in a manner that will provide for the preservation of the values and amenities of the Subdivision. In the event that it is necessary to interpret the meaning of any word, paragraph, term or provision of these Covenants, the determination of the Declarant shall be final and conclusive. In interpreting the architectural and building standards set forth in these Covenants, it is acknowledged that the Declarant may be required to exercise its discretion concerning the architectural and building standards and control within the Subdivision. The fact that Declarant has exercised Declarant's discretion with respect to one Lot or property in the Subdivision is not a guarantee that Declarant's discretion will

be exercised in the same manner with respect to other Lots or properties in the Subdivision. It shall be presumed that the Declarant has at all times exercised the discretion of the Declarant in a reasonable manner. Certain of the matters concerning architectural and building standards as are set forth in these Covenants are intended as guidelines, and the fact that an Owner believes that the Owner has complied with the guidelines shall not guarantee that the Declarant will approve such matter. The determination of the Declarant as to whether the architectural and building standards set forth in these Covenants have been met shall be final and conclusive. In the event that any person or entity brings an action or proceeding challenging any action or interpretation of the Declarant under these Covenants, then it shall be the burden of the person or entity challenging the actions or interpretation of the Declarant to establish beyond a reasonable doubt that the Declarant has acted in a manner that is arbitrary and capricious.

In the event that the powers of the Declarant are transferred to an Architectural Control Committee in accordance with the provisions of Section 203(a) of these Covenants, then the provisions of this section shall be applicable to the Architectural Control Committee to the same extent as this section provides for the Declarant.

Section 614. FHA/VA Approval. Until the termination of Declarant's reserved rights under this Declaration, and provided further that the FHA or the VA is insuring or guaranteeing or has agreed to insure or guarantee loans in any portion of the Property with respect to initial sales of Lots by Declarant, the following actions shall require the prior review of the FHA or the VA, in accordance with the procedure set forth herein: (a) dedication of any of the Common Areas; or (b) annexation of any additional real property to the Property; or (c) material amendments of the Articles of Incorporation or the Bylaws of the Association.

Section 615. Colorado Common Interest Ownership Act. Declarant hereby claims that this Declaration and the Subdivision are exempt from the provisions of the Colorado Common Interest Ownership Act (CCIOA) (C.R.S. 38-33.3-101, et seq.) pursuant to the provisions of C.R.S. 38-33.3-116 which exempt planned committees from the provisions of CCIOA if the annual average common expense liability of each lot restricted to

residential purposes, exclusive of optional user fees and any insurance premiums paid by the Association, may not exceed three hundred dollars. Declarant has incorporated that limitation on annual average common expenses in Section 403 of this Declaration. If the amount of the permissible average annual common expense liability is amended in CCIOA to exceed \$300, then Section 403 shall be automatically amended to such higher amount. Notwithstanding this exemption, this Declaration and the Subdivision are subject to the provisions of C.R.S. §§38-33.3-105, 38-33.3-106 and 38-33.3-107 of CCIOA.

IN WITNESS WHEREOF, Pinon Valley Company has executed this Declaration this 1st day of September, 1993.

ATTEST: PINON VALLEY COMPANY,
a Colorado Corporation

By: Frederick R. Reynolds By: Allen R. Gardner
Secretary/Treasurer President

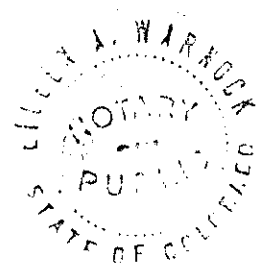
STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 1st day of September, 1993 by Allen R. Gardner as President and Frederick R. Reynolds as Secretary of Pinon Valley Company, a Colorado Corporation.

My commission expires: 5-9-94

Witness my hand and official seal.

William A. Warnock
Notary Public



BOOK PAGE
6250 1516

BOOK PAGE
6204 189

LEGAL DESCRIPTION

That portion of the South one-half of Section 14, Township 13 South, Range 67 West of the 6th P.M., City of Colorado Springs, County of El Paso, State of Colorado, more particularly described as follows:

Beginning at the Northwesterly corner of "Pinon Valley Filing No. 5", as recorded in Plat Book U-3 at Page 047 of the records of said El Paso County, said point also being on the easterly Right-of-Way of Centennial Boulevard;

Thence N.00°25'56"W., along said easterly Right-of-Way, a distance of 1389.71 feet to a point on the southerly Right-of-Way of Atherton Way in Pinon Valley Filing No. 3, as recorded in Plat Book T-3, at Page 51 of said El Paso County records;

Thence N.89°34'04"E., a distance of 622.73 feet along said southerly Right-of-Way to a point on the westerly line of a 60 foot drainage easement as recorded in said "Pinon Valley Filing No. 3" plat;

Thence along said 60 foot Drainage Easement the following seven (7) courses:

- 1) S.07°57'30"E., a distance of 279.21 feet to a point of curve;
- 2) Along said curve to the left, having a central angle of 14°47'30", a radius of 405.00 feet for an arc distance of 104.56 feet to a point of tangency;
- 3) S.22°45'00"E., a distance of 251.95 feet to a point of curve;
- 4) Along said curve to the right, having a central angle of 15°00'00", a radius of 345.00 feet for an arc distance of 90.32 feet to a point of tangency;
- 5) S.07°45'00"E., for a distance of 110.97 feet to a point of curve;
- 6) Along said curve to the left, having a central angle of 37°45'00", a radius of 380.00 feet for an arc distance of 250.37 feet to a point of tangency;
- 7) S.45°30'00"E., a distance of 20.00 feet to a point on the northerly Right-of-Way of Bourke Drive as shown on said "Pinon Valley Filing No. 3", said point also lying S.44°30'00"W., a distance of 60.00 feet from the most northerly corner of "Pinon Valley Filing No. 2", as recorded in Plat Book T-3, Page 52 of said El Paso County records;

Thence along the northwesterly Right-of-Way of said Bourke Drive of said "Pinon Valley Filing No. 2", the following three (3) courses:

- 1) S.44°30'00"W., a distance of 218.15 feet to a point of curve;
- 2) Along said curve to the left, having a central angle of 23°41'32", a radius of 380.00 feet for an arc distance of 157.13 feet to a point of tangency;
- 3) S.20°48'28"W., a distance of 85.19 feet to a point of curve on the northerly Right-of-Way of Mule Deer Drive, said point also being the northeasterly most corner of "Pinon Valley Filing No. 5", as recorded in Plat Book U-3, Page 47 of said El Paso County records;

Thence along the northerly Right-of-Way of said Mule Deer Drive of said "Pinon Valley Filing No. 5" the following two (2) courses:

- 1) Along said curve to the left, non-radial to the last mentioned course, having a central angle of 16°56'20", a radius of 400.00 feet, a chord bearing of N.81°57'46"W., a chord distance of 117.83 feet for an arc distance of 118.26 feet to a point of tangency;
- 2) S.89°34'04"W., a distance of 555.04 feet to the Point of Beginning and containing 24.12 acres more or less.

Exhibit "A"