

**First Restatement  
Of The  
Declaration of Covenants, Conditions, Restrictions and  
Easements  
For Fairway Pines Estates**  
A Planned Unit Development

(November 12, 2008)

**NOTICE:** The following is a transcribed and consolidated version of the actual, recorded documents listed in Recital 1. While care was taken in the transcription process to minimize errors, some discrepancies from the original documents may be present. In the event of any conflict between these transcriptions and their original counterparts or in their legal effect, the original recorded documents shall control and should be referenced for certainty with regard to any specific provision or effect.

## Table of Contents

RECITALS.....	4
ARTICLE I -- DEFINITIONS.....	6
Section 1.    "Association" .....	6
Section 2.    "Owner" .....	6
Section 3.    "Properties" .....	6
Section 4.    "Lot" .....	6
Section 5.    "Declarant" .....	6
Section 6.    "Board of Directors" or "Board" .....	7
Section 7.    "Subdivision" .....	7
Section 8.    "Commercial" .....	7
Section 9.    "Cluster Lot" .....	7
Section 10.   "Founders Golf Course Club Membership" .....	7
Section 11.   "Golf Club Membership" .....	8
ARTICLE II -- MEMBERSHIP AND VOTING RIGHTS.....	8
Section 1.    Association Membership .....	8
Section 2.    Voting .....	8
Section 3.    Declarant's Rights .....	8
Section 4.    Sub-Associations .....	8
ARTICLE III -- COVENANT FOR ASSESSMENTS AND ESTABLISHMENT OF LIEN.....	9
Section 1.    Creation of the Lien and Personal Obligation of Assessments .....	9
Section 2.    Purpose of Annual Assessments .....	9
Section 3.    Maximum Annual Assessment .....	9
Section 4.    Special Assessments for Capital Improvements .....	10
Section 5.    Notice and Quorum for Any Action Authorized Under Sections 3 and 4 .....	10
Section 6.    Uniform Rate of Assessment .....	10
Section 7.    Date of Commencement of Annual Assessments: Due Dates .....	10
Section 8.    Founders Golf Course Club and Membership Dues .....	11
Section 9.    Domestic Water Assessment .....	12
Section 10.   Effect of Nonpayment of Assessments: Remedies of the Association .....	12
Section 11.   Subordination of the Lien to Mortgagee .....	13
Section 12.   Homestead Waiver .....	13
ARTICLE IV -- ARCHITECTURAL CONTROL.....	13
Section 1.    Approval .....	13
Section 2.    Lot Owner Consent .....	14
Section 3.    Standards and Specifications .....	14
Section 4.    Financial Responsibility .....	14
Section 5.    View Restriction .....	14
Section 6.    Committee Membership .....	15
Section 7.    Committee Inspection .....	15
Section 8.    Meetings of the Committee .....	15
Section 9.    No waiver of Future Approvals .....	15
Section 10.   Compensation of Members .....	15
Section 11.   Correction of Defects .....	15
ARTICLE V -- RESTRICTIONS.....	16
Section 1.    Dwelling Quality and Size .....	16

Section 2.	Signs.....	17
Section 3.	Commercial Activity Prohibited.....	18
Section 4.	Setback.....	18
Section 5.	Use.....	19
Section 6.	Livestock and Pets.....	21
Section 7.	Certain Permanent and Temporary Structures.....	21
Section 8.	Fences.....	22
Section 9.	Repairs.....	22
Section 10.	Abandoned Vehicles, Vehicle Screening and Parking.....	22
Section 11.	Burning and Trash Disposal.....	22
Section 12.	Weed Control.....	23
Section 13.	Off Road Vehicles Prohibited or Limited.....	23
Section 14.	Mining and Drilling Activities Prohibited.....	23
Section 15.	Offensive Activity.....	23
Section 16.	Antenna Limitations.....	24
Section 17.	Clothes Dryers Prohibited.....	24
Section 18.	Utility Lines Underground.....	24
Section 19.	Sound Devices Prohibited.....	24
Section 20.	Miscellaneous.....	24
Section 21.	Sewage Disposal.....	25
Section 22.	Insurance Rates.....	25
Section 23.	No Further Subdivision.....	25
Section 24.	Association Remedies.....	25
Section 25.	Declarant's Rights.....	26
ARTICLE VI -- GENERAL PROVISIONS.....		26
Section 1.	Enforcement.....	26
Section 2.	Severability.....	26
Section 3.	Amendment.....	26
Section 4.	Annexation.....	26
Section 5.	Rules, Regulations and Compliance Sanctions.....	27
Section 6.	Variances.....	27
Section 7.	Association Property and Management.....	27
Section 8.	PUD Amendment.....	29
Section 9.	Easements.....	29
Section 10.	Golf Course.....	29
Section 11.	Liability Insurance.....	29
Section 12.	No Representations.....	30
Section 13.	Notices.....	30
Section 14.	Singular and Plural.....	30
Section 15.	Cumulative Remedies.....	30
Section 16.	Liberal Construction.....	30
Section 17.	Captions.....	30
Section 18.	Transfer Fee.....	30
APPENDIX A.....		32
CERTIFICATION AND ACKNOWLEDGMENT.....		33

## RECITALS

1. Loghill Village investors, Ltd., a California limited partnership, on March 23, 1992, recorded the original Declaration of Covenants, Conditions, Restrictions and Easements (The Initial Declaration), in Ouray County Colorado, at Reception No. 150511, which has been amended or extended as follows:
  - a. As amended by the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records, on September 11, 1992, Reception No. 151656;
  - b. As extended to Phase II by the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates Phase II, recorded in the official records on July 17, 1996, at Reception No. 162227;
  - c. As further amended by Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records on July 22, 1996, Reception No. 162268;
  - d. As further amended by Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records on May 31, 2001, Reception No. 174891;
  - e. As further amended by Certification of Amendment of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on July 22, 2008, Reception No. 198301;
  - f. As further amended by Certification of Amendment of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on September 11, 2008, Reception No. 198637.
2. On October 22, 2007, an Assignment of Declarant Rights for Fairway Pines Estates was recorded in the official records at Reception No. 196324, wherein, effective June 12, 2006, all remaining rights of then Declarant under the Fairway Pines Declaration were transferred and assigned to Heritage Inn and Suites of Kansas City, Inc., a North Dakota Corporation and H.T. Heritage Inn of Erie, LLC, a North Dakota limited liability company (**Assignees**). Under the terms of the assignment, Assignees from the effective date shall be the “Declarant” under the Fairway Pines Declaration and assume all obligations of the Declarant under the Fairway Pines Declarations. Notwithstanding the foregoing, in this Assignment of Declarant Rights, Assignees disclaim and do not accept any obligations under any other document,

instrument or agreement that the Assignors may have assumed or entered into, be they oral or written, unless and until Assignees may, by written instrument, expressly agree to assume such obligation.

3. The documents reviewed in the course of preparing this First Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines are listed in Appendix A, together with recording dates and reception numbers.
4. The Initial Declaration as amended or extended by the documents listed in Recital 1, and as affected by the Assignment of Declarant Rights for Fairway Pines Estates identified in Recital 2, are consolidated into this single restated Declaration to read as follows:

First Restatement  
Of The  
Declaration of Covenants, Conditions, Restrictions and Easements for  
Fairway Pines Estates  
A Planned Unit Development

December 1, 2008

**ARTICLE I -- DEFINITIONS**

**Section 1.** "Association" shall mean and refer to the Fairway Pines Estates Owners Association, Inc., a Colorado Nonprofit Corporation, its successors and assigns.

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

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

**Section 4** "Lot" shall mean and refer to any residential, cluster or commercial plot of land shown upon the PUD map of the Properties whether or not all phases and filings have received final approval.

**Section 5.** "Declarant" shall mean and refer to Loghill Village Investors, Ltd., a California Limited Partnership, and its successors and assigns if such successors or assigns should acquire, in bulk, all of the then remaining subdivision inventory from Loghill Village Investors, Ltd. for the purpose of resale.

**Note:** This Section 5 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on September 11, 1992, at Reception No. 151656. The Declarant's rights were assigned to the Heritage Inn and Suites of Kansas City, Inc., a North Dakota corporation, and H.T. Heritage Inn of Erie, LLC, a North Dakota limited liability company, effective June 12, 2006, according to the Assignment of Declarant Rights for Fairway Pines Estates, recorded on October 22, 2007, at Reception No. 196324.

**Section 6. "Board of Directors" or "Board"** shall refer to the Board of Directors of the Association consisting of persons designated or elected as follows:

a. Until ninety percent (90%) of the lots have been sold or until December 31, 2005, whichever event occurs first, one member of the Board shall be designated by the Owners and the remainder shall be designated by the Declarant's General Partner. The member designated by the Owners shall serve a term of one (1) year and shall be permitted to serve consecutive additional terms only with the express assent of Declarant. The General Partner may prospectively waive the Declarant's right to designate Board members at any time in which event elections will be governed by the Association's Articles of Incorporation and By-Laws.

b. After the expiration of Declarant's designation rights as specified in Part A of this Section 6, the members of the Board of Directors shall be elected in accordance with the Articles of Incorporation and By-Laws of the Association.

**Note: This Section 6 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on July 22, 1996, at Reception No. 162268.**

**Section 7. "Subdivision"** refers to the development project commonly known as Fairway Pines Estates as shown by the PUD filing and plat so titled. Declarant has reserved the right to develop, construct and market the project in multiple phases.

**Section 8. "Commercial"** means lawful business activities directed to consumer oriented activities and does not include activities commonly understood as industrial or manufacturing.

**Section 9. "Cluster Lot"** refers to a Lot designated for multiple single family dwellings and common open space with a Sub-Association as a part of the Association with authority to adopt rules, regulations and assessments applicable only to a specific Cluster Lot.

**Section 10. "Founders Golf Course Club Membership"** shall mean a base level of membership in the Golf Club with those annual golf course playing and use privileges that existed as of the date of the adoption of these amendments. Golf course club facility use privileges include reasonable golf season access to first-floor amenities, and also include off-season availability to Founders Members use based on demand as determined by the Golf Course and Golf Club Owner. Founders golf course club members shall not be required to pay greens fees. The Golf Course and Golf Club Owner is Heritage Inn of Fairway Pines, a North Dakota LLC, and its successors and assigns.

**Note:** This Section 10 was added according to the Certification of Amendment of the Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.

**Section 11. “Golf Club Membership”** refers to a broad category of membership which shall include, but is not limited to, Founders Golf Course Club Membership. The Golf Course and Golf Club owner may establish other optional levels of golf course and golf club membership and define the playing and use privileges attached thereto.

**Note:** This Section 11 was added according to the Certification of Amendment of the Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.

## **ARTICLE II -- MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Association Membership.** Every Owner of a Lot or cluster unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

**Section 2. Voting.** Owners 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. 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 Lot. Notwithstanding the foregoing, a Cluster Lot shall be entitled to as many votes as there are residential units therein authorized.

**Section 3. Declarant's Rights.** The Declarant is not an owner as defined in Article I Section 2; however, the Declarant is entitled to cast votes as Owner or member for each Lot owned by it in Phase 1 and Phase 2 of the subdivision (as shown in the overall Ouray County PUD application whether such lots are held for future development or as unsold inventory or otherwise) as may be herein expressly authorized and for all purposes of voting in Articles III and IV except for elections to authorize Special Assessments for Capital Improvements within the meaning of Article III Section 4.

**Note:** This Section 3 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on September 11, 1992, at Reception No. 151656.

**Section 4. Sub-Associations.** A Sub-Association shall be created by the Association for each Cluster Lot. Each Sub-Association shall be distinctively named and shall be governed by the Cluster Lot unit owners. The Sub-Association shall adopt By-Laws, rules and regulations as well as uniform assessments applicable only to that Cluster Lot containing such provisions as are apropos to the particular circumstances and conditions thereof including by way of illustration



but not limited to joint sewer system maintenance, landscaping and joint driveway maintenance. The covenants, lien rights and remedies provided to the Association in Article III of this Declaration shall be likewise applicable to each Sub-Association. The Sub-Association shall hold title to the common area and joint facilities within the Cluster Lot.

## **ARTICLE III -- COVENANT FOR ASSESSMENTS AND ESTABLISHMENT OF LIEN**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed of a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments for capital improvements, (3) Founders Golf Course Club Membership dues, (4) domestic water assessments, and (5) special assessment for uninsurable unusual or uninsurable extraordinary golf course and golf club costs, such assessments and dues to be established and collected as hereinafter provided. These charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment and the dues, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Note: This Section 1 was amended according to the Certification of Amendment of the Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.**

**Section 2. Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for its operating expenses and to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvement and maintenance of the streets (unless such street responsibility is assumed by Ouray County), lighting and any parks, other services, property, open space and green belts owned by the Association.

**Section 3. Maximum Annual Assessment.** The maximum annual assessment shall be ONE HUNDRED TWENTY DOLLARS (\$120.00) per Lot.

(a) The maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) The maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount less than the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement owned by the Association designated by the Board of Directors, providing that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Owners entitled to vote not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of Owners entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be at a uniform rate for all Lots and may be collected on a monthly basis; provided, however, that the Board may make non-uniform adjustments as it may determine in its sole discretion to be equitable and advisable regarding liability of cluster and commercial lots for assessments.

**Section 7. Date of Commencement of Annual Assessments: Due Dates.** The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the Owner's acquisition of a Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment for such Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. 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, dues and water charges 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 8. Founders Golf Course Club and Membership Dues.** In addition to Association Membership, all owners of residential lots and cluster units shall have a Founders Golf Course Club Membership. Founders Golf Course Club Membership shall be appurtenant to and may not be separated from such lot or unit ownership. Founders Golf Course Club Membership dues were set initially and cannot be increased except as provided herein. Founders Golf Course Club Membership dues are payable to the golf course and golf club owner or through the Association or such other billing service as may be designated from time to time; provided, however, that dues may not be increased, after the initial setting thereof, by a factor in excess of the percentage increase in the Bureau of Labor Statistics cost of living index (CLI) (or equivalent if publication thereof is discontinued) localized for the state of Colorado.\* Founders Golf Course Club Memberships as herein set forth provide playing and use privileges as defined and established from time to time by the Golf Course and Golf Club owner and do not include any management or ownership rights. Founders Golf Course Club Membership dues are subject to all lien and collection procedure and remedies provided by this Declaration for assessments.

The Golf Course Owner may from time to time, in its sole discretion, offer other Golf Course Memberships aside from the Founders Golf Course Club Membership described in this Declaration for which other types, kinds, or levels of membership the Golf Course and Golf Club Owner may charge additional fees. If the Owner of any residential lot(s) or cluster units elects to participate in one or more of the Golf Course and Golf Club Owner's additional or different Golf Course Memberships, any additional fee charged by the Golf Course and Golf Club Owner above the amount charged for the Founders Golf Course Membership dues, described above, shall be the personal obligation of such Owner(s) only and shall not be subject to the lien and collection procedures or remedies provided in this Declaration for assessments. However, nothing in this Declaration shall be construed to limit, restrict or in any way affect the legal rights of the Owners or the Golf Course and Golf Club Owner in connection with such Golf Course Memberships, or the payment of the fees associated therewith.

In addition, the Board is empowered to levy a special assessment on Owners of up to 10% of the annual Founders Golf Course Club Membership dues to cover uninsurable unusual or uninsurable extraordinary costs caused by events of nature. Such special assessment may be levied only upon request by the Golf Course and Golf Club Owner. The amount of the assessment will be based on the concept that both the Owner and the Golf Course and Golf Club Owner will share in the cost of any such event. There shall not be any more than one such assessment in any calendar year, and any such assessment shall not extend into the next year.

\* Note that pursuant to an Agreement in 1996 between certain Owners and the Declarant (Developer), this provision was agreed to be interpreted as follows: In administering any permitted dues increase, the Golf Course and Golf Club owner must determine the differential between the Bureau of Labor Statistics cost of living index (CLI) of the two most recent preceding years. The differential between them shall be converted to a percentage, which shall be the maximum by which dues may be increased. As an example of this computation, if dues for 1996 were \$1000, the maximum increase for 1997 would be \$60.00 if the 1994 Bureau of Labor Statistics cost of living increase (CLI) were 100 and the 1995 CLI were 106 (a 6% increase). In the event there is no dues increase in any year, any future increase thereafter will be established as set forth above and no consideration can be given to any increase which could have been imposed but was not. (This interpretation is entirely consistent with Article III, Section 8.)

**Note:** This Section 8 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on July 22, 1996, at Reception No. 162268; further amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891; and further amended according to the Certificate of Amendment of the Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.

**Section 9. Domestic Water Assessment.** In addition to Association membership and Founders Golf Course Club Membership as herein provided, all owners of lots shall pay through the Association, or such other billing service as may be designated from time to time, domestic water consumption charges as an assessment. The entity providing domestic water shall set such charges from time to time in accordance with its duly established policies. These charges are subject to all lien and collection procedures and remedies provided by this Declaration for assessments.

**Note:** This Section 9 was amended according to the Certificate of Amendment of the Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.

**Section 10. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Association property or services or by abandonment of his Lot. Public notice of the lien shall be given in the event of a delinquency in the payment of any assessment by the recording by the Board of a Notice of Assessment Lien specifying the delinquency, the

owner, and the property to which the lien is applicable. In the event of foreclosure, the procedure applicable to judicial foreclosure of Deeds of Trust in Colorado shall be employed. A notice of release of a lien shall be provided to the owner when all assessments, costs and charges secured by the lien have been fully paid or satisfied.

**Section 11. Subordination of the Lien to Mortgage.** The lien of the assessment provided for herein shall be subordinate to the lien of any first Deed of Trust or mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sales or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 12. Homestead Waiver.** Each Owner hereby agrees that the Association's lien on a Lot or Cluster Lot unit for assessments shall be superior to the homestead exemption provided by Colorado law as amended from time to time and each Owner hereby agrees that the acceptance of the deed conveying the Owner's property within the subdivision to him shall signify the Owner's waiver of the homestead right granted by said Colorado law.

## **ARTICLE IV -- ARCHITECTURAL CONTROL**

**Section 1. Approval.** No building, fence or other structure or improvement of any kind including home identification devices, shall be commenced, erected or maintained upon the Properties, nor shall any exterior repair, replacement, addition to or change or alteration, therein be made until detailed and legible plans and specifications showing the nature, kind, color, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, and topography and finish grade elevation by the Board of Directors of the Association, or by an Architectural Control Committee designated as hereafter provided. Evidence of submission of such materials shall be issued by said Board or Committee showing the date of such submission. In the event said Board, or its designated committee, fails to approve or request additional information or disapprove with recommendations or disapprove entirely such design and location within sixty (60) days in writing after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Approval of such plans and specifications shall not be arbitrarily or unreasonably withheld. So long as an Architectural Control Committee is appointed, the Board of Directors shall refer all requests for approval to the Committee. A reasonable fee may be charged to any Lot Owner for each plan review. Owners, the Association and Sub-Associations must comply with all

applicable governmental regulations including but not limited to §6.11 open space requirements and to the visual impact regulations being §9 respectively of the. Ouray County Land Use Code as amended from time to time. [Note: The only area affected by the visual impact regulations in the form in effect as of the date of recording this Declaration consists of Lots along County Road 1.]

**Section 2. Lot Owner Consent.** Neither the Architectural Committee, the Board of Directors nor Declarant nor their respective successors or assigns shall be liable in damages to anyone submitting plans and specifications for approval, or to any Owner affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans and specifications. Every Owner or other person who submits plans for approval agrees, by submission of such plans and specifications, that he will not bring any action or suit against the approving body or Declarant to recover any such damages. Approval of plans and specifications shall not be deemed to constitute compliance with the requirements of any local building codes or land use regulations and it shall be the responsibility of the Owner or other person submitting plans and specifications to comply therewith.

**Section 3. Standards and Specifications.** The Architectural Control Committee or the Board of Directors if no committee is appointed shall promulgate architectural standards and specifications which shall be published in booklet form. Such standards and specifications, subject to amendment by the adopting entity, shall govern all structures, improvements, commercial signs and home identification devices proposed for any Lot.

**Section 4. Financial Responsibility.** The Architectural Control Committee or the Board of Directors may, as a condition of approval of any construction on any Lot, require proof of the applicant's financial ability to pay for the entire cost of the proposed work.

**Section 5. View Restriction.** No vegetation or other obstruction shall be planted or maintained upon any lot in such location or of such height as to unreasonably obstruct the view from any other lot in the vicinity thereof. In the event of a dispute among owners as to the obstruction of a view from a lot, such dispute shall be submitted to the Board whose decision in such matters shall be binding. The Board may refer the matter to the Architectural Control Committee. Any such obstruction shall, upon request of the Board or the Committee, be removed or otherwise altered to the satisfaction thereof by the owner of the lot upon which the obstruction is located. Each owner shall be responsible for periodic trimming and pruning of all hedges, shrubs and trees located on his lot so that they do not grow in a manner as to unreasonably obstruct the view of adjacent owners or street traffic.

**Section 6. Committee Membership.** If the Board elects to appoint an Architectural Control Committee (sometimes hereinafter referred to as the "Committee") it shall designate three or more persons to so act. Members of the Committee need not be owners, each shall hold office until he resigns or has been removed or his successor has been appointed. Members of the Committee may be removed by the Board at any time without cause.

**Section 7. Committee Inspection.** The Committee shall have the right and authority to inspect construction in progress to assure its conformance with plans approved by the Committee.

**Section 8. Meetings of the Committee.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances as authorized by this Declaration. In the absence of such designation, the vote of any two (2) members of the Committee, or the written consent of any two members of the Committee taken without a meeting, shall constitute an act of the Committee.

**Section 9. No waiver of Future Approvals.** The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

**Section 10. Compensation of Members.** The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them for the performance of their duties hereunder. A Committee representative, however, may be paid as a consultant to the Committee.

**Section 11. Correction of Defects.** Inspection of work and correction of defects therein shall proceed as follows:

a. The Committee or its representative may at any time inspect any improvement for which approval of plans is required under this Declaration; provided, however, that the Committee's right of inspection of improvements for which plans have been submitted and approved shall terminate sixty (60) days after such work of improvement shall have been completed and the respective owner shall have given written notice to the Committee of such completion. The

Committee's rights of inspection shall not terminate pursuant to this paragraph in the event that plans for the work of improvement have not previously been submitted to and approved by the Committee. If, as a result of such inspection, the Committee finds that such improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Committee, it shall notify the owner in writing of failure to comply, specifying the particulars of noncompliance. The Committee shall have the authority to require the owner to take such action as may be necessary to remedy the noncompliance.

b. If upon the expiration of sixty (60) days from the date of such notification the owner shall have failed to remedy such noncompliance, the Committee shall notify the Board in writing of such failure. Upon notice and hearing, as provided in the By-Laws, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing, the same. If a noncompliance exists, the owner shall remedy or remove the same within a period of not more than forty five (45) days from the date that notice of the Board ruling is given to the owner. If the owner does not comply with the Board ruling within such period, the Board, at its option, may record a notice of noncompliance in the office of the Ouray County Clerk and Recorder and may thereafter peacefully remove the non-complying improvement or otherwise peacefully remedy the noncompliance, and the owner shall reimburse the Association, upon demand, for all expenses, including reasonable attorney's fees, incurred in connection therewith. If such removal or remedy may not peacefully be accomplished, the Board may take such legal action as may be required to accomplish the acts herein authorized. If expenses are not promptly repaid by the owner to the Association or, in any event, if the Board is required to take Court action, the Board shall levy an assessment against such owner for reimbursement as authorized in this Declaration for other assessments. The Board shall have all remedies and rights in such proceedings as are otherwise granted to it in this Declaration.

## **ARTICLE V -- RESTRICTIONS**

**Section 1. Dwelling Quality and Size.** All structures must be of a permanent nature constructed on site affixed to a permanent foundation, and no modular home, trailer house or mobile home shall be set upon any Lot within said Subdivision. All dwellings must be of workmanlike quality using new materials and shall be completely finished before occupancy. Completion must normally occur within one (1) year of issuance of a building permit. Construction shall commence within twelve (12) months of the date of an approval of final plans by the Architectural Control Committee. Completion of construction occurs with the issuance of a Certificate of Occupancy by the County. Where the County issues a six (6) month extension of the one-year County building permit, the one-year completion requirement of this Section is also extended upon notification of the Architectural Control Committee of the County extension. A



second six (6) month extension of the one-year requirement of this Section may also be granted by the Architectural Control Committee, if the County issues a second six (6) month extension of the building permit and the Architectural Control Committee makes its own determination that there has been continuous diligent pursuit of completion of the dwelling, unless any delays in construction are established by the Architectural Control Committee to have been caused by unusual weather or unexpected delays in the delivery of construction materials or “an act of God”. Each residence structure shall contain at least 2000 square feet of living space, of which not less than 1,250 square feet shall be the above ground, ground level main floor; provided, however, that a minimum square footage of 1,600 will be permitted within the core area, as designated by the Planned Unit Development (PUD) Amendment approved by the County in 1998, and a minimum square footage of 1,250 will be permitted on units on a Cluster Lot anywhere, including any Lot in the core area, and that no minimum square footage is applicable to commercial Lots. Square footage is to be determined by exterior wall measurement. No barn yard, security or large yard lights will be allowed to burn from 11:00 o’clock p.m. to 6:00 o’clock a.m. on residential and Cluster Lots unless approved by the Board of Directors or its Architectural Control Committee. No roof material, solar collectors. or building materials that reflect light shall be employed on any structure.

**Note: This Section 1 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.**

## **Section 2. Signs.**

a. Except for activities of Declarant, no signs, advertisements, billboards or advertising structures of any kind or character may be erected or maintained upon a Lot including those for the sole purpose of advertising the sale or lease of a residence. Signage for commercial Lots shall be as permitted by the Architectural Control Committee. Notwithstanding the foregoing, the Board or its Committee may approve and authorize home identification devices and signage for street identification, public directions, rules enforcement and golf course and open space usage.

b. Further, notwithstanding paragraph a, the Board of Directors, in its discretion, may provide to homeowners, whose houses are up for sale, tasteful appearing designators with symbols indicating a house is for sale and with attached boxes for holding for-sale flyers with information on the house and with attachment devices for affixing the designator and box to an address monument. The designator with box shall be limited in size to a maximum facing size of eight and one half (8-1/2) by eleven (11) inches. The Board of Directors may, in its discretion, authorize the use of, or provide, tasteful "Open House" signs of a predetermined size or sizes for use by homeowners and to set the term and conditions of the use of such signs, including, but not limited to, when they can be used and where they can be placed. The Board of Directors may set

a reasonable charge for the rental or purchase of signs provided by the Board, to compensate for the cost of providing such signs. Also, the Board, in its discretion, may exclude, or limit the placement of "For Sale" and "Open House" signs on Fairway Pines Common Areas (areas available for use by multiple owners, e.g. entrance areas and greenbelt areas), including at the entrances to the Subdivision. And the Board may, in its discretion, erect a tasteful generic "For Sale" sign, and, for use at appropriate times, a separate or combined tasteful generic "Open House" sign. The generic "for Sale" sign would be applicable to all houses and lots for resale, in Fairway Pines and would include information on the houses and lots for resale and where they are located by address, such as with slide-in panels, and/or with a brochure or information box, and/or directions where to get information on houses and lots for sale. The Board of Directors may also enter into an agreement with Log Hill Village and other subdivisions for the use of similar common "For Sale" and "Open House" signs on, or partially on, Fairway Pines common properties. The Board of Directors, in its discretion, may also erect or authorize the erection of tasteful governmentally-related signs on Fairway Pines' Common Areas. The Association may remove any unauthorized signs from lots and Common Areas and take such other action as is necessary to have such signs removed or prevent their use.

**Note: This Section 2 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.**

**Section 3. Commercial Activity Prohibited.** Except for sales offices and activities of Declarant related to the property, no business or commercial uses may be made on the premises of any residential Lot, provided, however, that permission to operate home businesses such as are generally defined as "cottage industries" exemplified by sewing goods, Tupperware sales, craft objects, carvings, stained glass, photography, paintings and woodworking may be granted upon request by the Architectural Control Committee or the Board of Directors upon an express finding that such home business activity will not interfere with the peace and quiet of the neighborhood, increase traffic or create a safety hazard.

These covenants shall preclude use of residential Lots as a base of operations for businesses that store inventories or goods outside of the residence. Examples of businesses that might fall in this category are contractors who store supplies for future use such as building contractors storing scaffolding, ladders, lumber, sheetrock, etc., and other goods which would create visual intrusion on the neighborhood.

**Section 4. Setback.** On residential lots, no permanent structure of any kind except fences, shall be placed within twenty five (25) feet of boundary line adjacent to golf course property and twenty five (25) feet from Subdivision roadways nor within fifteen (15) feet of other boundary lines. Any exceptions must be reviewed and approved in writing prior to construction by the

Architectural Control Committee or the Board of Directors. Notwithstanding the setback designations herein specified, the Board or Committee may, at the time of initial plan review, impose greater or allow lesser setback requirements in the event of circumstances unique to individual situations if required for safety or aesthetic or other reasons. Commercial lot and cluster lot setback requirements shall be established by the Board or Committee on a case by case basis. Driveways shall be easily accessible by emergency equipment.

**Note: This Section 4 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.**

## **Section 5. Use.**

a. Residential. Each residential Lot and each unit within a Cluster Lot shall be used for one single family private dwelling only per Lot, designed for the occupancy of and by one family except that maid's quarters and separate living quarters occupied only by related persons may be constructed upon approval by the Architectural Control Committee. The Owner may also construct one garage attached to or within fifteen (15) feet of the residence, provided said garage is constructed of suitable material and design so as to be aesthetically compatible with the dwelling and approved by the Board of Directors or its Architectural Control Committee.

b. Commercial. Lots designated on the PUD recorded plat and filings as "commercial" shall be used and occupied only for commercial purposes as above defined. The commercial Lots specified and the plat are subject to Declarant's right to substitute other or additional commercial lots as may be permitted within the PUD process. All provisions of this Declaration are applicable to the commercial Lots except that the covenants (Article V §3 and §5) limiting the use of Lots to residential occupancy are not applicable to commercial Lots; furthermore, signage is governed by the Board of Directors or the Architectural Control Committee and are not absolutely prohibited on commercial Lots. In all other respects, the Owners of commercial Lots are subject to the terms and conditions of this Declaration, membership in the Association and obligation for assessments and assessment liens as herein provided.

c. Cluster Lots. The Cluster Lots of the subdivision are designated as such on the PUD filings and recorded plat. The Cluster Lots specified and the plat are subject to Declarant's right to substitute other or additional Cluster Lots as may be permitted within the PUD process. All the provisions of this Declaration are applicable to Cluster Lots and the individual dwellings therein and, in addition, the following further covenants, conditions and restrictions apply exclusively to cluster Lots; namely:

(i) The individual dwellings within each Cluster Lot shall be designated and referred to as units within the Cluster Lot so that dwellings thereon will be described for purposes of legal descriptions as "Cluster Lot \_\_\_\_, Unit \_\_\_\_, Fairway Pines Estates". No part of a Cluster Lot or a unit therein may be further partitioned between or among the Owners thereof.

(ii) The Declarant or its successor in title to the Cluster Lot shall file for record either separately or as a part of the PUD plat a map for each Cluster Lot specifying the location thereof and the approximate location, the designation and linear dimensions of each unit therein as well as driveways and any shared sewage disposal systems. The map shall contain a certification that it fully and accurately depicts the layout, measurements and location of the proposed buildings and improvements, the unit designations and the dimensions of each unit; however, the Declarant hereby reserves unto itself and its successor in title to the Cluster Lot the right, from time to time, without the consent of any unit Owner being required, to amend the map and any supplements thereto, to conform them to the actual location of any of the constructed improvements, to establish, except with reference to the golf course and its use, easements, drainage, and encroachments, to vacate and relocate easements, driveways and joint property. The actual location of a unit shall be deemed conclusively to be the property intended to be occupied by the dwelling thereon situate and conveyed to the Owner thereof notwithstanding any minor deviations from the location thereof indicated on said map.

(iii) After the approval by the Board of County Commissioners of Ouray County of the map aforesaid of the Cluster Lot, and the recording of such map as approved, the Owner of the Cluster Lot shall be entitled to sell the individual units within the cluster Lot to individual Owners and to transfer title by deed to the units; likewise, the property not encompassed within the units for dwelling purposes shall be conveyed to the applicable Sub-Association for administration as common area as herein provided.

(iv) Each Unit shall be deemed to be a separate parcel and shall be subject to separate assessment and taxation by the Ouray County Assessor and each assessing unit and special district represented by the Assessor's office including ad valorem levies and lawful special, assessments. The property titled to the Sub-Association shall likewise be considered a separate parcel subject to separate assessment. The lien for taxes assessed to any Unit and the property owned by the Sub-Association shall be confined to such unit and the property of the Sub-Association. In the event, that such taxes or assessments for any year are not separately assessed as herein contemplated but rather are assessed on the Cluster Lot as a whole, then each Owner and the Association shall pay his proportionate share thereof, and, in said event such taxes or assessments shall be a common expense of the Sub-Association.

(v) Each Owner of a unit within a Cluster Lot may use the property of the Sub-Association in accordance with the purpose for which the property is intended, without hindering or encroaching upon the lawful rights of the other Owners. Such use may be to the exclusion of the other Owners within the subdivision who do not own a unit within a Cluster Lot. The Sub-Association may from time to time adopt rules and regulations governing the use of the property of the Sub-Association so long as they are uniform and non-discriminatory among the persons entitled to use such property.

(vi) Two or more units within each Cluster Lot may be served by a single engineered on-site sewage disposal system. Such shall be subject to the provisions of this Declaration. The repair, maintenance and upkeep of these systems shall be the joint responsibility of the Owners of the units within the Cluster Lot served by such system. In the event the Sub-Association is unable to manage or administer shared on-site sewage disposal systems because of a deadlock of the Owners of units within the Cluster Lot, the Association may take jurisdiction and make the decisions necessary to administer such systems and impose the necessary assessment for such repairs, maintenance or upkeep.

(vii) In addition to its pro rata share of Cluster Lot assessments levied by the applicable Sub-Association, each Cluster Unit owner will be assessed by the Sub-Association the assessments and dues contemplated by Article III §1.

**Section 6. Livestock and Pets.** No agricultural activity shall be undertaken for any business or commercial purpose and no animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot in the Subdivision for business or commercial purposes except for a pet store on a commercial Lot. Homeowners may keep not to exceed three (3) generally recognized house or yard pets provided they are appropriately fenced, chained or otherwise kept within the Owner's control both on and off the Owner's Lot. Except for bird feeders, owners and their guests shall not provide feed and/or water to wildlife except such as is naturally available within the subdivision.

**Section 7. Certain Permanent and Temporary Structures.** No permanent or temporary structure, including tent, shack, basement, trailer, barn, garage, outbuilding or the like, or any building, or structure may be constructed or used on any part of the Subdivision, unless in accordance with other provisions of these Covenants and approved by the Architectural Control Committee.

**Note: This Section 7 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.**

**Section 8. Fences.** All fences must be approved by the Board of Directors or its Architectural Control Committee and all fences must be maintained in good repair.

**Section 9. Repairs.** Any building or improvement which has been damaged by fire or other casualty causing the same to be unsightly shall be repaired or removed within four (4) months from the date of such casualty. All structures, buildings and improvements erected on Lots within the Subdivision shall at all times be kept in good repair and attractive.

**Section 10. Abandoned Vehicles, Vehicle Screening and Parking.**

a. No abandoned vehicles shall be permitted on any Lot. A vehicle shall be considered abandoned if it remains non-operative for a period of thirty (30) days. In such instance the Association shall send a letter requiring removal of the vehicle within thirty (30) days from the receipt of the letter and if the Owner does not comply within that period of time the Association may have the vehicle towed away at the violator's expense.

b. Parking of vehicles on the roads and streets within the Subdivision is prohibited, except as may be approved by the Board of Directors of the Association. Further, on and adjacent to residential and Cluster Lots, other than automobiles, all vehicles including but not limited to recreational vehicles, cycles, campers, motor homes, horse trailers, and snowmobiles, shall be parked in a garage or screened from view from streets, roads, golf course and neighboring property by approved structures, natural vegetation or terrain.

**Note: This Section 10.b was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.**

c. Motor homes, recreational vehicles and campers may be hooked-up to an owner's water or sewer system and they may be occupied by owner's guests on a temporary basis and in any event for not more than ten (10) days in any calendar month.

d. All residential garage doors shall be kept closed at all times, with the exception of those times a vehicle is actually entering or exiting the garage. The door may remain open for periodic maintenance of the door or garage area.

**Section 11. Burning and Trash Disposal.** Trash or garbage shall not be permitted to accumulate upon any Lot except in properly covered containers which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting therefrom. Solid waste disposal is the responsibility of the individual homeowner or occupant. Open burning of trash shall not be permitted. This covenant shall not be construed to prohibit fireplaces or

barbecue pits or open cooking on Lots. The Association may contract with a trash removal service within the Subdivision, however, the expense for such service will be the responsibility of each Owner who elects to participate in the service. Use of coal as a heat source in fireplaces, furnaces and stoves is prohibited.

**Section 12. Weed Control.** Weeds must be cut often enough so as to not permit land within the Subdivision to become unsightly or a fire hazard due to the overgrowth of weeds. If such weed control is not exercised by an Owner, the Association will have the right to hire the weeds mowed and assess the Owner for the expense of same with the Association having all the rights and remedies provided by Article III Section 10 above. (See §24 of this Article V).

**Section 13. Off Road Vehicles Prohibited or Limited.**

a. Except for construction and maintenance equipment and golf carts, only "street legal" vehicles may be operated within the Subdivision and on the Lots and roads thereof; provided, however, that prohibited vehicles may be operated for purposes of loading and unloading.

b. Golf carts are prohibited on all streets or roads within the Subdivision, unless authorized by the Board of Directors and unless the use of golf carts is in accordance with such regulations as may be set by the Board and is in accordance with governmental laws and regulations applicable to the Subdivision. The Board may institute appropriate actions to enforce the prohibition and any regulations on usage, where permitted, including withdrawal of any usage rights authorized by the Board. To the extent that the Board of Directors does not authorize golf carts of homeowners to use the roads and streets in the Subdivision and/or the County does not permit such use, homeowners who own golf carts as of December 3, 2000, may have access directly from their property to the golf course.

**Note: This Section 13.b was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.**

**Section 14. Mining and Drilling Activities Prohibited.** Any use of the surface of any Lot within the Subdivision for water, oil, gas, mineral, geothermal or oil shale exploration, development, mining or drilling activities of any kind whatsoever is expressly and absolutely prohibited.

**Section 15. Offensive Activity.** No noxious or offensive activity or odors shall be permitted or carried on at any Lot nor shall anything be done or placed therein which may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the

enjoyment of their Lots or in the property of the Association or in the use of the golf course. Firearms shall not be discharged within the Subdivision.

**Section 16. Antenna Limitations.** No outside television or radio antenna or satellite dish or other communication relay or transmitting or receiving device shall be erected, installed or maintained on any residential Lot, or structures thereon, or commercial Lot, or structure thereon, or on any area or structure in the Subdivision for the purpose of serving the Subdivision or any other area, unless the antenna or satellite dish or other communication device is approved by the Architectural Control Committee. The Architectural Control Committee may not withhold the approval of such devices located on or adjacent to a structure on a residential or commercial Lot, or impose requirements as to the use of such devices in such a way as to interfere with reception. The Architectural Control Committee may make reasonable requirements as to the size, normally not to exceed twenty (20) inches in any direction, and as to the nature and location of such antenna or satellite dish or other communication device, to assure compatibility of the architectural style of the dwelling and its surroundings.

**Note:** This Section 16 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on May 31, 2001, at Reception No. 174891.

**Section 17. Clothes Dryers Prohibited.** No exterior clothes dryer shall be erected, installed or maintained on any Lot, or on any structure thereon.

**Section 18. Utility Lines Underground.** Electric, telephone, television, radio and other utility lines shall be placed underground when extended from the street or Lot line to any structure on a Lot. Trenching shall avoid damage to trees and plants and all trenches shall be fully compacted and shall contain not less than four (4) inches of indigenous topsoil placed in the top of the trench to the end that the prior natural state of the area trenched is replicated.

**Section 19. Sound Devices Prohibited.** No exterior horns whistles, bells or other sound devices except security devices used exclusively to protect the security of dwellings and other improvements located on the Lot or essential to the function of community services shall be placed or used on any Lot or elsewhere in the Subdivision.

**Section 20. Miscellaneous.** Except for fire hazards, maintaining or improving plant health and vigor or for removal of insect or disease affected vegetation, for approved driveways, for construction of approved structures and for golf course construction, no indigenous trees or perennial bushes may be cut or removed, no action affecting drainage direction or affecting other property and no grading of the land surface shall be done within the Subdivision except upon variance as hereafter authorized. (See Article VI §6). Application for such variance shall be



accompanied by such drawings, plans or photographs as may be reasonably required to show the nature of the proposed cutting, removal or grading. It is desirable to preserve the natural character of the area and therefore to limit cutting, removal and grading to that which is necessary to the reasonable use and enjoyment of the property within the Subdivision. Approval of applications for variances within the contemplation of this section may be conditioned upon installation of appropriate drainage facilities to be installed at the applicant's expense. Water wells and cisterns are prohibited on any lot. Domestic water for use on all lots must be obtained from the pipeline system installed by the developer. House numbers shall be assigned by the Committee and shall be posted by the owner so as to be readily visible from the street.

**Section 21. Sewage Disposal.** No sewage collection system or sewage disposal shall be installed or used on any Lot unless and until such system is designed, constructed and located in conformity with the then existing standards, regulations and criteria employed by the Ouray County Sanitarian acting under the direction and within the regulations of the State of Colorado. No construction of any such system shall be undertaken until the plans, specifications and design therefor have received such approval and no such system shall be placed in use until the completed construction has received final governmental approval.

**Section 22. Insurance Rates.** Nothing shall be done or kept in the properties which will increase the rate of insurance on any Association property without the approval of the Board or the Committee, nor shall anything be done or kept in the properties which would result in the cancellation of insurance on any Association property or which would be in violation of any law.

**Section 23. No Further Subdivision.** No Lot may be further subdivided nor may any easement or other interest therein less than the whole be conveyed by the owner thereof without the approval of the Board of Directors or Architectural Control Committee.

**Section 24. Association Remedies.** In the event any owner fails to comply with any affirmative duty imposed on owners by or under the authority of this Declaration, the Association may perform such after fifteen (15) days' prior written notice to the owner and charge the owner with the expense thereof. The Association shall have the right to enter the owner's lot for this purpose but unless there exists an emergency, there shall be no entry into a building without the consent of the owner. In the event the Association is required under the terms of this section to perform a duty of the owner, the cost thereof including reasonable attorney's fees, shall constitute an assessment payable by the offending owner which cost shall create a lien enforceable in the manner set forth in Article III § 10 above.

**Section 25. Declarant's Rights.** Nothing in this Declaration shall be construed to limit or interfere with the Declarant's development of the property, construction of the golf course and amenities or the construction of utilities or other facilities contemplated by the PUD plan:

## **ARTICLE VI -- GENERAL PROVISIONS**

**Section 1. Enforcement.** The Declarant, the Association, a Sub-Association, or any Owner, or the Board of County Commissioners of Ouray County, Colorado, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and shall recover reasonable attorney's fees and costs for doing so. Such right of enforcement includes but is not limited to actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration or the rules, regulations and compliance sanctions adopted pursuant to §5 of this Article VI or the standards and specifications adopted pursuant to §3 of Article IV above. Failure by the Declarant, the Association, the County or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or abandonment of the right to do so thereafter.

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by Judgment or Court Order shall in no way effect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of twenty-five (25) years. This Declaration may be amended by the affirmative vote or agreement of owners to whom at least fifty-one percent (51%) of the votes in the Association are allocated. Any amendment must be recorded. For purposes of this section, Declarant and its assigns and successors are considered Owners as to Lots held by Declarant, whether for development, investment or resale.

**Note: This Section 3 was amended according to the Certificate of Amendment of Covenants, Conditions, Restrictions and Easements, recorded on July 22, 2008, at Reception No. 198301.**

**Section 4. Annexation.** Additional property may be annexed to the Properties by Declarant or its successor or assignee.

**Section 5. Rules, Regulations and Compliance Sanctions.**

a. The Board of Directors shall have authority to adopt reasonable rules and regulations for the purposes of insuring compliance with this Declaration and interpreting any of the provisions hereof as well as governing use of the property of the Association.

b. Rules and regulations governing Founders Golf Course Club Memberships and use of facilities as promulgated by the Golf Course and Golf Club Owner and as amended from time to time have the same force and effect as those adopted by the Board and are likewise enforceable in accordance with the sanctions and procedures of this Declaration.

**Note: This Section 5.b was amended according to the Certificate of Amendment of Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.**

c. The Board of Directors shall also have the right to suspend the voting rights of any Owner who is delinquent in payment of assessments or for infraction of such rules and regulations. Compliance sanctions may also include the imposition of fines to penalize infractions of such rules and regulations.

**Section 6. Variances.** The Board of Directors or its Architectural Control Committee if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in Article V hereof so long as such variances do not result in conditions which are inconsistent with the general concept, harmony and values within the Subdivision.

**Section 7. Association Property and Management.** Declarant shall convey to the Association the property shown on the PUD plat other than the Lots, golf course and other private property therein designated. Such conveyance shall take place not later than six (6) months after the date the first Lot is conveyed to an Owner. At the time of the conveyance, the Association property shall be free of any mortgages, judgment liens or similar liens or encumbrances. The Association shall hold such property subject to the right of the Declarant, its successors and assigns, to lay, install, construct and maintain utilities and other improvements in the areas designated therefor on the plat. The property conveyed to the Association shall be held by it for the use, benefit and enjoyment, in common, of each Owner. Each Owner, in common with all other Owners, shall have the right and privilege to use and enjoy the property of the Association for the purposes for which the same were designed. This right and privilege shall be appurtenant to and pass with the title to the Lot. The right to the use and enjoyment of such property shall be subject to:

a. The right of the Association to charge reasonable admission and other fees for use of facilities; and

b. The right of the Association to suspend the voting rights and rights to use the Association property by an Owner for any period in which any assessment against his Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of published rules and regulations of the Association.

c. The Association shall supervise, manage, use, repair, provide utility services and maintain its property, at its own cost and expense, in such manner as is determined by its Board of Directors from time to time. In the event a driving range is constructed on open space owned by the Association, the Board may contract with the golf course owner for a lease to govern the operation and maintenance of the driving range in which case a reasonable fee would be charged to the Lessee to cover the Association's expenses including but not limited to taxes, insurance and administration.

d. The Association and each Cluster Lot Sub-Association constitutes the organization for the ownership and maintenance of the open space required by §6.11 "Open Space Requirements" of the County of Ouray Land Use Code providing for adequate future ownership and maintenance of open space and common areas. The provisions of this Section 7 are applicable to all of the property and assets owned by the Association or any Sub-Association thereof but are not applicable to property, assets and easements owned or reserved by Declarant such as the golf course and appurtenant facilities and water rights.

e. The Association may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent deemed advisable by the Board of Directors thereof. The Association may also employ other personnel deemed to be necessary or desirable for the proper operation of the assets of the Association (or Sub-Association) whether such personnel are furnished or employed directly by the Association or by any person, firm or entity with which the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its business and shall provide such operating statements, reports and budgets as it may deem advisable.

f. The Board is authorized to charge, at its actual cost, an administrative fee to other entities for which it agrees in writing to collect and disburse assessments and dues as provided in the Declaration, such as the Golf Course and Golf Club Owner and domestic water provider.

**Note: This Section 7.f was amended according to the Certificate of Amendment of Covenants, Conditions, Restrictions and Easements, recorded on July 22, 2008, at Reception No. 198301; and further**

amended by the Certificate of Amendment of Covenants, Conditions, Restrictions and Easements, recorded on September 11, 2008, at Reception No. 198637.-

**Section 8. PUD Amendment.** Declarant or its successors or assigns reserves the right to amend the PUD filings from time to time as may be authorized by the applicable governmental entity.

**Section 9. Easements.**

a. Easements for the installation and maintenance of utilities and drainage facilities, if any, are hereby reserved by Declarant for itself and its assignees and are dedicated to the public over the ten (10) feet adjacent to the boundaries of each Lot. No conveyance of a Lot by Declarant shall be deemed to be a conveyance or release of the foregoing easement in the absence of a specific expression of intent to do so. The Association is hereby granted the right to grant and convey to any person or firm easements and rights of way in, on, over or under any portion of Association property in carrying out any duty or power belonging to the Association.

b. Declarant expressly reserves for the benefit of all properties reciprocal easements for access, ingress and egress for all owners and Declarant to and from their respective lots; for installation and repair of utility services; for encroachments of improvements constructed by Declarant or authorized by the Board over Association assets; for drainage of water over, across and upon adjacent lots and property of the Association resulting from the normal use of adjoining lots or property of the Association; and for necessary maintenance and repair of any improvement. Such easements may be used by the Declarant, its successors, assigns, the Association and all owners, their guests, tenants and invitees.

**Section 10. Golf Course.** It is understood that the golf course portions of the PUD filing are included in open space designations therein but that the golf course is privately owned by Declarant and is not included in any public dedication or common properties. Use and maintenance of the golf course are subject to the requirements and restrictions of Declarant but is otherwise governed by this Declaration. Declarant contemplates that the Association will be authorized to use portions of the golf course for winter sports activities such as cross country skiing subject to reasonable rules, regulations and charges adopted by the Declarant or negotiated with the Association.

**Section 11. Liability Insurance.** The Association and Sub-Association shall be required to maintain liability insurance insuring against injury to persons or property as a result of use of the property of the Association. Such insurance shall be maintained with a company licensed to do business in the State of Colorado and shall have minimum amounts of liability for injury or

damage to persons or property in the amount of ONE MILLION DOLLARS (\$1,000,000.00), with such amount to be adjusted periodically and increased if the same is required in the reasonable judgment of the Board of Directors of the Association and if such increased amounts of insurance are available for purchase at such time.

**Section 12. No Representations.** Except as expressly set forth herein, Declarant makes no representations regarding use of the property of the Association or within the Subdivision and the restrictions placed thereon by these Covenants or by the County of Ouray or by other governmental authorities. Further, Declarant makes no representations as to the existence, preservation or permanence of any view from any Lot.

**Section 13. Notices.** Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as such Owner of the records of the Association at the time of such mailing. Each Owner shall keep the Association informed of any address changes.

**Section 14. Singular and Plural.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

**Section 15. Cumulative Remedies.** Each remedy provided herein is cumulative and not exclusive. The Association, without waiving its right to foreclose an assessment lien, may at its option bring a suit to enforce and/or collect a delinquent assessment obligation or any violation of any provision of the Declaration.

**Section 16. Liberal Construction.** The provisions, of this Declaration shall be liberally construed to promote and effectuate the purposes hereof.

**Section 17. Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**Section 18. Transfer Fee.** A fee of \$3,000.00 is due and payable at the time of the transfer of any legal or equitable interest in any lot or cluster unit except a transfer made to related persons for estate planning purposes or in lieu of foreclosure or by virtue of law through any judicial or administrative proceeding or a transfer made by Declarant. The transfer fee shall be paid to Declarant's General Partner and commingled but accounted for separately from other assets of Declarant. The transfer fee proceeds shall be used for such purposes as Declarant may determine to be in the best interest of the development of the subdivision including but not limited to

infrastructure, Association property, administrative expenses and capital improvements but shall not be used for Declarant's debt reduction or its property acquisition. Declarant shall provide an accounting annually to the Association as to the income and expenses of the transfer fee fund. Payment of the fee is subject to the lien and collection remedies herein provided for the Association and the Association is authorized to take such action as Declarant may request to assure the recovery of the transfer fee. At such time as Declarant specifies to the Association in writing that the subdivision project is totally sold out, the transfer fee shall thereafter be payable to the Association and collectable in accordance with assessment procedures. The Association shall then be entitled to use the transfer fee income for any Association purpose. At any time after the Association becomes entitled to receive the transfer fee, the membership may vote to terminate or modify the transfer fee.

## APPENDIX A

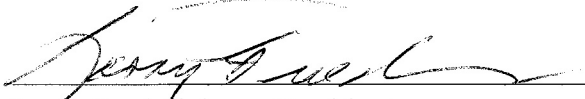
<u>Item No.</u>	<u>Description</u>	<u>Recording Date</u>	<u>Reception No.</u>
1	Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.	March 27, 1992	150511
2	Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.	September 11, 1992	151656
3	Notice of Standards and Remedies for Fairway Pines Golf Course	October 6, 1994	157753
4	An Agreement between certain members of the Fairway Pines Village Estates Owners Association and Loughill Village Investors, Fairway Pines Development, Ltd., Fairway Pines Golf Partners, Ltd.		
5.	Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates Phase II.	July 17, 1996	162227
6	Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.	July 22, 1996	162268
7	Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, Filing 5A	December 23, 1997	165843
8	Affidavit of Correction of Typographical Error in Fairway Pines Estates Declaration Title Re: Phase II.	June 18, 1999	169881
9	Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development.	May 31, 2001	174891
10	Fairway Pines Clubhouse Extension Resolution and Agreement, dated September 5, 2002		
11	Resolution of Manager of The Pines Development Group, LLC.	February 19, 2004	183960
12	Agreement and Vacation of Certain Instruments.	September 27, 2007	196142
13	Assignment of Declarant Rights for Fairway Pines Estates	October 22, 2007	196324
14	Certification of Amendment of the Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision.	July 22, 2008	198301
15	Certification of Amendment of the Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision.	September 11. 2008	198637
16	Declaration of Covenants, Conditions, Restrictions and Easements for Ridge View Ouray Sub-Association	February 22, 1999	168981
	Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Ridge View Ouray Sub-Association	December 29, 2005	190166
17	Declaration of Covenants, Conditions, Restrictions and Easements for The Den Sub-Association of Fairway Pines	June 28, 1995	159647



# CERTIFICATION AND ACKNOWLEDGMENT

I, Larry Frederickson, President of the Board of Directors of the Fairway Pines Estates Owners Association, Inc., a Colorado non-profit corporation, certify that the foregoing First Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, (First Restatement) was adopted by the Association Board of Directors at a properly noticed meeting on November 11, 2008, and that the Board resolution adopting this First Restatement contains the following:

- a. This First Restatement was prepared by the Association's Covenants Committee and reviewed by the Board of Directors.
- b. The First Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development, is a transcribed and consolidated version of the actual recorded documents listed its Recital 1. While care was taken in the transcription process to minimize errors, some discrepancies from the original documents may be present. In the event of any conflict between this First Restatement and its original counterparts or in their legal effect, the original recorded documents shall control and should be referenced for certainty with regard to any specific provision or effect.
- c. This First Restatement shall be recorded in the official records of Ouray County.

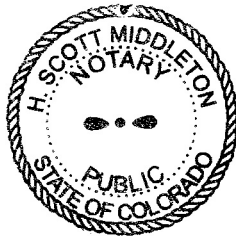
  
\_\_\_\_\_  
Larry Frederickson, President

STATE OF COLORADO            )  
  )        SS.  
COUNTY OF OURAY            )

The foregoing certification was acknowledged before me this 12 day of NOV, 2008, by Larry Frederickson, who acknowledged himself to be the President the Board of Directors of the Fairway Pines Estates Owners Association, Inc., a Colorado non-profit corporation, and that he being authorized to do so executed the foregoing instrument for the purposes therein contained.

Witness my hand and official seal.

My commissions expires 6/12/2011.



  
\_\_\_\_\_  
Notary Public