

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE DEN SUB-ASSOCIATION OF FAIRWAY PINES  
OURAY COUNTY, COLORADO

THIS DECLARATION, is made on the date hereinafter set forth by JDB DEVELOPMENT, INC. hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the County of Ouray and State of Colorado, which is more particularly described as Lots 329 and 330, Fairway Pines Estates, according to the recorded plat thereof; and

WHEREAS, Declarant intends that said real property shall be used for residential purposes while preserving to the extent practical the existing natural environment; and

WHEREAS, Declarant will convey the said property, subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

NOW, THEREFORE, Declarant hereby declares that all of the property above described shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to The Den Sub-association, a Colorado Nonprofit Corporation, its successors and assigns.

Section 2. "Member" shall mean and refer to every person or entity who holds membership in the Association. Any Owner entity

must designate a person to serve as the member representing the Unit owned by such entity.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to a Unit shown on the plat including contract purchasers but excluding those who have an interest merely as security.

Section 4. "Unit" shall mean an individual building site within Lots 329 and 330.

Section 5. "Plat" shall mean and refer collectively to the recorded plat of Lots 329 and 330, Fairway Pines Estates, showing its configuration as a Cluster Lot for eight (8) residential interior units.

Section 6. "Properties" shall mean and refer to the above described real estate.

Section 7. "Board" shall refer to the Board of Directors of the Association.

Section 8. "Common Elements" shall mean all real property, including the improvements thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners, as designated on the Plat or as acquired by the Association from time to time.

**ARTICLE II**

**Property Rights**

Section 1. Roads and Driveways. The streets and/or roads as shown on the Plat are private and every Owner shall have a right and easement of use and enjoyment in and to same. Driveways are exclusively for the use of the Owner whose Unit is connected to a street or road by means thereof

Section 2. Additional Common Elements. The Association may, but shall not be obligated to, construct and maintain when constructed, additional common elements including but not limited to paths, golf cart storage facilities, hot tubs, swimming pools and tennis courts. Every Owner shall have a right and easement of use and enjoyment in and to any such additional Common Elements.

**ARTICLE III**

**Home Owners Association**

Section 1. Functions. The Association shall perform the functions as provided in this Declaration to further the common interest of all Owners. The Association shall be obligated to and

shall assume and perform all functions and obligations imposed on it or contemplated for it under this Declaration, its Articles of Incorporation and By-Laws. The Association shall have all powers necessary or desirable to effectuate these purposes and shall be governed by its By-Laws. It shall not engage in commercial or profit-making activity. The Association shall have the obligation to enforce the terms and conditions of the underlying Declaration of Covenants for Fairway Pines Estates, the recording data for which is more particularly identified in Article V, Section 1 below.

Section 2. Membership.

(a) Every Owner of a Unit is a member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Unit which is subject to assessment.

(b) Upon transfer of fee simple title to a Unit, membership in the Association shall automatically pass to the new Owner.

Section 3. Voting.

(a) Members shall be all of the Owners and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as the Owners of such Unit determine among themselves, but in no event shall more than one vote be cast with respect to any Unit.

(b) Notwithstanding any other provisions expressly or impliedly to the contrary contained in this Declaration, the Articles of Incorporation or By-Laws of the Association, Declarant reserves the right to exercise all the rights, duties and functions of the Board of Directors of the Association until 3/4ths of the Units are sold. During such period of development and sale, the quarterly or monthly assessment for common expenses shall be based upon estimated costs, and may include an estimated amount for contingencies, reserves or sinking funds.

Section 4. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors of the Association subject to Declarant's right of control as described in Section 3(b) above.

Section 5. Rights of Association. The Association shall have and may exercise by and through the Board of Directors, the following rights, to wit:

(a) Rights and privileges given it by this Declaration.

(b) Any other right, privilege or power and authority necessary or desirable to fulfill its obligations under the Fairway

Pines Covenants, Conditions, Restrictions and Easements, this Declaration and the Association's Bylaws, as permitted by law, including, without limiting the generality of the foregoing, the following:

(i) To take such actions as are necessary to provide road maintenance as set forth in Section 6 of this Article III;

(ii) To obtain and pay for accounting, legal and other professional services as may be necessary or desirable;

(iii) To obtain and pay for such comprehensive liability coverage or other insurance as good business practice may necessitate or require;

(iv) Upon request of any Member, to review requests for variances and subject to the Declarant's right to veto, to grant relief from any requirements contained herein if the strict enforcement of same would tend to be unfair to or work an undue hardship on any Member or Members;

(v) To adopt and enforce Rules and Regulations to implement the aforementioned and to ensure the fullest enjoyment of the Properties.

(vi) To establish assessments as required under this Declaration for the purpose of satisfying the expenses incurred or estimated to be incurred by the Association. Assessments owed to the Fairway Pines Owners Association will be the individual responsibility of the Unit Owners.

(vii) To enforce the terms and conditions of this Declaration; and to fine and collect such sums from the Owners in violation hereof according to but not limited to the costs involved in taking the necessary action.

Section 6. Maintenance. The Association shall be obligated to and shall provide for the care, improvement, management, maintenance, repair and replacement of the Common Elements referred to in Article II, Sections 1 and 2. Maintenance when so decided by the Association's Board of Directors, shall include the removal of snow to the extent necessary to ensure full use of any of the roadways.

Section 7. Rental Services. The Association may, at the request of Owners, provide a central reservations system for such of the Units as the Owners may wish to have a rental service provided.

ARTICLE IV

Covenant for Assessments

Section 1. Creation of the Lien and Personal Obligation for Payment of Assessments.

The Declarant, for each Unit owned within the Properties hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments, such assessments to be fixed, established and collected as hereafter provided. The annual and special assessments, together with interest and costs of collection including reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due. The personal obligation for repayment of delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by the new Owner. However, the lien shall continue to encumber the Unit.

Section 2. Establishment of Assessments.

A. Annual assessments shall be fixed annually by a majority vote of the Association's Board of Directors. Annual assessments are intended to defray the budgeted operating expenses of the Association and shall be used exclusively for the purpose of promoting the safety and welfare of the Owners and of the houses situated upon the Units including the maintenance and repair of Common Elements. Annual assessments may include a depreciation and reserve accounts.

B. Special assessments shall require the affirmative vote of Owners of three (3) Lots. Special assessments are intended to provide funds for construction or replacement of Common Elements and for extraordinary expenses of the Association not provided by its annual assessments.

Section 3. Allocation of Assessment. The amount of each Unit's share of the total assessment shall be determined by dividing the total assessment by the total number of Units subject to the assessment.

Section 4. Notice of Assessment. All assessment notices shall be in writing and may be sent by the Association by registered or certified mail to the Member's last known address. All Members shall be required to advise the Association of all changes of address. All assessments shall be payable to the Association within thirty (30) days from the date of delivery or mailing of the notice of assessment.

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Section 5. Effect of Nonpayment of Assessments-Remedies of the Association. The Association may provide for the payment of the assessment in periodic installments. Any assessment installment which is not paid when due shall be delinquent. If the assessment installment is not paid within thirty (30) days after the due date, the assessment installment shall bear interest from the date of delinquency at the rate of 18% per annum. The Association may bring an action at law against the Owner personally obligated to pay the delinquent installments. In addition to such action or as an alternative thereto, the Association shall have a lien against each Unit to secure payment of monies owed to the Association by the Owner of that respective Unit. The Association may file with the Clerk and Recorder of Ouray County, a Statement of Lien with respect to the Unit, setting forth the name of the Owner, the legal description of the Unit, the name of the Association, and the amount of delinquent assessments then owing by the Owner of that respective Unit, which Statement shall be duly signed and acknowledged by the President or a Vice President of the Association, and which shall be served upon the Owner of the Unit by mail to the address of the Unit or at such other address as the Association may have in its records for the Owner of the Unit. Thirty (30) days following the mailing of such notice, the Association may proceed to foreclose the Statement of the Lien in the same manner as provided for the foreclosure of mortgages under the statutes of the State of Colorado. The Association shall be entitled to recover the costs and reasonable attorney's fees incurred with respect to any attempt to collect assessments which are delinquent. No Owner may waive or otherwise escape liability for the payment of assessments provided for herein by non-use or abandonment of his Unit.

Section 6. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first lien mortgage or first lien deed of trust encumbering a Unit.

## ARTICLE V

### Use Restrictions and Design Standards

Section 1. Existing Restrictions. Restrictions on use and governing design standards are as provided in the Fairway Pines Estates Covenant, Conditions, Restrictions and Easements recorded in the Ouray County Public Records on 27th day of March, 1992 in Book 222 at Pages 20-36. These restrictions shall be enforced by the Association.

Section 2. Town House Concept. Declarant intends to construct and sell attached residential structures built on the Units within the concept of town homes and not as condominiums as defined at C.R.S. 38-33-103 reserving, however, the right to change

plans by appropriate amendment to the plot plan if circumstances should require such a restructuring of the project.

Section 3. Party Walls. Any walls shown on the plot plan for the development of the property depicting floor plans for the structure to be constructed on each Unit which are on Unit boundary lines are party walls forming a common wall and boundary for the affected Units. Owners on either side of the wall have the right to use it for the joint purposes of the buildings separated by it. No Owner may make any use, modification or extension of any such party wall which could impair its strength or its structural integrity or injure the foundation or roof of any building. The adjoining Owners shall have cross easements in the wall. If it becomes necessary or desirable to repair or rebuild the whole or any part of the party wall, the repairing or rebuilding expenses shall be born equally by the Owners using the wall. Any repairing or rebuilding of the wall shall be on the same location and of the same size as the original party wall or portion thereof and of the same or similar material of the same quality as that used in the original party wall or portion thereof. Should such repair or rebuilding be occasioned by the default, negligence or other act or omission of one of the adjoining Owners, such Owner shall rebuild or repair and compensate the other Owner for any damages to the property of the other Owner.

Section 4. Shared Propane Facilities. Two or more of the Units may share propane gas distribution tanks. In which case easements on common elements and within Units for the shared use of the propane facility and gas distribution shall be reserved as built even if not specified on the plat or plot plan. The Association shall provide for metering and for an assessment for the purchase of facilities as may be necessary.

Section 5. Shared Sewer Facilities. The Association may assess the Owner the cost providing sewer service to the Units.

## ARTICLE VI

### General Provisions

Section 1. Enforcement. The Association, Declarant, or any Owner, 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 or any amendments thereto. Failure by the Association, Declarant or any Owner, to enforce any such covenant or restrictions shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Membership Succession. Any person, firm, corporation or other entity which shall succeed to the title of any

Owner through foreclosure of a Deed of Trust or other type of security instrument or through other legal proceedings, shall upon issuance of the official deed to any Unit, become thereupon a Member of the Association as Owner and shall succeed to the rights, duties and liabilities of the previous Owner as herein provided. Any other conveyance by an Owner shall pass membership in the Association to the Grantee as herein provided.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, Declarant or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first five years by an instrument signed by the Owners and Mortgagees of not less than fifty percent (50%) of the Units and by not less than seventy-five percent (75%) thereafter. However, Declarant until three Units have been sold to third Party Owners, may veto any such amendment.

Section 4. Attorneys' Fee. In any action brought by the Association, Declarant or any Owner to enforce the provisions hereof, whether legal or equitable, the prevailing party in addition to any other amounts, shall be entitled to a reasonable attorneys' fees and costs.

Section 5. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

Section 6. Binding Effect. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The provisions hereof shall constitute covenants running with the land, burdening and benefitting each and every part of the Properties, and every interest therein. In addition, the provisions hereof shall be enforceable in equity as equitable servitudes upon the land and as covenants in an agreement between Owners.

Section 7. Titles. The titles to Articles or Sections contained herein are for informational purposes only and shall not be deemed determinative of the contents of any such Articles or Sections.

Section 8. Legal Description. The legal description for the individual Units within Lots 329 and 330 shall be as follows: "Cluster Lots 329 and 330, Unit \_\_\_\_\_, Fairway Pines Estates".



IN WITNESS WHEREOF, Declarant has executed this document this  
28th day of JUNE, 1995.

JDB DEVELOPMENT, INC.,  
A Colorado Corporation

By Donald B Frank  
President

STATE OF ~~COLORADO~~ )  
CALIFORNIA ) ss.  
COUNTY OF ORANGE )

The forgoing instrument was acknowledged before me this  
28th day of JUNE, 1995, by Donald Bradley Frank as  
President of JDB Development, Inc., a Colorado Corporation.

Witness my hand and official seal.

My commission expires: JULY 2, 1995

Stacey R. Babcock  
Notary Public

