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CATHEDRAL PINES

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OF  
CATHEDRAL PINES**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CATHEDRAL PINES**

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION, made and entered into as of the date shown below, by CATHEDRAL PINES BY KING 'S DEER, LLLP, a Colorado limited liability limited partnership, hereinafter called "Declarant" for itself, its successors and assigns.

**WITNESSETH**

**WHEREAS**, the Declarant is the owner of the real property described on Exhibit "A" attached hereto (hereinafter called the "Property"), and,

**WHEREAS**, the Declarant desires to submit the Property to the covenants, terms and provisions hereof.

**NOW, THEREFORE**, the Declarant hereby declares that all of the Property, as hereinafter described, with all appurtenances, facilities and improvements thereon, shall be held, sold, used, improved, occupied, owned, resided upon, hypothecated, encumbered, liened, and conveyed subject to the following easements, reservations, uses, limitations, obligations, restrictions, covenants, provisions and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and all of which shall run with the land and be binding on and inure to the benefit of all persons or entities having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

I. **DEFINITIONS:** The terms used herein shall have the following meanings, except as otherwise provided herein:

A. **"Association"** shall mean and refer to the CATHEDRAL PINES HOMEOWNERS ASSOCIATION, INC., a Colorado non-profit corporation, which has been or shall be organized under the laws of the State of Colorado, its successors and assigns.

B. **"Board"** means the Board of Directors of the Association. Except as specified herein, or in the Association's Articles of Incorporation or Bylaws, the Board may act on behalf of the Association without any vote or prior approval of the members.

C. **"Committee"** shall mean the architectural control committee of three or more persons appointed by the Declarant or appointed by the Association's Board of Directors or it may be the Board itself, to review and approve the plans for all improvements constructed on the Property.

D. **"Common Area"** shall mean and refer to any tracts or parcels designated as such on any plat of the Property or otherwise granted or conveyed to the Association, together with all improvements located thereon and all common property owned by the Association, but excluding the Lots, and shall include any Common Area located upon any real property which is hereafter annexed to the project pursuant to Paragraph 21. The Common Areas may include any easements for trails, fencing, or other purposes as dedicated or conveyed by the Declarant to the Association. Owners acknowledge that certain open spaces may be developed as a park, a community center, and possible recreational facilities (the "Facilities"), and that the Facilities will not be Common Areas unless conveyed to the Association, but may be owned by public or private entities or, at Declarant's sole discretion, such open spaces or Facilities or both may be conveyed to the Association at any future time; Declarant has not made and will not make any representation or guarantee what Facilities or whether the Facilities will be constructed. Notwithstanding any contrary provision, the Facilities and the open spaces shall not be subject to any provision of this Declaration unless the Declarant expressly subjects them to this Declaration by written document duly recorded hereafter.

E. **"Home"** shall mean the residential dwelling improvement constructed and located upon a Lot.

F. **"Lot"** shall mean and refer to any of the Lots shown on any recorded plat of the Property, together with all appurtenances thereto and improvements now or hereafter thereon and shall be interchangeable with the term "Lots." The boundaries of the Lots shall be shown on any recorded plat of the Property which shall be incorporated herein by this reference.

G. **"Declaration"** means this Declaration as contained herein and as it may be amended from time to time as herein provided.

H. **"Declarant"** shall mean and refer to CATHEDRAL PINES BY KING'S DEER, LLLP, a Colorado limited liability limited partnership, its agents, employees, contractors, successors and assigns to whom it expressly transfers all or any part of its rights as Declarant hereunder.

I. **"Design Guidelines"** shall mean and refer to the Design Guidelines and Community Standards which are adopted by the Committee.

J. **"Owner"** means any person, corporation, partnership, association, contractor, sellers or other legal entity or any combination thereof, including Declarant, who owns the record fee simple interest in one or more Lots. The term "Owner" shall include any grantee, transferee, heir, successor, personal representative, executor, administrator, devisee, and assign of any owner but shall not refer to any Mortgagee as herein defined.

K. **"Mortgage"** means and refers to any mortgage, deed or trust or other assignment or comparable security instrument recorded in the real property records of the office of the Clerk and

Recorder of the county in which the Property is located, and by which a Lot or any part thereof is encumbered.

L. "First Mortgage" shall mean a Mortgage upon a Lot having priority of record over all other recorded encumbrances and liens thereon, except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

M. "Mortgagee" means any person or entity, or any successor or assign thereof, which holds or owns a Mortgage. "First Mortgagee" means a mortgagee whose encumbrance is a First Mortgage.

N. "Project" means all of the Property, together with improvements and rights, and improvements located on the Property and all rights, easements and appurtenances belonging thereto, and shall include any real property subsequently annexed or added to the Project.

O. "Property" means the real property described on Exhibit "A" attached hereto, together with any real property which may be subsequently annexed thereto under Paragraph 21 hereof.

P. "Period of Declarant's Reserved Rights" means twelve (12) years from the date on which this Declaration is recorded, unless the Declarant voluntarily relinquishes in writing Declarant's rights hereunder prior to that date.

2. **INTENT:** The intent of this Declaration is to establish a general plan of development for the benefit of the entire Project and to preserve the Project as a high quality residential area of lasting value, and this Declaration has been designed to that end. Pursuant to C.R.S. §38-33.3-116, the Declarant, the Association, and the Property shall not be subject in any manner whatsoever to the Colorado Common Interest Ownership Act except they shall be subject only to C.R.S. §§38-33.3-105, 38-33.3-106 and 38-33.3-107, and no other sections of said Act.

3. **BUILDING TYPE AND USE:**

A. All Lots shall be used and occupied only for single family residential purposes and shall be used only for custom built residential Homes. Human services establishments, including human service homes, human service residences, human service facilities and human service shelters, health care support facilities, hospices and youth homes (as each of such terms are defined in the Zoning Code of El Paso County) and any other similar or dissimilar group home are each prohibited on a Lot.

B. No structure shall be erected, altered, converted, placed or permitted to remain on any Lot other than one single-family dwelling, not exceeding the height set forth therein, together with an attached garage and any related structures approved by the Committee; all building and improvements shall be used solely for single family residential purposes and shall not be used for trade, business or

commercial purposes as defined by the Board in its reasonable discretion, which may allow Home Occupations as defined by the El Paso County Zoning Code but subject to such additional requirements as the Board may impose. No structure may be constructed or used in violation of zoning or other laws or regulations, nor be erected prior to construction of the main dwelling. No mobile homes, pre-manufactured homes, domes or similar structures shall be allowed upon any Lot, unless a variance is granted by the Committee.

C. Ancillary buildings and improvements, including without limitation, sheds, dog runs, recreational storage, play sets, guest houses, tennis courts and swimming pools, may be approved in the sole discretion of the Committee, which may condition its approval upon color, appearance, screening, and any other matter.

4. **DESIGN GUIDELINES:** The Design Guidelines shall specify the minimum size of dwellings, the building locations and heights, and the setbacks.

5. **TEMPORARY RESIDENCES:** No structure of temporary character, including without limitation, trailer, basement, tent or accessory building shall be used on any Lot as a residence, temporarily or permanently.

6. **ASSOCIATION:**

A. The Association shall operate as a Colorado non-profit corporation pursuant to its Articles of Incorporation and Bylaws, which may include, without limitation, provisions for the indemnification of officers and directors. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. If additional Lots are added to the Association, membership shall automatically be expanded thereby. Members shall have the right to cast votes on all matters to be voted on by the members, and each Lot shall be entitled to one vote in the Association, as provided in the Association's Articles of Incorporation and Bylaws. 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 Lot. Owners of multiple Lots shall have one vote for each Lot owned.

B. **General Duties and Powers of Association.** The Association has been formed to further the common interests of the Members. The Association, acting through the Board or representatives to whom the Board has delegated such powers, shall have the duties and powers given nonprofit corporation, including without limitation those hereinafter set forth:

(i) **Duty to Accept Property and Facilities Transferred by Declarant.** The Association shall accept title to any property, including without limitation all Common Areas and any other Improvements thereon, any easement or other right, and personal property transferred to the Association by Declarant or by any third party with Declarant's permission, and equipment related



thereto, together with the responsibility to perform any and all Association functions associated therewith, provided that such property and functions are not inconsistent with the terms of this Declaration. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and contractual rights or licenses to use property. Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Board of Directors, be transferred to the Association free and clear of all liens (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration. No representation, express or implied, is made that the Declarant will or will not transfer any property to the Association.

(ii) Duty to Manage and Care for Property. To the extent owned by the Association, the Association shall manage, operate, care for, maintain and repair all Common Areas and Facilities, if any subsequently designated by the Declarant, and keep the same in an attractive and desirable condition for the use and enjoyment of the Members; provided, however, maintenance responsibilities for any Common Areas shall not commence until Assessments commence.

(iii) Duty Under Water Augmentation Plan. The Association is hereby authorized and shall have the obligation to operate, administer and account for the Water Augmentation Plan described in Paragraph 10 of this Declaration.

(iv) Duty to Pay Taxes. The Association shall pay all taxes, if any, levied upon the any property owned by the Association and all other taxes and assessments payable by the Association.

(v) Duty to Maintain Insurance. The Association shall obtain and keep in full force and effect at all times insurance coverage in accordance with this Declaration and as required by Colorado law.

(vi) Duty to Levy and Collect Assessments. The Association shall levy and collect Assessments as elsewhere provided in this Declaration.

(vii) Power to Acquire and Maintain Property and Construct Improvements. The Association may acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The Association may construct or reconstruct Improvements on property and may demolish existing Improvements. The Association shall have the power to maintain public or private rights of way and to perform maintenance on any portion of the Property, whether or not owned by the Association.

(viii) Power to Adopt and Enforce Design Guidelines. The Association may adopt, amend, repeal and enforce such Design Guidelines as may be deemed necessary or desirable with respect to the interpretation and implementation of this Declaration and matters related thereto, the

operation of the Association, the use and enjoyment of the Common Areas, the use of any other property within the Property, including the Lots.

(ix) Power to Enforce Declaration, Articles of Incorporation, and Bylaws. The Association shall have the power to enforce the provisions of the Association's operative documents and shall take such action as the Board deems necessary or desirable to cause compliance.

(x) Power to Provide Special Services. The Association shall have the power to provide special services beyond this Declaration to a Member or group of Members and any services to any other Person. Any such service or services shall be provided pursuant to an agreement in writing, or through one or more amendments to this Declaration, which shall provide for payment to the Association by such Member or group of Members or other Persons of the costs and expenses which the Association estimates it will incur in providing such services, including a fair share of the overhead expenses of the Association, and shall contain provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns or the Member or group of Members or other Persons, and may be collected in the same manner as a Lot Assessment, or, if the written agreement so provides, in installments as part of the Assessments or may be collected in any manner permitted by law or statute or the Association Documents.

The Association shall have the power to regulate the days and hours during which trash and solid waste may be collected or put out for collection in any portion of the Property, and the Association may require all Owners to use a common trash collection company or entity selected by the Board. The Association shall also have the power to provide services for the collection of trash and solid waste within all or any portion of the Property. The Association shall have the power, but not any duty, to sponsor or conduct various community activities or special events of a social or recreational nature, to hire and provide a security or courtesy patrol, which shall be unarmed and shall not be a substitute for the municipal police, and to provide general informational services which may include, without limitation, community newsletter, radio broadcast, cable television services and similar services.

(xi) Power to Operate and Charge for Facilities. The Association shall have the power to acquire, create, own and operate any and all such facilities and services as it deems appropriate, including, without limitation, landscape maintenance and refuse collection, an intranet communication service for the Owners or any other similar or dissimilar function, and to establish charges for the use of facilities and services. The charges may include admission, rental or other fees and charges for any use of property, facilities, or services of the Association. Such charges or fees shall be as determined from time to time by the Board of Directors.

(xii) Power to Grant Easements The Association shall have the power to grant access, utility, drainage, water facility and any other easements in, on, over or under the Common Areas for any lawful purpose, including, without limitation, the provision of emergency services, utilities,

telephone, television, or other uses or services to some or all of the Members or to facilitate the development of the Property.

(xiii) Power to Employ Managers. The Association shall have the power to retain and pay for the services of a manager or managers to undertake any of the management of any functions for which the Association has responsibility under this Declaration to the extent deemed advisable by the Association, and may delegate any of its duties, powers or functions to the manager or managers. Any contract or agreement with a manager shall be terminable by the Association for cause on no more than thirty days prior written notice, and shall be terminable by the Association without cause and without payment of a termination fee on no more than ninety days prior written notice. No such contract or agreement shall be for a term of more than one year. Notwithstanding any delegation to a manager of any duties, powers or functions of the Association, the Association and its Board shall remain ultimately responsible for the performance and exercise of such duties, powers and functions. In addition to a manager, the Association may employ and pay a consultant, which may be Declarant, an affiliate of Declarant, or a third party, to assist in operating and managing the Association after the Declarant's reserved rights terminate.

(xiv) Forestry Management and Insurance. In addition to each Owner's obligations as set forth in this Declaration, the Association shall have the power, but not the obligation, to establish a program to provide forestry management for the entire Property in order to monitor and manage the health of the vegetation within the Property ("Forestry Management Program"). The cost of any Forestry Management Program which the Association may elect to provide to the Owners will be included within the Assessments. Generally, the Forestry Management Program will involve surveying and testing the health of the Property vegetation, including testing for beetles, mistletoe and other infectious conditions, and removing any infected vegetation, even if such vegetation is located on or within the Owner's Lot. Each Owner hereby grants the Association and its agents an easement to enter each Owner's Lot for purposes of conducting forestry surveying and testing and, if thereafter deemed reasonably advisable, to remove any and all vegetation which it reasonably determines to be infectious. In addition to the Association's right to undertake a Forestry Management Program, each Owner, if requested by the Association, will undertake, through an appropriate professional, such surveying and testing of his Lot to determine if any of the above-described conditions exist within this Lot.

(xv) Community Programs. The Association shall have the power, but not the obligation, to establish regulations, services and programs related to the Facilities or Common Areas for the Owners, the cost of which may be included in the Assessments or charged on a user basis. The Association shall have the authority to implement such Design Guidelines, regulations, services and program, to include the cost thereof in the Assessments and to establish the services to be provided and the procedures and limitations concerning the utilization of such services and programs. No Owner or Member shall have the right to withhold or reduce payment of the Assessment or any portion of the Assessment by not using the Facilities or Common Areas made available to the Owners and Members

pursuant to services and programs as adopted or amended by the Association. The Association shall have the right to amend or terminate any such program at any time.

(xvi) General Corporate Powers. The Association shall have all of the ordinary powers and rights of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, subject to any limitations, restrictions, or requirements expressly set forth in the Association Documents.

7. ASSESSMENTS:

A. Creation of the Obligation for Assessments. Each Owner, for each Lot owned within the Property, by acceptance of a deed therefor or interest therein, whether or not it shall be so expressed in such deed, 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 this Declaration (hereinafter collectively called the "Assessments") 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. No Owner may waive or otherwise escape personal liability for the payment of the assessments by non-use of any common properties or services, by abandonment or leasing of his Lot, or by asserting any claims or defenses against the Association, the Declarant or any other person or entity.

B. Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the health and welfare of the Owners and for the improvement and maintenance of the Project as more specifically provided herein.

C. Annual Assessments: The annual Assessments may specifically include, but shall not be limited to, expenses of management of the Association and its activities; taxes and special Assessments upon the Association's real and personal property, if any; premiums for all insurance which the Association is required by statute or First Mortgages to maintain, or all insurance authorized by the Board in its sole discretion, and all other expenses connected with such insurance; running path, light poles and other street signs, entrance monuments, walls and lighting, ponds, recreation areas, and other items of common ownership, the creation of adequate reserve funds for maintenance, repairs and replacement of those elements of common property or maintenance that must be done or replaced on a periodic basis and are payable in regular installments of Assessments; and, any other costs, expenses, and fees which may be incurred or may reasonably be expected to be incurred by the Board, in its sole discretion, to promote the health, safety and welfare of the Owners under this Declaration including, without limitation, expenses relating to the Augmentation Plan and any Common Areas.

D. Limit on Annual Assessments: The maximum annual Assessment shall not exceed three hundred dollars (\$300.00) per Lot for the fiscal year ending December, 2005; after that year, the maximum annual Assessment shall automatically increase at a rate not to exceed five percent (5%) per annum cumulated each year thereafter, provided however, the maximum may be increased by a two-

thirds vote of the Owners present at an annual or special meeting of the Association, at which a quorum is present. Notwithstanding any contrary provision of this Declaration, (a) any Lot owned by the Declarant, its successors or assigns, shall be assessed at the rate of ten dollars (\$10.00) per year until the date on which the Lot is conveyed to a party not related to the Declarant or Declarant's principals, at which time the Owner of such Lot shall pay dues at the same rate as the other Owners, and (b) the annual Assessment for any Lot, exclusive of any optional user's fees and any insurance premiums paid by the Association, shall never exceed four hundred dollars (\$400.00) per year or the maximum allowed for exemption from the Colorado Common Interest Ownership Act pursuant to C.R.S., §38-33.3-116.

**E. Procedure for Annual Assessments:** The Assessments shall be payable in an annual amount and shall commence as to all Lots in that Filing, including Lots owned by Declarant, on January 1 of the year following the conveyance of the first Lot in that Filing from the Declarant. The Association's Board of Directors may fix the annual Assessment at an amount not in excess of the maximum stated above and shall provide such notice and procedure for budgeting and collection as the Board deems appropriate in its sole discretion. The Association may furnish to an Owner, upon written request delivered to the Association's registered agent, a written statement setting forth the amount of any unpaid Assessments levied against a Lot, and the statement may be relied upon all Owners acting in good faith thereon as conclusive evidence of payment of such Assessment.

**F. Collection of Assessments:**

(i) **Personal Liability.** Any Assessment which is not paid when due shall be delinquent, and the Association may impose a late charge for each month any Assessment is delinquent, and may also collect the attorneys fees, costs and expenses of any collection from the delinquent Owner. Additionally, the Association may bring an action at law against any Owner personally obligated to pay any Assessment, and, in the event of any lawsuit, the delinquent Owner shall pay all attorneys fees, court costs and any expenses of such lawsuit.

(ii) **Lien.** Additionally, any such unpaid Assessment, together with all expenses of collection and attorneys fees, shall be a continuing lien upon the Lot against which such Assessment was made. The Association may enforce such lien by filing with the Clerk and Recorder of El Paso County a statement of lien with respect to said Lot, setting forth such information as the Association may deem appropriate. Said lien shall run with the land and shall additionally secure all Assessments and expenses which become due after its filing. Said lien may be foreclosed by the Association in the manner provided for foreclosures of mortgages under the laws and statutes of the State of Colorado. All rights and remedies of the Associations are cumulative, and foreclosure of the lien shall not prevent a lawsuit against the Owner personally liable therefor whether taken before, after or during such foreclosure. Said lien may be released by recording an appropriate document executed by an officer or agent of the Association. Such lien is in addition to any other lien allowed to the Association by statute, law or equity. Said lien shall be superior and prior to any homestead rights or similar exemption now or hereafter

provided under state or federal law to any Owner, whose acceptance of a deed to a Lot shall constitute a waiver of such homestead or other rights.

G. Lot Assessment.

(i) Liability of Owners for Damage. Each Owner shall be liable to the Association for any damage to Common Areas and/or Facilities or for any expense or liability incurred by the Association, to the extent not covered by insurance, which may be sustained by reason of the negligence or willful misconduct of such Owner, guest, contractor, tenant or family member of such Owner. The Association shall have the power, as elsewhere provided in this Declaration, to levy and collect a Lot Assessment against an Owner to cover the costs and expenses incurred by the Association on account of any such damage or any such violation of this Declaration and/or Design Guidelines, including without limitation, the deductible on any insurance of the Association, interest, costs, expenses and attorneys fees, or for any increase in insurance premiums directly attributable to any such damage or violation.

(ii) Lot Assessments. Except for a default consisting solely of a failure to timely pay any Assessment, including, without limitation, any Special Assessment which shall not require any notice and hearing, a Lot Assessment shall be levied only after such notice and hearing as may be established by the Board. The amount of the Lot Assessment shall be due and payable to the Association upon notice by the Board that the Lot Assessment is owing. Imposition or non-imposition of Lot Assessments shall not preclude the Association from pursuing simultaneously or subsequently all other legal or equitable rights and remedies.

8. **CONSTRUCTION:** Construction of all dwellings and Improvements shall be in accordance with the standards, requirements, and procedures of the Design Guidelines.

9. **MAINTENANCE OF LOTS:** Each Owner shall maintain the exterior of the Home and all other Improvements on the Lot of the Owner in good condition and in accordance with this Declaration and the Design Guidelines, and shall cause them to be repaired as the effects of damage or deterioration become apparent. Each Owner shall keep all landscaping properly maintained in accordance with the Design Guidelines. Each Owner hereby acknowledges that the requirement to maintain each Lot in "good condition" and "properly maintained" shall be based upon a standard of care which is appropriate for the highest quality county single family residential areas in El Paso County, Colorado. If the Owners fails to properly perform such maintenance, Declarant or the Committee may, after given thirty (30) days written notice and at the Owners' expense, effect such repairs and maintenance as it deems necessary in its judgment to maintain the standards of the Property. Entry to effect such repairs and maintenance shall not be deemed a trespass, and the Owners shall be liable for all costs incurred in connection with the repairs and maintenance as provided herein.

**10. WATER AUGMENTATION PLAN REQUIREMENTS:**

A. All Lots in the Project shall be subject to the requirements as set forth in the decrees in Case No. 00 CW 175 (Water Division No. 1) and 00 CW 85 (Water Division No. 2) which are recorded at Reception No. 205001738 of the El Paso County records (the "Augmentation Plan").

B. Each Owner shall be responsible for obtaining a permit for a well to provide a water supply to his dwelling and for constructing and operating such well. Each well will be limited to an annual amount of 0.441 acre-feet per year for in-house use in one single family residence (.027 acre-feet) and irrigation (0.171 acre-feet/limited to irrigation of 3000 square-feet of home lawn and garden). All wells shall be constructed and operated in compliance with the Augmentation Plan and the permits for such wells. Declarant shall convey by deed to individual Owners sufficient water rights in the Dawson Aquifer (0.441 acre-feet per year and 132.3 acre-feet total) underlying each Lot to satisfy El Paso County's 300 year water supply requirements as provided in the County's requirements and the Augmentation Plan.

C. Each Owner will be required to log a well, unless a waiver is obtained, as it is constructed and a well meter shall be installed so as to provide information necessary to the Augmentation Plan upon written request from the Association. Failure to provide a well meter reading within 30 days written request shall be cause for fines to be levied in the amount of \$500.00 plus \$100.00 per day until the reading is provided to the Association. Each Owner shall maintain the meter and the well and shall allow the Association or its agents to enter the Owner's Lot to read and inspect the meter and well.

D. Each Owner shall provide any information necessary to enable any reports required under the Augmentation Plan to be filed in a timely manner. Each Owner hereby acknowledges that all connections for water within a Lot shall be required to be located after the water meter to ensure complete and accurate measuring of water usage. Such connections include, without limitation, all connections for exterior water hoses, sprinklers and other outside water use. The Association shall have the authority to require each Owner to locate such connection on his landscape plan and shall have the right to enter each Lot from time to time to inspect such connections.

E. Declarant hereby assigns to the Association any and all right, interest and responsibilities under the Augmentation Plan. By this assignment to the Association, Declarant shall be relieved of any responsibility for the administration or enforcement of the Augmentation Plan or the operation of the augmentation water supply, and the Association shall be obligated to perform the same. By such assignment, the Association shall hold such interest in the Augmentation Plan and augmentation water supply for the benefit of all Owners, shall assume the responsibility for administering and enforcing the Augmentation Plan, and shall take all necessary actions to ensure protection of water and well rights for all Owners pursuant to the Augmentation Plan, including pursuing and maintaining all further action required under the Augmentation Plan. Failure of the Association or the Owners to comply with the

terms of the Augmentation Plan may result in an order from the Division Engineer's office to curtail or eliminate pumping of the Owners' wells. Declarant shall convey by recorded deed to the Association 16.4 acre-feet per year and 4,920 acre-feet total of the reserved Arapahoe and 19,400 acre-feet of the Larimer-Fox Hills Aquifer water rights required under the Augmentation Plan.

F. The water rights adjudicated in the Dawson Aquifer which are subject to the Augmentation Plan, and also the Arapahoe and Laramie-Fox Hills Aquifers which are part of the Augmentation Plan as referenced in Paragraph E above, shall be appurtenant to the Cathedral Pines Subdivision and to Declarant's Lots, and may not be separately sold, bartered, liened or encumbered.

G. Present and future retention structures may be placed in any area shown as a Common Area or "drainage easement" or "flood plain" on the plat. The purpose of the facilities is to maintain historic drainage flows within the Project property, because dwelling and road construction may slightly increase drainage flows. Additionally, no structures or landscaping or other materials shall be placed within any designated flood plain area as shown on the plat or any drainage easements unless approved in writing by the Committee. It may be necessary to place driveways across certain portions of the flood plain, and Owners may be given permission to do so by the Committee, provided that the driveway is constructed in a manner that will not impede drainage flows. Owners are hereby put on notice that drainage ways (even smaller drainage swells in lots) can have significant volumes of water during storms, and Owners are strongly encouraged to construct any structures, away from such drainage ways, whether identified on the plat or not. Any drainage or flood plain area and any structures on those areas shall be repaired and maintained by the Owner of said Lots for augmentation purposes. Owners shall be responsible for their actions or omissions in relation to said drainage easements and drainage areas. The Declarant, El Paso County, Soil Conservation entities, the Association, and their successors and assigns reserve the right to enter upon the Lots and the easements and drainage areas periodically for purposes of inspection and related matters.

H. No changes or deletions to this Paragraph may be made which may alter or in any manner compromise the Augmentation Plan or the water rights of either Declarant or the Owners, without the prior written approval of all Owners and Declarant.

11. **GENERAL DEVELOPMENT PLAN.** The Declarant has obtained the required approval of El Paso County for the PUD Development Guidelines, a copy of which is recorded at Reception No. 206001726, El Paso County, Colorado (the "Development Guidelines"). Each Owner and the Association shall comply with the Development Guidelines including, without limitation, the wildfire mitigation requirement, and the Association shall enforce the Development Guidelines, as well as the Design Guidelines and the Augmentation Plan, as a part of this Declaration.



12. **ARCHITECTURAL CONTROL AND DESIGN:**

A. **Purpose.** The purpose of this Declaration is to assure, through intelligent architectural control of building design, placement, materials, colors and construction, so the Project shall become and remain an attractive residential community, and to uphold and enhance property values.

B. **Architectural Control Committee:**

(1) **Composition:** The Committee is composed of Declarant, its heirs, successors or assigns, represented by three (3) persons or more, who shall be appointed by Declarant during the Period of Declarant's Reserved Rights; however, at its option and choice of time, Declarant may relinquish control of the Committee to the Association at any time. After the Association controls the Committee, the Committee shall be appointed by the Association's Board of Directors, except that the Board itself may serve as the Committee. The Members of the Committee need not be members of the Association.

(2) **Terms:** Members of the Committee shall serve two year terms, provided however, any member appointed by the Declarant may be removed by the Declarant and any member of the Committee appointed by Board may be removed by a majority (51%) vote of the Board. In the event of the death or resignation of any member of the Committee, the Declarant or the Board shall have full authority to designate a successor member to fill the remaining term.

(3) **Non-Liability:** Neither the Declarant, the Committee, the Association, nor any persons acting therefor, shall be liable in damages or otherwise to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests, or with regard to any other actions taken by the Committee or the Association under authorization of the provisions hereof. The Committee shall not have any responsibility or liability for construction quality nor compliance with building codes or governmental requirements. The Association shall indemnify the Committee to the fullest extent allowed by law or statute.

(4) **Records retained by Committee:** The Committee shall maintain records of the election of its members. It shall retain a complete file of applications, Home plans, and location sketches until all structures applied for thereunder have been completed and for three (3) years thereafter. If requests for additions are made, both the original plans and plans for said additions will be kept until said additions are completed.

(5) **Compensation:** Compensation, including without limitation, reimbursement of expenses and/or abatement of expenses, may be received by members of the Committee for services performed pursuant to this Declaration to the extent approved by the Board. The Committee may hire an independent contractor to review the applications and enforce this Declaration and the Design Guidelines.

C. **Procedure for Obtaining Approval of Plans:** All plans shall be submitted to the Committee as required by the Design Guidelines in accordance therewith, together with all forms, fees and other requirements.

D. **Authority of Committee:**

(1) The Committee is empowered to adopt the Design Guidelines and to approve in writing or disapprove all plans for construction, site locations, clearing, plantings, fencing, additions to existing structures, remodeling that alters the exterior, replacement of roofs, changing of house colors and any other changes in the natural environment of Lots or appearance of Homes in the Project. Disapproval of submissions by the Committee may be based upon any grounds, including purely aesthetic grounds. If such submissions are disapproved, the Committee shall give written reasons for said disapproval to applicant. The Committee may make other reasonable requirements of the applicant including, but not limited to, submission of additional plans, specifications, and material samples, and may require such changes as it deems necessary to conform to the overall intent as herein expressed.

(2) The Committee shall have the right to alter site locations as shown on the submitted site plan, or deny construction if, in the opinion of the Committee, the proposed site locations will unduly interfere with adjoining Lots as to view, intrusions or sound or light, sanitation, proximity or type of construction, actual or proposed, or unduly damage the natural growth and terrain.

(3) The Committee may prohibit the construction of fences, Homes or any other improvements to any Lot, and is empowered to order their removal if written application was not made by the Owner, or if approval was not granted in accordance with this Declaration, or if actual construction is different from the approved plans or if the location of the structure is different than that approved by the Committee.

(4) The Committee may require a compliance deposit to be made prior to commencement of construction upon any Lot. Additionally, the Committee may require the submission of a non-refundable architectural review fee in an amount set forth in the Association's Design Guidelines, along with each submittal of plans to the Committee to defray the administrative costs of the review process. Any unused portions thereof shall be deposited into the general funds of the Association.

(5) The Committee, upon written request, shall have the authority to grant in writing, variances from the provisions of this Declaration as they apply to construction and setbacks, in cases of irregularly shaped Lots, unusual terrain, highly desirable building sites near Lot lines, or other conditions wherein the strict enforcement of this Declaration would result in unusual hardship. The Committee shall be the sole and exclusive judge of whether or not such hardship exists. It is the intent of this Declaration that the Committee and the Board shall exercise broad discretionary powers hereunder and its decisions

shall be final and conclusive. The Board shall resolve all questions and interpretation and this Declaration shall be interpreted in accordance with their general purpose and intent as herein expressed.

E. **Architectural Design and Requirements:** In addition to the other requirements hereof, the architectural design requirements shall be set forth in the Design Guidelines, which may be enforced as if contained in this Declaration.

F. **Penalty Fee for Violations:** Written application for approval of plans shall be made by the Owner of the Lot (not the builder) and the Owner shall be held responsible for any violations of this Declaration which are committed by the builder or other persons engaged by the Owner. If any excavation, cutting of trees, or construction is commenced by an Owner or Owner's representatives prior to receipt of written approval by the Committee, then the Owner agrees to pay an immediate fine of One Thousand Dollars (\$1,000.00) as described in Paragraph 23 hereof. Purchasers of Lots in the Project agree to make such payment and understand that a lien shall be filed against their Lot if they do not, as provided in Paragraph 23 hereof. Further, if legal action is necessary to enforce this Declaration, Owners agree to pay all expenses and to include reasonable legal fees incurred by the Committee or the Association in collection of said fine. Payment of said fine does not preclude other or further action by the Committee to disapprove plans in areas in which clearing or construction has begun.

13. **EASEMENTS:** Easements for installation, operation and maintenance of utilities, roadways, trails, drainage facilities and such other purposes as may be designated by Declarant and/or governmental authorities are reserved on, over and under a strip of land twenty feet (20') wide along all front Lot lines, twenty feet (20') along all side and rear Lot lines, and twenty feet (20') along all the Project exterior boundaries, except as otherwise shown on the recorded plat. In addition, Declarant reserves the right to create and grant easements in the setbacks described in the Design Guidelines. If an Owner buys contiguous Lots, easements and setbacks shall apply unless the Owner formally vacates the common lot lines through the appropriate government agencies. Owners are responsible for providing access to the Association's utility companies and other governmental agencies which have reason to use said easements and, if damage is done to fences, shrubbery or plantings in said easements, Owners have no recourse against said agencies, the Declarant, the Association or the Committee. No building or similar structure may be placed within the easements, unless vacated by the agencies involved and approved by the Committee. It is recommended that such easements be kept open and unfenced.

14. **OBSTRUCTIONS TO VISION AT INTERSECTIONS:** No fence, wall, hedge, tree, shrub planting or other structure which unduly obstructs lines-of-sight shall be placed or permitted to remain on any corner formed by the intersections of streets. The Committee shall be the sole and exclusive judge of whether said obstruction exists or may exist or whether a possible safety hazard may exist.

15. **REDIVISION:** Further subdivision of Lots in the Project is not permitted, except that this covenant shall not preclude any further subdivision or replatting by Declarant or any minor Lot line

adjustments to resolve building hardships, as long as such adjustments meet all legal requirements and are approved by Declarant and the Committee in writing. If a Lot line had been vacated, the affected property may not be again redivided into separate Lots without complying with all of the requirements of any governmental entities and obtaining the prior written approval of the Declarant and the Committee.

16. **NUISANCES:**

A. Owners shall maintain their Lots in a clean, attractive condition, and builders shall keep construction sites clean and free of trash and debris, which shall be placed in closed dumpsters. Nothing shall be done or permitted on any Lot which may be or become an annoyance or nuisance to the neighborhood. No noise or any noxious or otherwise offensive activities or commercial businesses or trades shall be carried on upon any Lot. No activity shall be permitted which will generate a noise level sufficient to interfere with the reasonable quiet enjoyment of the persons on any adjoining or nearby Lots.

B. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire alarm devices used exclusively for security purposes, shall be located, used or placed on any Improvement or within any Lot, without the prior written approval of the Committee. With the prior approval of the Committee, an Owner may install exterior stereo speakers, provided that the sound levels from such speakers are not objectionable to neighbors.

C. Trail bikes, minibikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise causing vehicles shall not be operated within the Project other than on County roads.

D. No hunting of any kind and no discharge of firearms or fireworks shall be permitted in the Project, without the prior written consent of the Board.

E. There shall be no outdoor fires on any Lot or on the Common Areas, except fires in barbecue, braziers and outside fireplaces contained within facilities or receptacles intended for such purpose. Any outside facilities or receptacles intended for use as a fireplace or to contain fires shall be in compliance with the Design Guidelines and shall be subject to approval by the Committee. In no event shall any such facility or receptacle be used for burning of trash. Any such facilities or receptacles shall be subject to the Design Guidelines, which may include limitations on the time and manner in which fires will be permitted and may permit the Association to impose total outside fire bans when deemed appropriate by the Association. No Owner shall permit any condition on such Owner's Lot which creates a fire hazard or is in violation of fire prevention regulations adopted by El Paso County or any governmental authority having jurisdiction and control over outside burning. If any ban on outdoor fires is at any time imposed by the County or a governmental authority having jurisdiction and control over outside burning, such ban shall be observed within the Property.

17. **DRILLING:** No oil drilling, oil development operations, oil refining, quarry or mining operations of any kind shall be permitted on or in any Lot, nor shall gas or oil wells, tanks, tunnels,

mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot. No Lot shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind. The foregoing is not intended to prohibit temporary drilling to obtain samples in connection with the investigation of soils or temporary drilling necessary in the construction of Improvements or wells.

18. **VEHICLE PARKING AND EQUIPMENT:** All parking within the Property shall comply with the Design Guidelines. The Committee is empowered to impose fines, take legal action, and/or remove and tow vehicles, at their owner's expense, which fail to comply with Design Guidelines.

19. **UTILITIES:**

A. All utility lines, including service lines of whatsoever kind or nature, shall be underground on all Lots within the Project, excepting that existing poles and lines shall not be removed and placed underground by Declarant.

B. The water supply for the Project shall be provided by means of wells, to be constructed and operated in accordance with the Augmentation Plan described in Paragraph 10 above. Each Owner shall be responsible for the construction and maintenance of his own well and for the connection of the well to his Home. No Owner may construct a well or initiate any water right within the Project except through a well approved pursuant to the Augmentation Plan.

C. Sewer service for the Project will be provided by means of individual septic systems, tanks and leach fields, to be constructed and maintained by each Owner. No systems of the evapotranspiration type shall be permitted unless required by the El Paso County Health Department or other governmental agency of proper jurisdiction and approved under the Augmentation Plan. All septic systems and leach fields shall require the prior approval by the Committee pursuant to Paragraph 12 of this Declaration.

20. **ANIMALS:** No animals, poultry or livestock of any kind (including exotic animals) shall be housed, raised or kept on any Lot except as permitted and regulated by the Design Guidelines.

21. **RIGHT OF DECLARANT:** Notwithstanding any contrary provision of this Declaration, the Declarant, its successors or assigns, expressly reserves the following rights and privileges for the Period of Declarant's Reserved Rights, which may or may not be exercised in the Declarant's sole discretion:

A. The Declarant may complete or make improvements indicated on the plats or planning documents or otherwise necessary or desirable to complete construction of the Project and

related Improvements, including without limitation, trails, roads and Improvements on the Common Areas and/or parklands.

B. The Declarant may install, assign and/or maintain signs on the Property to advertise the Project.

C. The Declarant may grant, use and permit others to use easements and rights as may be reasonably necessary for the purpose of making, repairing, maintaining and replacing any utilities or other Improvements within the Property or otherwise performing other rights under the Declaration, including without limitation, easements through the Common Area and/or through the parklands.

D. The Declarant may establish, from time to time, by dedication or otherwise, access, trail, utility and other easements for purposes including but not limited to streets, paths, walkways, drainage, recreation areas, parking areas, roads, trails, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Declarant, the District, the County and/or Owners within the Project.

E. The Declarant may enter into, establish, execute, amend, and otherwise deal with contracts, assignments, and agreements for the use, lease, repair, maintenance or regulation of the Common Area, community center, parklands and/or recreational facilities, which may or may not be a part of the Project for the benefit of the Owners and/or the Association.

F. The Declarant may appoint or remove any officer of the Association or any director of the Association and to appoint or remove any member of the Architectural Control Committee.

G. The Declarant may amend the Declaration (including without limitation any exhibits thereto), the Articles of Incorporation, the Bylaws and/or the Design Guidelines in connection with the exercise of any development rights or other rights, and to require that any amendments of said documents be approved in writing by Declarant prior to adoption.

H. The Declarant may amend any plat for the Property in connection with the exercise of any development rights or other rights, to change Lot lines or subdivide any portion of the Property into Lots and Common Areas.

I. Notwithstanding any contrary provisions of this Declaration or any other document, the Declarant hereby reserves the right, but without approval or vote of the Members, to amend this Declaration, the Design Guidelines, the Articles of Incorporation and/or the Bylaws, as may be necessary to correct typographical errors or make clarifications or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or the Department of Veterans Affairs or any other lender so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Property, and each Owner and

Mortgagee by accepting a deed, mortgage or other instrument affecting a lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's name and Mortgagee's name and recording any such amendments to this Declaration and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments.

J. The Declarant may enter into agreements with the purchaser of any Lot or Lots (without the consent of the purchasers of other Lots or adjoining or adjacent property) to deviate from those conditions, restrictions, limitations and agreements herein set forth, and any such deviation, which shall be manifested by agreement in writing, shall not constitute a waiver of any such condition, restriction, limitation, or agreement as to the remaining Lots in the Project, and the same shall remain fully enforceable on all other Lots located in the Project by Declarant, its successors or assigns, and the Association or other Owners, except as against the Lot where such deviation is permitted.

K. During the Period of Declarant's Reserved Rights, the Declarant reserves the right to expand the Project, without approval of the Owners or Mortgagees, to include additional real property and improvements. Such expansion may be accomplished by recording a supplement or supplements to this Declaration with the Clerk and Recorder of El Paso County, Colorado containing a legal description of the real property thereby annexed and any additional provisions deemed appropriate by Declarant, which may annex the property in phases, but shall not be liable or obligated to annex any property. Upon annexation, the additional property and the owners thereof shall be bound by this Declaration, the Association's Articles of Incorporation, Bylaws and Design Guidelines, and any additional provisions in the annexation supplement. By accepting a deed to any Lot or a Mortgage, each Owner and Mortgagee grants Declarant a right to expand the Project and consents to such annexation expanding the Project and will not oppose or hinder Declarant's right to expand and annex additional real property and improvements or to develop adjoining properties and improvements. Declarant also reserves the right to deed open spaces or Facilities to the Association or governmental entities and to create and extend any trail easement or any other easements to and upon any real property annexed to the Project.

L. The Declarant may transfer, assign or delegate any right reserved or granted by this Declaration, law or statute to any person or party to the fullest extent permitted under this Declaration, law or statute.

M. Any and all other rights of Declarant as set forth in this Declaration, by law or statute are hereby reserved to Declarant. In the event of any conflict, the broadest right reserved by Declarant shall prevail.

22. **TERMS OF COVENANTS:** These covenants and restrictions are to run with the land and shall remain in full force and effect for twenty-five (25) years from the date on which this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten

(10) years unless revoked as provided herein. This Declaration may be revoked or amended at any time by an instrument signed by a majority of the Owners of the Lots (one vote per Lot), except that any amendment of any provision hereof shall also require the prior written approval of the Declarant during the Period of Declarant's Reserved Rights. All amendments shall be certified by the Association's President and Secretary as complying with this Paragraph, and the certified amendment shall be recorded in the real property records of El Paso County. The covenants and restrictions regarding water in Section 10, Paragraphs A – H shall not terminate unless the requirements of the Water Decree are also terminated by order of the appropriate Water Court. Notwithstanding any provision to the contrary, the covenants in Section 10 regarding water may be amended in the manner provided for amendments to other covenants and restrictions, provided that the amendments are consistent with the requirements of the Water Decree or any Water Court-approved amendments thereto and further provided that prior written approval of the proposed amendment is obtained from the Board of County Commissioners of El Paso County.

23. **ENFORCEMENT:**

A. **General Enforcement:** Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages. This Declaration is intended for the use, convenience and protection of all Owners, the Declarant and the Association. The Declarant, the Committee, any Owner or the Association may act to enforce this Declaration, provided however, none of the foregoing, are obligated to do so. In any enforcement of the Declaration, whether by lawsuit or lien, the Declarant, the Committee, the Owner or the Association or all of them shall be entitled to collect their attorneys fees and expenses of enforcement from the non-complying Owner or party. The Declarant and the Committee, together or separately, or through authorized agents or employees, further reserve the right, whenever there shall have been an apparent violation of one or more of the provisions of this Declaration and after ten (10) days notice to Owner, to enter upon the Lot where such violation exists and summarily abate or remove the same at the expense of the Owner, and such entry and abatement or removal shall not be deemed a trespass. Owners expressly agree to abide by injunctions without necessity of bond, in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay and agree to pay all costs of the enforcement proceeding, including without limitation, reasonable attorneys' fees. The Board may impose daily or lump sum fines for any violation of this Declaration or the Design Guidelines or both; such fines shall be imposed after written notice and opportunity for a hearing and may be enforced by legal action, including without limitation recovery of the Association's attorneys fees and expenses, or by lien or both. The failure to enforce any right, reservation, restriction; or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way effect any of the other restrictions, but they shall remain in full force and effect.



B. **Liens:** Nonpayment of any fines or any sums incurred by Declarant or the Committee or the Association in enforcing correction of a violation of this Declaration or in abatement or removal as covered herein shall result in a recorded lien being placed upon the Lot or Lot interest owned by the violator(s), including improvements thereon; said lien shall bear interest at eighteen percent (18%) per annum. Declarant or the Committee or the Association is empowered to file such lien if, within thirty (30) days of written notification to Owner of amount due, the Owner has not made payment in full. Such lien shall run with the land. Continued failure to pay such liens may result in foreclosure on the entire Lot in order to enforce payment as provided by Paragraph 7 hereof.

C. **Design Guidelines:** The Committee may adopt, amend, repeal and enforce such Design Guidelines as may be deemed necessary or desirable in its discretion with respect to the interpretation and implementation of this Declaration and matters related thereto, the operation of the Association, the use and enjoyment of the Project including, without limitation, Design Guidelines to enforce the Augmentation Plan, the Development Guidelines, and related matters, provided however, such Design Guidelines shall not affect, impair or impact Declarant's rights hereunder. Any such Design Guidelines should be applied as determined by the Board in its sole discretion. Design Guidelines shall be effective upon adoption by resolution of the Board of Directors. Each Owner and other person shall comply with such Design Guidelines and shall see that family members, contractors, guests and invitees of such Owner comply with the Design Guidelines. Design Guidelines shall have the same force and effect as if they were set forth in and were part of this Declaration. The Committee shall have power and discretion to interpret this Declaration, and any such interpretation shall be final, absolute and binding on each Owner, unless made with malice or wanton disregard for an Owner's rights, and except as to the Declarant's rights hereunder. Any Design Guidelines shall only be adopted as Design Guidelines.

24. **NOTICES:** Any notice required to be given to any Owner or other person under the provision of this Declaration shall be deemed to have been properly given when mailed, post paid, to the last known address of the record owner of the Lot in which the member has an interest.

25. **DECLARANT MAY ASSIGN:** The Declarant, its successors or assigns, may assign any and all of its rights, powers, obligations and privileges under this instrument to any other corporation, association, committee or person.

26. **PROPERTY RIGHTS IN THE COMMON AREA:**

A. **Title to the Common Area.** Subject to the limitations and restrictions of this Declaration, title to the Common Area shall be conveyed by the Declarant to the Association in fee simple or granted by easement. Owners acknowledge and agree that Declarant may retain or convey certain open space areas to private or public parties or entities for use as a park, recreation area and related facilities, but absolutely no representations or statements have or will be made by Declarant that such Facilities will be constructed; alternatively, Declarant may, at its sole option, convey such areas to the Association as Common Areas.

B. **Non-Partition of Common Area.** The Common Area shall not be subject to partition by the Owners. By the acceptance of his deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Area. Each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this provision may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney fees, costs and other damages the Association incurs in connection therewith. It is agreed by all Owners that the foregoing restrictions are necessary to preserve the rights of all Owners regarding the operation and management of the Common Area.

C. **Owners' Common Area Easement of Enjoyment.** Subject to the limitations and restrictions of this Declaration, every Owner shall have an equal, nonexclusive right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass automatically with the title to every Lot without the necessity of additional reference.

D. **Extent of Owners' Common Area Easement.** The rights and easements of enjoyment created hereby in the Common Area shall be subject to the following:

(1) The right of the Association to enforce the restrictions contained in this Declaration and to promulgate and publish Design Guidelines with which every Owner, his family members, guests, tenants, and contractors shall strictly comply, including, but not limited to, the right of the Association to establish reasonable charges for the use of all or a portion of the Common Area if deemed necessary;

(2) The right of the Association, as provided in its Articles or Bylaws, to suspend an Owner's voting rights and the right to the use of the Common Area for any period during which such Owner is in default under this Declaration, including without limitation the non-payment of any assessment levied by the Association, and to make such suspensions for a period not to exceed sixty (60) days for any infraction of its published Design Guidelines and regulations;

(3) The right of the Association to close or limit the use of the Common Area while maintaining, repairing and making replacements in the Common Area;

(4) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes, subject to such conditions as may be imposed by the public entity; for example, if any interior streets are private and have not been built to city or county specifications and so might not be accepted by them;

(5) The rights of the Association as set forth in the Association's Articles of Incorporation and Bylaws, including, without limitation, to borrow money for the purpose of improving the Common Area and to mortgage said property as security for any such loan;

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

(7) The rights of the Declarant as set forth in this Declaration, and notwithstanding any provision of this Declaration to the contrary, Declarant reserves the right to create, grant and transfer non-exclusive easements in, under, over, across, through, and upon the Common Area and the Property for the purpose of installing, maintaining, repairing and replacing any utilities or related services, including but not limited to any gas, electric, water or sewer line, mains or laterals, any telephone and cable television lines, any master television antenna system, any drainage or retention areas, or for other public purposes consistent with the intended use of the Project under this Declaration. The foregoing easements shall include, without limitation, the right of ingress and egress, the right to erect and maintain the necessary pipes, wires, poles and other equipment and the right to enter into agreements relating to such utility service and easements; all of which shall be binding upon the Association and the Owners. Should any person or party furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant shall have the right to grant such easement on the Common Area or the Property or both without conflicting with the terms hereof. The foregoing easements shall be in addition to any other recorded easements on the Property, including, but not limited to, any easements granted in the recorded subdivision map. The rights reserved in this Paragraph shall pass from the Declarant to the Association upon the earlier of when the Declarant assigns such rights to the Association or when the Declarant no longer owns any Lot or real property in the Project, and any and all of the covenants, terms, provisions, rights and duties arising from such easements granted by the Declarant and any related agreements shall thereupon pass to the Association and be assumed by it in place of the Declarant. Any consideration for any such easement shall be delivered to and become the property of the Association, whether the grant of easement was made by the Declarant or by the Association.

E. **Delegation of Use.** Owners may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of their family, their tenants, their guests, or contract purchasers who reside on their Lots. Each Owner shall, to the maximum extent permitted by law, be liable for any damage done to the Common Area by his family, tenants, guests, or contract purchasers and for any breach of the Association's Design Guidelines and regulations by such persons.

F. **Non-Dedication of Common Area.** Declarant, in recording this Declaration, has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. Nothing contained in this Declaration shall be deemed to dedicate the Common Area or any open spaces for use by the general public, unless conveyed by the Declarant or public entity.

G. **Association Maintenance.** The Association shall provide all repair, replacement, improvement and maintenance of the Common Area and all improvements located thereon, including without limitation, if applicable, any landscaping, sprinkler system, any parking, roadways, driveways, clubhouse, utility lines, ponds, recreational facilities, trail easements, any drainage structures or facilities or public improvements to the extent applicable and any light fixtures, sidewalks, and pathways, or other improvements located on the Common Area.

27. **COMMON INSURANCE.** Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Association shall obtain and maintain at all times, to the extent reasonably obtainable, insurance policies on the Common Area, and any other Common Areas and activities, covering the following risks:

A. **Property.** Property insurance on the Common Area for broad form covered causes of loss.

B. **Public Liability.** Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and Common Areas and activities, and deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees, agents, and all persons acting as agents. The Declarant shall be included as an additional insured in such Declarant's capacity as an Owner and Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Area and Common Areas and activities.

C. **Other Insurance.** In addition, the Board of Directors may obtain any other insurance against such other risks, of a similar or dissimilar nature, which the Board shall deem appropriate with respect to the Project.

28. **GENERAL PROVISIONS.**

A. **Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration.

B. **Violations of Law.** Any violation of any federal, state, municipal or local law, ordinance, rule or regulation, pertaining to the ownership, occupation or use of any property within the Property, is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

C. **Remedies Cumulative.** Each remedy provided under this Declaration is cumulative and not exclusive.

D. **Limitation on Liability.** The Association, the Board of Directors, the Committee, Declarant, and any member, agent or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent set forth in the Declaration, the Association's Articles of Incorporation and Bylaws and as set forth in the laws and statutes of the State of Colorado, including without limitation, circumstances in which indemnification is otherwise discretionary under Colorado law.

E. **No Representations or Warranties.** No representations or warranties of any kind, express or implied, shall be deemed to have been given or made by Declarant or its agents or employees in connection with any portion of the Property, or any Improvements thereon, as to its or their physical condition, zoning, compliance with applicable laws, or fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in a writing signed by Declarant.

F. **Liberal Interpretation.** The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes of this Declaration. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

G. **Governing Law.** This Declaration shall be construed and governed under the laws of the State of Colorado.

H. **Severability.** Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability or partial validity or partial enforceability or any provision or portion thereof shall not affect the validity or enforceability of any other provision.

I. **Number and Gender.** Unless the context requires a contrary construction, as used in this Declaration, the singular shall include the plural and the plural, the singular and the use of any gender shall include all genders.

J. **Captions for Convenience.** The titles, headings and captions used in this Declaration are intended solely for convenience of reference and not intended to affect the meaning of any provision of this Declaration.

K. **Conflicts in Documents.** In case of any conflict between this Declaration and the Articles of Incorporation or the Bylaws of the Association, this Declaration shall control. If there is a conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

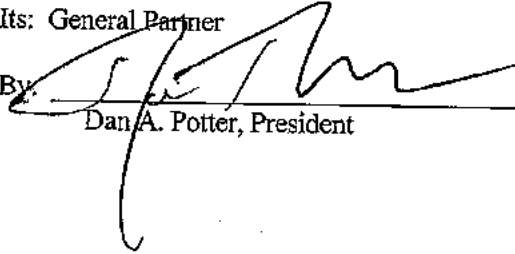
L. **Interpretation of Declaration.** If any doubt or questions shall arise concerning the true intent or meaning of any provision of this Declaration, the Declarant, during the Period of Declarant's Reserved Rights, and thereafter, the Committee, shall determine the proper construction of the provisions in question and shall set forth in a written instrument duly acknowledged and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect, and application of the provision. This determination will thereafter be binding on all parties, except the Declarant unless it consents thereto in writing.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on this 3<sup>rd</sup> day of January, 2005.

CATHEDRAL PINES BY KING'S DEER, LLLP, a Colorado limited liability limited partnership.

By: The Firetree Corporation,  
a Colorado corporation

Its: General Partner

By:   
Dan A. Potter, President

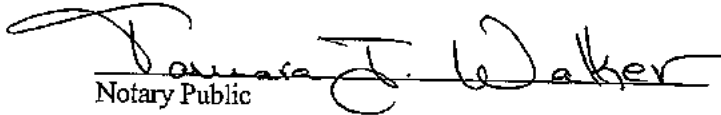
STATE OF COLORADO )  
 ) ss.  
COUNTY OF EL PASO )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of January 2005, by Dan A. Potter, as President of The Firetree Corporation, a Colorado corporation, as General Partner of CATHEDRAL PINES BY KING'S DEER, LLLP, a Colorado limited liability limited partnership.

Witness my hand and official seal.

My Commission Expires 04-19-05

My commission expires:

  
Notary Public

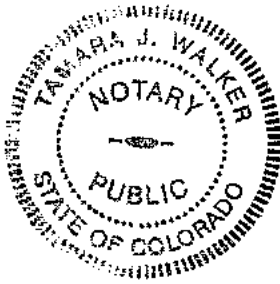






EXHIBIT A

CATHEDRAL PINES SUBDIVISION FILING NO. 1

A TRACT OF LAND BEING A PORTION OF THE WEST HALF OF SECTION 1 AND THE EAST HALF OF SECTION 2, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6TH P.M., EL PASO COUNTY, COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 2, AS MONUMENTED BY A 3-1/4" ALUMINUM CAP "LADD ENGINEERING PLS 9132" AND DATED 2000, THENCE S88°55'55"W ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 2 A DISTANCE OF 1708.18 FEET TO THE SOUTHEAST CORNER OF THAT TRACT OF LAND DESCRIBED AT RECEPTION NO. 200027778 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER; THENCE N01°11'44"W ON THE EAST LINE OF SAID TRACT A DISTANCE OF 1583.77 FEET TO THE NORTHEAST CORNER THEREOF; THENCE S88°55'55"W ON THE NORTH LINE OF SAID TRACT A DISTANCE OF 965.20 FEET TO THE NORTHWEST CORNER THEREOF AND A POINT ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 2; THENCE N01°11'44"W ON SAID WEST LINE OF THE SOUTHEAST QUARTER A DISTANCE OF 674.88 FEET;  
THENCE N88°48'16"E A DISTANCE OF 10.30 FEET;  
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 530.00 FEET, THROUGH A CENTRAL ANGLE OF 13°03'22", AN ARC DISTANCE OF 120.77 FEET, THE LONG CHORD OF WHICH BEARS S84°40'03"E A DISTANCE OF 120.51 FEET;  
THENCE N11°51'38"E A DISTANCE OF 172.59 FEET;  
THENCE N83°41'58"E A DISTANCE OF 500.00 FEET;  
THENCE S70°23'09"E A DISTANCE OF 684.00 FEET;  
THENCE S79°46'39"E A DISTANCE OF 297.00 FEET;  
THENCE N55°48'41"E A DISTANCE OF 264.00 FEET;  
THENCE N89°18'49"E A DISTANCE OF 406.51 FEET;  
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 810.00 FEET, THROUGH A CENTRAL ANGLE OF 08°45'47", AN ARC DISTANCE OF 123.88 FEET, THE LONG CHORD OF WHICH BEARS N21°35'09"W A DISTANCE OF 123.76 FEET;  
THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 56°50'55", AN ARC DISTANCE OF 24.80 FEET, THE LONG CHORD OF WHICH BEARS N45°37'43"W A DISTANCE OF 23.80 FEET;  
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 160.00 FEET, THROUGH A CENTRAL ANGLE OF 304°56'07", AN ARC DISTANCE OF 851.54 FEET, THE LONG CHORD OF WHICH BEARS N78°24'53"E A DISTANCE OF 147.92 FEET;  
THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 25.00 FEET, THROUGH A CENTRAL ANGLE OF 69°31'46", AN ARC DISTANCE OF 30.34 FEET, THE LONG CHORD OF WHICH BEARS S16°07'03"W A DISTANCE OF 28.51 FEET;  
THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 690.00 FEET, THROUGH A CENTRAL ANGLE OF 06°20'22", AN ARC DISTANCE OF 76.35 FEET, THE LONG CHORD OF WHICH BEARS S21°49'01"W A DISTANCE OF 76.31 FEET;  
THENCE N65°00'48"E A DISTANCE OF 211.27 FEET;  
THENCE S67°51'01"E A DISTANCE OF 195.00 FEET;  
THENCE N58°12'43"E A DISTANCE OF 204.05 FEET;  
THENCE S57°14'14"E A DISTANCE OF 376.14 FEET;  
THENCE N40°28'55"E A DISTANCE OF 188.25 FEET;  
THENCE N61°11'36"E A DISTANCE OF 345.00 FEET;  
THENCE N50°20'10"E A DISTANCE OF 386.12 FEET;  
THENCE S83°48'19"E A DISTANCE OF 296.00 FEET;  
THENCE S56°05'26"E A DISTANCE OF 306.00 FEET;  
THENCE S13°03'59"E A DISTANCE OF 360.00 FEET;

THENCE S30°22'18"W A DISTANCE OF 436.00 FEET;  
THENCE S50°52'55"W A DISTANCE OF 398.00 FEET;  
THENCE S38°23'20"W A DISTANCE OF 79.00 FEET;  
THENCE ON A CURVE TO THE RIGHT HAVING A RADIUS OF 810.00 FEET, THROUGH A  
CENTRAL ANGLE OF 79°58'30", AN ARC DISTANCE OF 1130.62 FEET, THE LONG CHORD  
OF WHICH BEARS S11°37'25"E A DISTANCE OF 1041.04 FEET;  
THENCE S28°21'50"W A DISTANCE OF 166.89 FEET;  
THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 690.00 FEET, THROUGH A  
CENTRAL ANGLE OF 29°03'01", AN ARC DISTANCE OF 349.85 FEET, THE LONG CHORD  
OF WHICH BEARS S13°50'19"W A DISTANCE OF 346.11 FEET;  
THENCE S00°41'11"E A DISTANCE OF 70.18 FEET TO A POINT ON THE SOUTH LINE OF  
THE SOUTHWEST QUARTER OF SECTION 1; THENCE S89°18'49"W ON SAID SOUTH LINE  
OF THE SOUTHWEST QUARTER A DISTANCE OF 1290.50 FEET TO THE POINT OF  
BEGINNING;

THE DESCRIBED TRACT CONTAINS 200.6204 ACRES, MORE OR LESS.

