

**Resolution Adopting the Second Amendments to the
Second Restatement of the
Declaration of Covenants, Conditions, Restrictions and Easements
For Fairway Pines Estates**

The Board of Directors of Fairway Pines Estates Owners Association finds and resolves that:

1. This Second Amendments to the Second Restatement was prepared by the Association's Covenants and Rules Committee and reviewed by the Board of Directors.
2. This restatement adds amendments adopted by the Association's membership.
3. These First and this Second Restatements of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development, are transcribed and consolidated versions of the actual recorded documents listed in paragraph 1 of the Recitals and in Appendix A of the Covenants. While care was taken in the transcription process to eliminate errors, some discrepancies from the original documents may be present. In the event of any conflict between this Second Restatement and its original counterparts or in their legal effect, the original recorded documents shall control and should be referenced for certainty with regard to any specific provision or effect.
4. This Second Amendment to the Second Restatement was adopted by the Association Board of Directors at a properly noticed meeting on February 29, 2024
5. This Second Amendment to the Second Restatement shall be recorded in the official records of Ouray County.

Signed by Mike Jones
Association Secretary

Date 3/26/2024

236785

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Cristy Lynn Sulewski, Clerk & Recorder
Ouray County, CO

04-02-2024 12:55 PM Recording Fee \$198.00

**Second Amendment to the
Second Restatement of the
Declaration of Covenants, Conditions, Restrictions and
Easements
For Fairway Pines Estates**
A Planned Unit Development

Adopted by the Board of Directors on February 29, 2024.

(Restates the original Declarations dated March 27, 1992, and all amendments, extensions, and restatements up to and including amendments certified and recorded on (TBD, 2024.)

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

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RECITALS

1. Loghill Village investors, Ltd., a California limited partnership, on March 27, 1992, recorded the original Declaration of Covenants, Conditions, Restrictions and Easements (The Initial Declaration), including the legal description attached thereto, in Ouray County Colorado, at Reception No. 150511, which has been amended, extended, or restated as follows (collectively, "Declaration"):
 - a. As amended by the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records, on September 11, 1992, Reception No. 151656;
 - b. As extended to Phase II by the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates Phase II, recorded in the official records on July 17, 1996, at Reception No. 162227;
 - c. As further amended by Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records on July 22, 1996, Reception No. 162268;
 - d. As further amended by Amendment of Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, recorded in the official records on May 31, 2001, Reception No. 174891;
 - e. As further amended by Certification of Amendment of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on July 22, 2008, Reception No. 198301;
 - f. As further amended by Certification of Amendment of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on September 11, 2008, Reception No. 198637;
 - g. As restated in the First Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, recorded in the official records on November 12, 2008, Reception No. 199474;
 - h. As further amended by Certification of Amendment to the Declaration of Covenants, Conditions, Restriction and Easements of the Fairway Pines Subdivision, recorded in the official records on August 5, 2013, Reception No 210505.

- i. As further amended by the Certification of Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on September 13, 2016, Reception No. 216942.
 - j. As further amended by the Certification of Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements of the Fairway Pines Subdivision, recorded in the official records on February 29, 2024, Reception No. 236785
2. In addition to the Declaration, the following described plats of Fairway Pines have been duly executed and recorded (collectively, the “Plat”):
- a. Fairway Pines Estates PUD, Filing #1, Book 276C & 388, Page 18 all, Dated 7/7/92.
 - b. Fairway Pines Estates, Filing #2, Book 338, Dated 1/4/92.
 - c. Fairway Pines Estates, Filing 3A, Book 371, Dated 4/1/94.
 - d. Fairway Pines Estates, Correction Plat, Filing 3A-1, Book 371, Page 0, Dated 12/23/97.
 - e. Fairway Pines Estates, Filing 4A, Book 371, Page 0, 8/21/95.
 - f. Fairway Pines Estates, Filing 4A-1, Book 371, Page 0, Dated 4/16/96.
 - g. Fairway Pines Estates, Filing 5A, Book 371, Page 0, Dated 11/6/97.
 - h. Fairway Pines Estates, Filing 5B, Book 421, Page -, Dated 2/1/99.
 - i. Fairway Pines Estates Filing 5C, Book 542 Page -, Dated 11/17/2000.
 - j. Fairway Pines Estates Village 1, 2, 3, 4, 5, & 6 (PDP), Book 371, Page -, Dated 7/7/98.
 - k. Fairway Pines Estates Village 1A, Book 573, Page 8, Dated 1/19/01.
 - l. Fairway Pines Estates Village 6A, Book 421, Page -, 2/16/99.
 - m. The Estates at Fairway Pines (PDP), Book 574, Page 1, Dated 9/15/2000.
 - n. Plat of Access & Utility Easements, Book -, Page -, Dated 2/26/2000.
 - o. The Divide Ranch and Club Filing #6, 7, 8, 9, 10, & 11 (PDP), Dated November 2006.

Reviewed and deemed complete as of June 30, 2016, per Ouray Clerk and Recorder Records.

3. On October 22, 2007, an Assignment of Declarant Rights for Fairway Pines Estates was recorded in the official records at Reception No. 196324, wherein, effective June 12, 2006, all remaining rights of then Declarant under the Fairway Pines Declaration were transferred and assigned to Heritage Inn and Suites of Kansas City, Inc., a North Dakota Corporation and H.T. Heritage Inn of Erie, LLC, a North Dakota limited liability company (**Assignees**). Under the terms of the assignment, Assignees from the effective date shall be the “Declarant” under the Fairway Pines Declaration and assume all obligations of the Declarant under the Fairway Pines Declarations. Notwithstanding the foregoing, in this Assignment of Declarant Rights, Assignees disclaim and do not accept any obligations under any other document,

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

4. The documents reviewed in the course of preparing the First and Second Restatements of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines are listed in Appendix A, together with recording dates and reception numbers.
5. The Initial Declaration as amended or extended by the documents listed in Recital 1, and as affected by the Assignment of Declarant Rights for Fairway Pines Estates identified in Recital 2, and as consolidated into the First Restatement of the Declaration is hereby amended to read as in the following “Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates.”
6. The foregoing documents as well as the following additional documents, as they may be amended from time to time, are collectively referred to as the “Community Documents.”
 - a. Articles of Incorporation
 - b. By-Laws
 - c. Policies and Procedures
 - d. Architectural Standards

**Second
Amendment to
The
Second Restatement of the
Declaration of Covenants, Conditions, Restrictions and
Easements for Fairway Pines Estates
A Planned Unit Development (PUD)**

ARTICLE I -- DEFINITIONS

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

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

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

Section 4. "**Residence**" shall mean and refer to a residential structure that has been built, or may be built, on a Lot or Cluster Lot in accordance with the Community Documents and those certain land use approvals granted for Fairway Pines by Ouray County.

Section 5. "**Lot**" shall mean and refer to any residential lot, Cluster Lot or Commercial plot of land shown upon the PUD map of the Properties whether or not all phases and filings have received final approval. The term Lot shall include the terms Cluster Lot and Cluster Lot Unit, unless otherwise intended by the context.

Section 6. "**Declarant**" shall mean and refer to Loghill Village Investors, Ltd., a California Limited Partnership, and its successors and assigns if such successors or assigns should acquire, in bulk, all of the then remaining subdivision inventory from Loghill Village Investors, Ltd. for the purpose of resale.

Note: This Section 6 was amended according to the Amendment of Declaration of Covenants, Conditions, Restrictions and Easements, recorded on September 11, 1992, at Reception No. 151656. The Declarant's rights were assigned to the Heritage Inn and Suites of Kansas City, Inc., a North Dakota corporation, and H.T. Heritage Inn of Erie, LLC, a North Dakota limited liability company, effective June 12, 2006, according to the Assignment of Declarant Rights for Fairway Pines Estates, recorded on October 22, 2007, at Reception No. 196324.

Section 7. "**Board of Directors**" or "**Board**" shall refer to the Board of Directors of the Association consisting of persons designated or elected in accordance with the bylaws of the Association:

Section 8. "Subdivision" refers to the development project commonly known as Fairway Pines Estates as shown by the PUD filing and plat so titled. Declarant has reserved the right to develop, construct and market the project in multiple phases.

Section 9. "Commercial" means lawful business activities directed to consumer-oriented activities and does not include activities commonly understood as industrial or manufacturing. Commercial development shall be consistent with Ouray County Resort PUDs. If residential structures are put onto commercial lots, they shall be governed by the architectural standards of the association.

Section 10. "Cluster Lot" refers to those portions of the Fairway Pines Community which have been designated on the Plat as a Cluster Lot, which may be used, occupied and developed for multifamily townhomes, duplexes or single-family residences, each Cluster Lot Unit, shall have protective covenants appropriate for the development type proposed. Any cluster lot proposing common areas shall be governed by a Sub-Association approved by the Master Association with the authority to adopt rules, regulations, and assessments applicable only to a specific Cluster Lot and the Cluster Lot Units. The number of Cluster Lot Units that may be developed on the Cluster Lot is noted on the Plat.

Section 11. "Cluster Lot Units" (also referred to as cluster units) refers to the separate Residences that may be used, occupied, and developed on a Cluster Lot either as attached or detached units. Each Cluster Lot Unit shall constitute a separate Residential unit, capable of sale, transfer, conveyance, use and occupancy by different owners. Each Cluster Lot Unit, whether built or able to be built in the future, shall:

- (a) be separately assessed and shall be responsible for the payment of all assessments, dues, fees, restrictions as the same become due and payable, (b) shall be entitled to vote in Association matters, and (c) shall be deemed to be a member of the Association with all associated and accompanying rights and benefits, including proportionate rights in the ownership of the Common Areas.

Section 12. "Village Lot" refers to those lots as defined on the Core Area map as Exhibit [A], from the Ouray County PUD.

Section 13. "Founders Golf Course Club Membership" shall mean a base level of membership in the Golf Club with those annual golf course playing and use privileges that existed as of the date of the adoption of these amendments. Golf course club facility use privileges include reasonable golf season access to first-floor amenities, and also include off- season availability to Founders Members use based on demand as determined by the Golf Course and Golf Club Owner. Founders golf course club members shall not be required to pay greens fees. The Golf Course and Golf Club Owner is Equilibrium Resorts.

Section 14. "Golf Club Membership" refers to a broad category of membership which shall include, but is not limited to, Founders Golf Course Club Membership. The Golf Course and Golf Club owner may establish other optional levels of golf course and golf club membership and define the playing and use privileges attached thereto.

ARTICLE II -- MEMBERSHIP AND VOTING RIGHTS

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

Section 2. Voting. Owners shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Notwithstanding the foregoing, a Cluster Lot shall be entitled to as many votes as there are Cluster Lot Units allocated to the Cluster Lot in accordance with the Plat. Commercial lots may add multi-density unit such as condominium type units or individual commercial suites designated on that commercial site as identified in the lots special use permit and development plat, will have one vote per each individually titled condominium unit or commercial suite.

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

Section 4 Sub-Associations. Each Cluster Lot shall have a Sub-Association subject to the approval of the Association. Each Sub-Association shall be distinctively named and shall be governed by the Cluster Lot Unit owners. The Sub-Association shall adopt By-Laws, rules and regulations as well as uniform assessments applicable only to that Cluster Lot containing such provisions as are apropos to the particular circumstances and conditions thereof including by way of illustration but not limited to joint sewer system maintenance, landscaping and joint driveway maintenance. The covenants, lien rights and remedies provided to the Association in Article III of this Declaration shall be likewise applicable to each Sub-Association. The Sub- Association shall hold title to the common area and joint facilities within the Cluster Lot.

ARTICLE III -- COVENANT FOR ASSESSMENTS AND ESTABLISHMENT OF LIEN

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed of a Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments for capital improvements, (3) Founders Golf Course Club Membership dues, (4) domestic water assessments, (5) assessments for fines or penalties for violation of Association rules, policies, or procedures, and (6) special assessment for uninsurable unusual or uninsurable extraordinary golf course and golf club costs, such assessments and dues to be established and collected as hereinafter provided. These charges, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment and the dues, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. In the case of a Cluster Lot, each Owner of a Cluster Lot shall be responsible for the full and timely payment of all such assessments, dues and other payments required by this Section, which will be allocated and assessed in a manner that is equal to the number of Cluster Lot Units designated to the Cluster Lot on the Plat. The allocation of assessments shall not vary, be reduced or otherwise waived because the owner of the Cluster Lot has not yet constructed Cluster Lot Units on the Cluster Lot. The intent of the Association is that assessments, dues and other payments required by this Section shall be due and payable without regard to whether or not Cluster Lot Units have been constructed on the Cluster Lot.

Section 2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively for its operating expenses and to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the streets (unless such street responsibility is assumed by Ouray County), lighting and any parks, other services, property, open space and green belts owned by the Association. Annual assessments for these purposes attach to each residential Lot separately to each Cluster Lot Unit within each plat-designated Cluster Lot, each Commercial lot and separately to added multi-density unit such as condominium type units or individual commercial suites designated on that commercial site as identified in the lots special use permit and development plat.

Section 3. Maximum Annual Assessment. The maximum annual assessment updated to 2024 shall be five hundred forty-five (\$545) per Lot and five hundred forty-five (\$545) per each built or unbuilt Cluster Lot unit, separate multi-unit residential or commercial units (e.g. condominiums or commercial units).

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

two-thirds (2/3) of members who are voting in person or by proxy at a meeting duly called for this purpose.

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

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

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all Owners entitled to vote not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, (60%) of the Owners entitled to vote shall constitute a quorum. Owners are encouraged to attend the meeting in person or participate via ZOOM or other virtual platforms used by the Association. Owners will cast their vote by ballot or provide a signed proxy certified by the Associations Secretary or the Secretary's designee. Ballots may be delivered in person at the meeting. If Owners are unable to attend in person, they may cast their vote by mailing or emailing their ballot, proxies or directed proxies to the Association. If an acceptable voting application is available, the Association may use this process to cast votes also. If the required quorum is not met (votes provided by ballots, proxies, directed proxies or voting application), another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be at a uniform rate for all lots, including each built or unbuilt Cluster Lot unit, separate multi-unit residential or commercial units (e.g. condominiums or commercial units). Such assessments may be collected on a monthly or yearly basis; provided, however, that the Board may make non-uniform adjustments as it may determine in its sole discretion to be equitable and advisable regarding liability of cluster and commercial lots for assessments.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot and to each built or unbuilt Cluster Lot Unit on the first day of the month following the Owner's acquisition of a Lot, Cluster Lot, or Cluster Lot Unit. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment for such Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association

setting forth whether the assessments, dues, and water charges on a specified Lot (or built or unbuilt Cluster Lot Unit) have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot or built or unbuilt Cluster Lot Unit is binding upon the Association as of the date of its issuance.

Section 8. Founders Golf Course Club and Membership Dues. In addition to Association Membership all owners of all lots, including each built or unbuilt Cluster Lot unit, separate multi-unit residential or commercial units (e.g. condominiums or commercial units) shall have a Founders Golf Course Club Membership. Founders Golf Course Club Membership shall be appurtenant to and may not be separated from such lot or unit ownership. Founders Golf Course Club Membership dues were set initially and cannot be increased except as provided herein. Founders Golf Course Club Membership dues are payable to the golf course and golf club owner or through the Association or such other billing service as may be designated from time to time; provided, however, that dues may not be increased, after the initial setting thereof, by a factor in excess of the percentage increase in the average annual CPI-U (rounded up to a one tenth of a percent) for the previous twelve months shown in the consumer price index for all urban consumers (CPI-U) of the U.S. Department of Labor's Bureau of Labor Statistics (BLS) and shall be calculated as follows: (1) Determine the difference of the average annual CPI-U index for each of the two previous years as published by the BLS; (2) Convert to a percentage by dividing that difference by the lesser of the two annual CPI-U indices, multiplying times 100, and rounding up to one tenth of a percentage point maximum; (3) Multiply that percentage increase times the current year's dues; and (4) Add that amount to the current year's dues to determine next year's dues. In the event there is no dues increase in any year, any future increase will be established as set forth above, and no consideration shall be given to any increase that could have been imposed but was not. Commercial lots which may be subdivided into residential lots or separate commercial suites or entities shall be required to pay Founder Membership golf course and association assessments.

Founders Golf Course Club Memberships as herein set forth provide playing and use privileges as defined and established from time to time by the Golf Course and Golf Club owner and do not include any management or ownership rights. Founders Golf Course Club Membership dues are subject to all lien and collection procedure and remedies provided by this Declaration for assessments.

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

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

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

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate set by the board consistent with law. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Association property or services or by abandonment of his Lot or built or unbuilt Cluster Lot Unit. Public notice of the lien shall be given in the event of a delinquency in the payment of any assessment by the recording by the Board of a Notice of Assessment Lien specifying the delinquency, the owner, and the property to which the lien is applicable. In the event of foreclosure, the procedure applicable to judicial foreclosure of Deeds of Trust in Colorado shall be employed. A notice of release of a lien shall be provided to the owner when all assessments, costs and charges secured by the lien have been fully paid or satisfied.

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

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

ARTICLE IV -- ARCHITECTURAL CONTROL

Section 1. Approval. No building, fence or other structure or improvement of any kind including home identification devices, shall be commenced, erected or maintained upon the Properties, nor shall any exterior repair, replacement, addition to or change or alteration, therein be made until detailed and legible plans and specifications showing the nature, kind, color, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures, and topography and finish grade elevation by the Board of Directors of the Association, or by an Architectural Review Committee (hereafter referred to as the Committee) designated as hereafter provided. Approval of such plans and specifications shall not be arbitrarily or unreasonably withheld. So long as an Architectural Review Committee is appointed, the Board of Directors shall refer all requests for approval to the Committee. A reasonable fee may be charged to any Lot Owner for each plan review. Owners, the Association and Sub-Associations must comply with all applicable governmental regulations including but not limited to §6.11 open space requirements and to the visual impact regulations being §9 respectively of the Ouray County Land Use Code as amended from time to time. [Note: The only area affected by the visual impact regulations in the form in effect as of the date of recording this Declaration consists of Lots along County Road 1.]

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

Section 3. Standards and Specifications. The Board of Directors shall promulgate architectural standards and specifications and revisions thereto. The current standards and specifications shall be published in their entirety on the Association's website. Such standards and specifications shall be reviewed by the Committee and subject to amendment by the Board of Directors at least every two years, and shall govern all structures, improvements, commercial signs and home identification devices proposed for any Lot.

Section 4. Financial Responsibility. The Committee or the Board of Directors may, as a condition of approval of any construction on any Lot or Cluster Lot, require proof of the applicant's financial ability to pay for the entire cost of the proposed work, subject to Board-adopted policies and procedures.

Section 5. View Restriction, Screening, and Visual Impacts. No vegetation or other

obstruction shall be planted upon any lot in such location or of such height as to unreasonably obstruct the view from any other lot in the vicinity thereof. In the event of a dispute among owners as to the obstruction of a view from a lot, such dispute shall be submitted to the Board whose decision in such matters shall be binding. The Board may refer the matter to the Committee. Any such obstruction shall, upon request of the Board or the Committee, be removed or otherwise altered to the satisfaction thereof by the owner of the lot upon which the obstruction is located. Each owner shall be responsible for periodic trimming and pruning of all hedges, shrubs and trees located on his lot so that they do not grow in a manner as to unreasonably obstruct the view of adjacent owners or street traffic.

In reviewing applications, the Committee may require the planting of screening vegetation to reasonably soften the visual impact of the structure or improvement from the golf course or roads.

Section 6. Committee Membership. If the Board elects to appoint an Architectural Review Committee, it shall designate three or more people to so act. The Board shall adopt policies and procedures for establishing qualifications for Committee membership, appointing members, and setting terms of membership. Members of the Committee may be removed by the Board at any time without cause.

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

Section 8. Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may, from time to time by resolution unanimously adopted in writing, designate a committee representative (who may, but need not, be one of its members) to act as project liaison, to inspect for compliance with the project approval. In the absence of such designation, the vote of a majority of the Committee, or the written or email consent of a majority of the Committee taken without a meeting, shall constitute an act of the Committee.

The Committee may meet by remote meetings or email, but the Committee shall maintain a record of such meetings, including documentation of any decisions made.

Section 9. No waiver of Future Approvals. The approval of the Committee to any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent. Nor shall any approval of the Committee constitute a waiver of the ongoing obligation of any owner to comply with these Covenants, Conditions, Restrictions and Easements

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

consultant to the Committee.

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

a. The Committee or its representative may at any time inspect any improvement for which approval of plans is required under this Declaration; provided, however, that the Committee's right of inspection of improvements for which plans have been submitted and approved shall terminate sixty (60) days after such work of improvement shall have been completed and the respective owner shall have given written notice to the Committee of such completion. The Committee's rights of inspection shall not terminate pursuant to this paragraph in the event that plans for the work of improvement have not previously been submitted to and approved by the Committee. If, as a result of such inspection, the Committee finds that such improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Committee, it shall notify the owner in writing of failure to comply, specifying the particulars of noncompliance. The Committee shall have the authority to require the owner to take such action as may be necessary to remedy the noncompliance.

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

ARTICLE V -- RESTRICTIONS

Section 1. Dwelling Quality and Size. All structures must be of a permanent nature, constructed on site, and affixed to a permanent foundation. No trailer house or mobile home shall be set upon any Lot within said Subdivision.

All dwellings must be of workmanlike quality using new Committee-approved materials and shall be completely finished before occupancy. Completion must normally occur within one (1) year of issuance of a building permit. Construction shall commence within twelve (12) months

of the date of an approval of final plans by the Committee. Completion of construction occurs with the issuance of a Certificate of Occupancy by the County. Where the County issues a six (6) month extension of the one-year County building permit, the one-year completion requirement of this Section is also extended upon notification of the Committee of the County extension. A second six (6) month extension of the one-year requirement of this Section may also be granted by the Committee, if the County issues a second six (6) month extension of the building permit and the Committee makes its own determination that there has been continuous diligent pursuit of completion of the dwelling, unless any delays in construction are established by the Committee to have been caused by unusual weather or unexpected delays in the delivery of construction materials or “an act of God”. Failure of any Owner to complete construction within 24 months of the initial approval to proceed with construction shall constitute the default of the Owner to conclude construction. The association may take any and all action, including legal action to assert a lien on the Owners property in the development, in accordance with Article III, § 10. The cost of such action(s) shall be the responsibility of the owner.

Each residence structure shall contain at least 2000 square feet of living space, of which not less than 1,250 square feet shall be the above ground, ground level main floor; provided, however, that a minimum square footage of 1,600 will be permitted within the core area, as designated by the Planned Unit Development (PUD) Amendment approved by the County in 1998, and a minimum square footage of 1,250 will be permitted on Cluster Lot Units on a Cluster Lot anywhere, including any Lot in the core area, and that no minimum square footage is applicable to commercial Lots. The Board may set a maximum building footprint in the Architectural Standards, provided however that the Committee may consider a variance allowing a larger footprint upon finding that the proposed project would have less visual impact.

Section 2. Exterior Lights. No barn yard, security lights, yard lights, or lighted decorations will be allowed to continuously be illuminated from 11:00 PM to 6:00 AM on residential lots, including residential units on commercial lots, unless approved by the Board of Directors or its Architectural Review Committee. Additionally, all exterior lighting shall comply with Ouray County’s dark-sky ordinance. No roof material or building materials that reflect light shall be employed on any structure. Solar panels shall be installed to minimize annoying reflections on neighboring lots consistent with state and federal laws.

Section 3. Signs.

a. Except for activities of Declarant, no signs, advertisements, billboards or advertising structures of any kind or character may be erected or maintained upon any Residential or Cluster Lot or Cluster Lot Unit. including those for the sole purpose of advertising the sale or lease of a property. The Committee will seek to work with the Declarant to select a pleasant appearing scheme for the Declarant’s signage. Signage for commercial Lots shall be as permitted by the Committee. Notwithstanding the foregoing, the Board or its Committee may approve and authorize home identification devices and signage for street identification, public directions, rules enforcement and golf course and open space usage. The Association may adopt policies and procedures regarding signage.

- b. Consistent with state and federal laws, the Association may adopt reasonable rules and regulations regarding the size, location, and manner of display of the American and Colorado flags, service flags, or political signage.
- c. The Board of Directors may also enter into an agreement with Log Hill Village and other subdivisions for the use of similar common "For Sale" and "Open House" signs on, or partially on, Fairway Pines common properties.
- d. The Board of Directors, in its discretion, may also erect or authorize the erection of tasteful governmentally related signs on Fairway Pines' Common Areas.
- e. The Association may remove any unauthorized signs from lots and Common Areas and take such other action as is necessary to have such signs removed or prevent their use.

Section 4. Commercial Activity Prohibited. Except for sales offices and activities of Declarant related to the property, no business or commercial uses may be made on the premises of any residential Lot, provided, however, that permission to operate home businesses such as are generally defined as "cottage industries" exemplified by sewing goods, Tupperware sales, craft objects, carvings, stained glass, photography, paintings and woodworking may be granted upon request by the Board of Directors upon an express finding that such home business activity will not interfere with the peace and quiet of the neighborhood, increase traffic or create a safety hazard.

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

Section 5. Setback. On residential lots, no permanent structure of any kind except fences, shall be placed within twenty-five (25) feet of boundary line adjacent to golf course property and twenty-five (25) feet from Subdivision roadways nor within fifteen (15) feet of other boundary lines. Any reductions to setbacks for residential lots are major variances governed by policies and procedures established by the Board. Notwithstanding the setback designations herein specified, the Board or Committee may, at the time of initial plan review, impose greater setback requirements in the event of circumstances unique to individual situations if required for safety or aesthetic or other reasons. Commercial lot and Cluster Lot or Cluster Lot Unit setback requirements shall be established by the Board or Committee on a case-by-case basis. Driveways shall be easily accessible by emergency equipment.

Section 6. Use.

- a. Residential. Each Residence constructed on a Residential Lot or Cluster Lot Unit shall be used for one single family private dwelling only per Lot, designed for the occupancy of and by one family except that maid's quarters or separate living quarters occupied only by a domestic help or care provider or persons related to the owner may be constructed upon approval by the Committee. Family members include domestic help, caregivers, and significant others as well as

persons related to one another by bonds of blood or legal ties. In no event shall a residence be occupied by more individuals than permitted by applicable law, zoning, or other local government regulations. The Owner may also construct one garage attached to or within fifteen (15) feet of the residence, provided said garage is constructed of suitable material and design to be aesthetically compatible with the dwelling and approved by the Board of Directors or Architectural Review Committee.

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

c. **Cluster Lots.** The Cluster Lots of the subdivision and the number of Cluster Lot Units allocated and capable of development on each Cluster Lot is as indicated on the Plat. The Cluster Lots specified, and the plat are subject to Declarant's right to substitute other or additional Cluster Lots as may be permitted within the PUD process. All the provisions of this Declaration are applicable to Cluster Lots and the individual Cluster Lot Units authorized to be used and developed therein and, in addition, the following further covenants, conditions and restrictions apply exclusively to Cluster Lots and Cluster Lot Units; namely:

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

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

from the location thereof indicated on said map.

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

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

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

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

(vii) In addition to its pro rata share of Cluster Lot assessments levied by the applicable Sub- Association, the owner of each built or unbuilt Cluster Lot Unit will be assessed by the Sub- Association the assessments and dues contemplated by Article III §1, which assessments are to be assessed by the Association to each Cluster Lot Unit at such time that a Cluster Lot has been platted and the right to develop each Cluster Lot Unit was established.

(viii) The timing for imposition of Association assessments for Cluster Lot Units is the

same as for other Lots, whether or not a Residence has been constructed on the Lot, notwithstanding any determination by Ouray County as to when County property taxes may be assessed and levied on Cluster Lot Units.

Section 7. Livestock. No agricultural activity shall be undertaken for any business or commercial purpose and no animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot in the Subdivision for business or commercial purposes except for a pet store on a commercial Lot. Except for bird feeders, owners and their guests shall not provide feed and/or water to wildlife except as is naturally available within the subdivision.

Section 8. Pets. This is a pet friendly community. It is incumbent on pet owner to control their pet in order to prevent damage, to property and vehicles, and injuries or death, to people, other pets, and the indigenous wildlife. This includes removal of pet feces from HOA owned property and privately owned lots, including removal of the feces and bag containing same. Lot owners may keep, not to exceed three (3), generally recognized house or yard pets provided they are appropriately fenced, leashed or otherwise kept within the Owner's control both on and off the Owner's lot. Owner's will adhere to the Ouray County RESOLUTION No. 2017-009, or as subsequently amended, ORDERING THE VACCINATION AND CONTROL OF DOGS, CATS AND DOMESTIC FERRETS. Control "Control", with respect to a dog, means a dog that is:

- a. On a leash or other physical restraining device, with sufficient strength to restrain the dog; or
- b. Confined in a building, within a fenced enclosure, motor vehicle, or other structure in such a way that it does not escape; or
- c. The dog is within sight and hearing distance of its Owner or a family member of the Owner, or any authorized agent or employee of the Owner and, upon command, the dog returns to the immediate vicinity (at least within four feet) of such person; or
- d. A dog shall be deemed not under control when the dog inflicts damage or injury by biting, jumping upon, or harasses, chases or attacks persons, vehicles, cyclist's pedestrians, equestrians, livestock, other domestic animals, or wildlife; except that these behaviors shall not be deemed not under control if the dog is acting in defense of the Owner, Owner's family, or property of the Owner. Further, this definition does not apply to dogs while actually working livestock, locating or retrieving wild game in season for a licensed hunter, or assisting law enforcement officers or while being trained for any of these pursuits.

The Board may establish additional policies or rules relating to the control of pets, including a levy of fines for contravening these rules.

Section 9. Certain Permanent and Temporary Structures. No permanent or temporary structure, including tent, shack, basement, trailer, barn, garage, outbuilding or the like, or any building, or structure may be constructed or used on any part of the Subdivision, unless in accordance with other provisions of these Covenants and approved by the Architectural Review Committee.

Section 10. Fences. All fences must be approved by the Board of Directors, or the Committee

and all fences must be maintained in good repair.

Section 11. Repairs. Any building or improvement which has been damaged by fire or other casualty causing the same to be unsightly shall be repaired or removed, including concrete slab and foundations/footers within four (4) months from the date of such casualty, unless earlier directed by Ouray County authorities. An extension may be granted upon application to the Board of Directors. All structures, buildings and improvements erected on Lots within the Subdivision shall at all times be kept in good repair and attractive.

Section 12. Abandoned, Inoperable or Dilapidated Vehicles, Commercial Vehicles, Machinery and Equipment, Vehicle Screening, Parking and Garage Doors.

- a. **Abandoned, Inoperable or Dilapidated Vehicles.** Except for golf course owned lots or lots related to golf course operations, no motor vehicle shall be constructed, reconstructed, or repaired on any Lot except for emergency repairs which do not take more than seventy-two (72) hours or except inside a garage or other approved structure. No abandoned, dilapidated, or inoperable vehicles shall be permitted on any Lot. A vehicle shall be considered abandoned, dilapidated, or inoperable if it remains non-operative for a period of thirty (30) days or if its physical appearance suggests it is incapable of operating. In such instance the Association shall send a letter requiring removal of the vehicle within thirty (30) days from the receipt of the letter and if the Owner does not comply within that period of time the Association may have the vehicle towed away at the violator's expense.
- b. **Parking.** Overnight parking of vehicles on the roads and streets within the Subdivision is prohibited, except as may be approved by the Board of Directors of the Association. Further, on and adjacent to Residential Lots, Cluster Lots and Cluster Lot Units, other than automobiles and pickup trucks, all vehicles including but not limited to recreational vehicles, cycles, campers, motor homes, horse trailers, utility trailers, watercraft, and snowmobiles, shall be parked in a garage or screened from view from streets, roads, golf course and neighboring property by approved structures, natural vegetation or terrain in a manner previously approved by the Committee or Board of Directors.
 - i. Temporary parking of such vehicles not to exceed seventy-two (72) hours is permitted for the specific purpose of loading, unloading, or cleaning.
 - ii. No vehicle shall be stored or parked for any period of time on an unimproved lot or the unsurfaced portion of an improved lot.
- c. **Commercial Vehicles.** Except for automobiles and pickup trucks with no more than two rear wheels, no commercial vehicle used for business shall be parked on any property unless the vehicle is parked within a fully enclosed garage. The Board may by rule define what is "commercial vehicle." Specifically exempt from this requirement are:
 - i. Trucks of any size or configuration that are parked on a property for use related to an open construction permit.
 - ii. Service company vehicles present for home or vehicle repairs.

- iii. Pickup trucks and vans used for business purposes and designated by the manufacturer as full size, mid-size or compact, that do not have dual rear wheels, regardless of other body configuration or permanently affixed advertising.
- iv. A commercially licensed pickup truck of any size, equipped with a standard pickup bed, and used as a private vehicle not for business purposes. A private use pickup truck may have dual wheels as required for recreational uses.
- v. Vehicles used in the maintenance, operations, or improvement of the golf course.
- vi. Commercial Trailers. No utility or box type trailer, commonly used by but not limited to the construction industry, either open at the top or fully enclosed, is to be stored on a residential lot, except for an active construction site.
- vii. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any lot except as is usual or customary in connection with the use, maintenance or repair of residential or commercial property. For example, nothing larger than a residential type of lawn and garden tractor.
- viii. Motor Homes, RVs, and Campers. Motor homes, recreational vehicles and campers may be hooked-up to an owner's water or sewer system and they may be occupied by owner's guests on a temporary basis and in any event for not more than ten (10) consecutive days in any 30-day period.
- ix. Garage Doors. All residential garage doors shall be kept closed at all times, with the exception of those times a vehicle is actually entering or exiting the garage. The door may remain open for periodic maintenance of the door or garage area.

Section 13. Burning and Trash Disposal. Trash, slash, or garbage shall not be permitted to accumulate upon any Lot except in properly covered containers which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting therefrom.

Contractors performing approved construction on any lot shall maintain a suitable covered dumpster, or waste trailer on that lot for the purpose of waste construction material temporary storage prior to disposal in a recognized waste facility. Solid waste disposal is the responsibility of the individual homeowner or occupant. The Association may contract with a trash removal service within the Subdivision; however, the expense for such service will be the responsibility of each Owner who elects to participate in the service. Open burning of trash shall not be permitted. This covenant shall not be construed to prohibit fireplaces or barbecue pits or open cooking on Lots, provided fireplaces or fire pits are properly screened to arrest sparks. Use of coal as a heat source in fireplaces, furnaces and stoves is prohibited. The Board may impose greater restrictions as necessary for fire safety. Emergency burn bans issued by the Board, or a relevant government agency shall be obeyed.

Section 14. Weed Control. Weeds must be cut often enough so as to not permit land within the Subdivision to become unsightly or a fire hazard due to the overgrowth of weeds. If such weed control is not exercised by an Owner, the Association will have the right to have the weeds mowed and assess the Owner for the expense of same with the Association having all the rights and remedies provided by Article III Section 10 above. (See §24 of this Article V). Noxious weeds as identified by Ouray County must be removed.

Section 15. Off Road Vehicles Prohibited or Limited.

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

b. Private golf carts are currently prohibited on the golf course but may be permitted in the future subject to golf course owner approval. Golf carts may be used on streets and roads in accordance with county and state regulations, including liability insurance and driver license requirements.

Section 16. Mining and Drilling Activities Prohibited. Any use of the surface of any Lot within the Subdivision for water, oil, gas, mineral, geothermal or oil shale exploration, development, mining or drilling activities of any kind whatsoever, except for directional drilling for utilities or foundation anchoring, is expressly and absolutely prohibited.

Section 17. Offensive Activity, Outside Storage. No noxious or offensive activity, sounds, lights, or odors shall be permitted or carried on at any Lot nor shall anything be done or placed therein which may be unsightly or may be or become a nuisance or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the enjoyment of their Lots or in the property of the Association or in the use of the golf course. Firearms shall not be discharged within the Subdivision.

Except for Lots subject to an open construction permit, there shall be no outside storage or piles of equipment, building supplies, or other materials that would visually intrude on the neighborhood. Storage of construction materials for the purpose of approved construction shall conform to the requirements of the ARC standards.

Section 18. Antenna Limitations. No outside television or radio antenna or satellite dish or other communication relay or transmitting or receiving device shall be erected, installed or maintained on any residential Lot, or structures thereon, or commercial Lot, or structure thereon, or on any area or structure in the Subdivision for the purpose of serving the Subdivision or any other area, unless the antenna or satellite dish or other communication device is approved by the Committee or authorized by the Architectural Standards. The Committee may not withhold the approval of such devices located on or adjacent to a structure on a residential or commercial Lot or impose requirements as to the use of such devices in such a way as to interfere with reception. The Committee may make reasonable requirements as to the size, normally not to exceed twenty (20) inches in any direction, and as to the nature and location of such antenna or satellite dish or other communication device, to assure compatibility of the architectural style of the dwelling and its surroundings.

Section 19. Energy Conservation Devices, Solar Panels, Clothes Dryers. No exterior clothes dryer shall be erected, installed, or maintained on any Lot, or on any structure thereon, except as authorized by state or federal law. While state and federal laws impose some limits on the ability of property owner associations to regulate energy conservation devices, the installation of solar

panels and other energy conservation devices is subject to the review and approval of the Committee.

Section 20. Utility Lines Underground. Electric, telephone, television, radio and other utility lines shall be placed underground when extended from the street or Lot line to any structure on a Lot. Trenching shall avoid damage to trees and plants and all trenches shall be fully compacted and shall contain not less than four (4) inches of indigenous topsoil placed in the top of the trench to the end that the prior natural state of the area trenched is replicated.

Section 21. Sound Devices Prohibited. No exterior horns whistles, bells or other sound devices except security devices used exclusively to protect the security of dwellings and other improvements located on the Lot or essential to the function of community services shall be placed or used on any Lot or elsewhere in the Subdivision. This section shall not apply to entertainment systems, so long as they are not operated in an offensive manner described in Section 15, above.

Section 22. Preservation of the Natural Character of the Subdivision, Tree Removal and Drainage.

Removal of all indigenous trees shall be approved by the Committee. This includes:

- a. Fire hazards.
- b. Maintaining or improving plant health and vigor
- c. Removal of insect or disease affected vegetation.
- d. For approved driveways
- e. For construction of approved structures
- f. For golf course construction

No indigenous trees or perennial bushes may be removed, no action affecting drainage direction or affecting other property and no grading of the land surface shall be done within the Subdivision except upon variance as hereafter authorized. (See Article VI §6).

Application for such variance shall be accompanied by such drawings, plans or photographs as may be reasonably required by the Committee or the Board to show the nature of the proposed cutting, removal or grading. It is desirable to preserve the natural character of the area and therefore to limit cutting, removal and grading to that which is necessary to the reasonable use and enjoyment of the property within the Subdivision. Approval of applications for variances within the contemplation of this section may be conditioned upon installation of appropriate drainage facilities to be installed at the applicant's expense.

Section 23. Water Wells, Domestic Water. Water wells and cisterns are prohibited on any lot. Domestic water for use on all lots must be obtained from the pipeline system installed by the developer.

Section 24. House Numbers. The design and display of house numbers shall be regulated by the Committee, in compliance with Ouray County regulations, and shall be posted by the owner so as to be readily visible from the street.

Section 25. Sewage Disposal. No sewage collection system or sewage disposal shall be installed or used on any Lot unless and until such system is designed, constructed and located in conformity with the then existing standards, regulations and criteria employed by Ouray County acting under the direction and within the regulations of the State of Colorado or Fairway Pines Sanitation District or Ouray County Land Use Department. No construction of any such system shall be undertaken until the plans, specifications and design therefore have received such approval and no such system shall be placed in use until the completed construction has received final governmental approval.

Section 26. Insurance Rates. Nothing shall be done or kept in the properties which will increase the rate of insurance on any Association property without the approval of the Board or the Committee, nor shall anything be done or kept in the properties which would result in the cancellation of insurance on any Association property, or which would be in violation of any law.

Section 27. No Further Subdivision. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the owner thereof without the approval of the Board of Directors.

Section 28. Association Remedies. In the event any owner fails to comply with any affirmative duty imposed on owners by or under the authority of this Declaration, the Association may perform such after fifteen (15) days' prior written notice to the owner and charge the owner with the expense thereof. The Association shall have the right to enter the owner's lot for this purpose unless there exists an emergency, there shall be no entry into a building without the consent of the owner. In the event the Association is required under the terms of this section to perform a duty of the owner, the cost thereof including reasonable attorney's fees, shall constitute an assessment payable by the offending owner which cost shall create a lien enforceable in the manner set forth in Article III § 10 above. Additionally, the Association may impose other sanctions, including fines, as authorized by article VI, Section 5.

Section 29. Declarant's Rights. Nothing in this Declaration shall be construed to limit or interfere with the Declarant's development of the property, construction of the golf course and amenities or the construction of utilities or other facilities contemplated by the PUD plan.

ARTICLE VI -- GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association, a Sub-Association, or any Owner, or the Board of County Commissioners of Ouray County, Colorado, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and shall recover reasonable attorney's fees and costs for doing so. Such right of enforcement includes but is not limited to actions and suits to restrain and enjoin any breach or threatened breach of any provision of this Declaration or the rules, regulations and compliance sanctions adopted pursuant to §5 of this Article VI or the standards and specifications adopted pursuant to

§3 of Article IV above. Failure by the Declarant, the Association, the County, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or abandonment of the right to do so thereafter.

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

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

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

Section 5. Rules, Regulations and Compliance Sanctions.

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

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

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

Section 6. Variances. The Board of Directors shall have the authority to grant written variances from the terms and conditions contained in Article V hereof so long as such variances do not result in conditions which are inconsistent with the general concept, harmony, and values within the Subdivision. The Board of Directors may give the Architectural Review Committee the authority to grant written variances from terms and conditions in Article V. If granted the Board of Directors will incorporate the specific authorities into the Associations Policies and Proceed Section 11, Policy and Procedures Regarding the Granting of Variances

Section 7. Association Open Space Property and Management. Declarant shall convey to the Association the property shown on the PUD plat other than the Lots, golf course and other

private property therein designated. At the time of the conveyance, the Association property shall be free of any mortgages, judgment liens or similar liens or encumbrances. The Association shall hold such property subject to the rights of the Declarant, its successors and assigns, to lay, install, construct and maintain utilities and other improvements in the areas designated therefore on the plat. The property conveyed to the Association shall be held by it for the use, benefit, and enjoyment, in common, of each Owner. Each Owner, in common with all other Owners, shall have the right and privilege to use and enjoy the property of the Association for the purposes for which the same were designed. This right and privilege shall be appurtenant to and pass with the title to the Lot. The right to the use and enjoyment of such property shall be subject to the following provisions:

- a. The right of the Association to charge reasonable admission and other fees for use of facilities.
- b. The right of the Association to suspend the voting rights and rights to use the Association property by an Owner for any period in which any assessment against his Lot remains unpaid or for a period not to exceed sixty (60) days for any infraction of published rules and regulations of the Association.
- c. The Association shall supervise, manage, use, repair, provide utility services and maintain its property, at its own cost and expense, in such manner as is determined by its Board of Directors from time to time. In the event a driving range is constructed on open space owned by the Association, the Board may contract with the golf course owner for a lease to govern the operation and maintenance of the driving range in which case a reasonable fee would be charged to the Lessee to cover the Association's expenses including but not limited to taxes, insurance and administration.
- d. The Association and each Cluster Lot Unit Sub-Association constitutes the organization for the ownership and maintenance of the open space required by §6.11 "Open Space Requirements" of the County of Ouray Land Use Code providing for adequate future ownership and maintenance of open space and common areas. The provisions of this Section 7 are applicable to all of the property and assets owned by the Association or any Sub-Association thereof but are not applicable to property, assets and easements owned or reserved by Declarant such as the golf course and appurtenant facilities and water rights.
- e. The Association may obtain and pay for the services of a managing agent to manage its affairs, or any part thereof, to the extent deemed advisable by the Board of Directors thereof. The Association may also employ other personnel deemed to be necessary or desirable for the proper operation of the assets of the Association (or Sub-Association) whether such personnel are furnished or employed directly by the Association or by any person, firm, or entity with which the Association contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with its business and shall provide such operating statements, reports, and budgets as it may deem advisable.
- f. The Board is authorized to charge at its actual cost, an administrative fee to other entities for which it agrees in writing to collect and disburse assessments and dues as provided in the Declaration, such as the Golf Course and Golf Club Owner and domestic water provider.

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

Section 9. Easements.

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

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

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

Section 11. Liability Insurance. The Association and Sub-Associations shall be required to maintain liability insurance insuring against injury to persons or property as a result of use of the property of the Association each sub-association shall provide evidence to the Association of such coverage. Such insurance shall be maintained with a company licensed to do business in the State of Colorado and shall have minimum amounts of liability for injury or damage to persons or property in the amount of ONE MILLION DOLLARS (\$1,000,000.00) per incident, with such amount to be adjusted periodically and increased if the same is required in the reasonable judgment of the Board of Directors of the Association and if such increased amounts of insurance are available for purchase at such time.

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

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

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

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

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

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

Section 18. Golf Course Transfer Fee. A fee of \$3,000.00 is due and payable at the time of the transfer of any legal or equitable interest in any Commercial lot, Residential lot, Cluster Lot or Cluster Lot Unit or any other lot as defined in Definitions, except a transfer made to related persons for estate planning purposes or in lieu of foreclosure or by virtue of law through any judicial or administrative proceeding or a transfer made by Declarant. Upon partition of any commercial lot approved by the County, the number of transfer fees shall be determined by the number of titles to be issued for each part of the partitioned lot. The transfer fee shall be paid to the golf course.

Exhibit A - Core Area Map

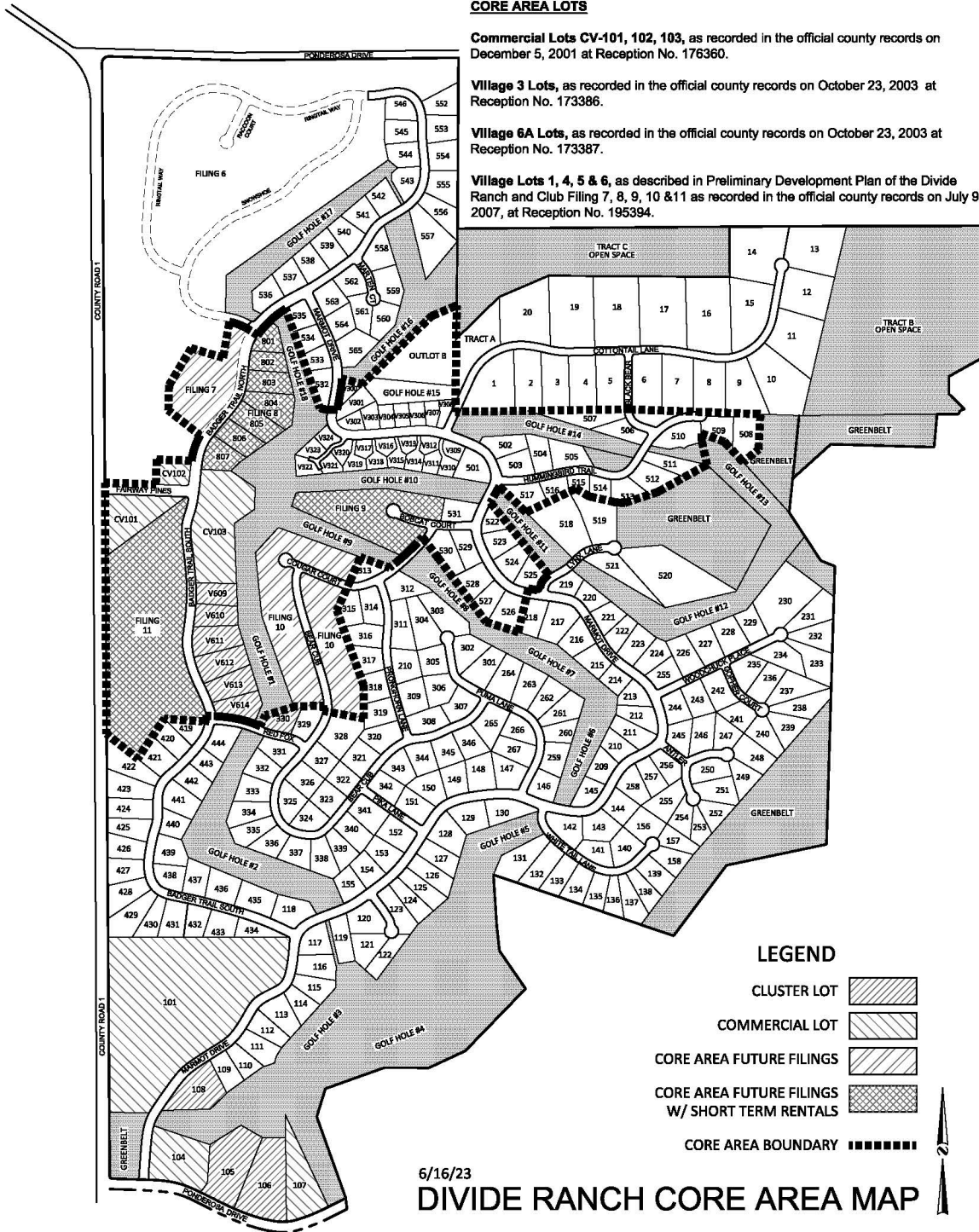
CORE AREA LOTS

Commercial Lots CV-101, 102, 103, as recorded in the official county records on December 5, 2001 at Reception No. 176360.

Village 3 Lots, as recorded in the official county records on October 23, 2003 at Reception No. 173386.

Village 6A Lots, as recorded in the official county records on October 23, 2003 at Reception No. 173387.

Village Lots 1, 4, 5 & 6, as described in Preliminary Development Plan of the Divide Ranch and Club Filing 7, 8, 9, 10 & 11 as recorded in the official county records on July 9, 2007, at Reception No. 195394.



APPENDIX A

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

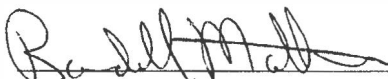
18	First Restatement of the Declaration of Covenants, Conditions, Restrictions, and Easements for Fairway Pines Estates	November 13, 2008	199474
19	Certification of Amendments to the Declaration of Covenants, Conditions, Restrictions and Easements for the Fairway Pines Estates Owners Association	August 5, 2013	210505
20	Certification of Amendments to the Declaration of Covenants, Conditions, Restrictions and Easements to the Fairway Pines Estates Owners Association	September 13, 2016	216942
21	Letter from Divide Golf LLC draft opinion on proposed covenant amendments	June 29 2018	
21	Assignment of Declarant rights to Divide Golf LLC	March 1 2018	220484
22	Assignment of Declarant rights to transfer fee to Fairway Pines estates	March 1 2018	220483
23	Supplement and Release Agreement	July 6 2017	
24	Quit claim deed (water rights)	February 20, 2019	222500
25	Quit claim deed (water rights)	February 20, 2019`	222501
26	Status report and motion for substitution of applicant	February 20, 2019	FB8115D1 52023
27	Order approving motion for substitution of applicant	February 21, 2019	2016CW3 069
28	Settlement agreement	February 20, 2019	222499
29	Memo of understanding for golf course operation and founder membership dues	February 22, 2008	
30	Memo of understanding for declarant exemption from P.O.A. dues	June 22, 2008	
31	Letter to Declarant from P.O.A. regarding new clubhouse	February 22, 2008	
32	Settlement and Release agreement among P.O.A, golf course and declarant	July 2, 2019	
33	Settlement agreement regarding water rights	January 19, 2019	

34	Second Restatement of the Declaration of Covenants, Conditions, Restrictions, and Easements of	February 29, 2024	236785
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CERTIFICATION AND ACKNOWLEDGEMENT

I, Randall Mathis, President of the Board of Directors of the Fairway Pines Estates Owners Association, Inc., a Colorado Non-Profit Corporation, certify that the foregoing Second Amendment to the Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a Planned Unit Development, (First Amendment), was adopted by the Association Board of Directors at a properly noticed meeting on February 29, 2024, and that the Board resolution adopting this Second Amendment contains the following:

- a. This Second Amendment was reviewed by the Covenants Committee, reviewed and approved by the Board of Directors, approved by the membership, and adopted by the Board of Directors on February 29, 2024.
- b. The First and Second Restatement of the Declaration of Covenants, Conditions, Restrictions and Easements for Fairway Pines Estates, a planned unit development, are transcribed and consolidated versions of the actual recorded documents listed in paragraph 1 of the Recitals and in Appendix A. While care was taken in the transcription process to eliminate errors, some discrepancies from the original documents may be present. In the event of any conflict between the Second Restatement and its original counterparts or in their legal effect, the original recorded documents shall control and should be referenced for certainty with regard to any specific provision or effect.
- c. This Second Amendment to the Second Restatement shall be recorded in the official records of Ouray County.



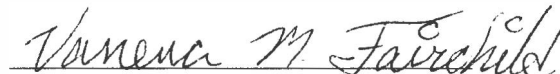
President

STATE OF COLORADO)
) SS.
COUNTY OF OURAY)

The foregoing certification was acknowledged before me this 25th day of March, 2024, by Randall Mathis, who acknowledged himself to be the President of the Board of Directors of the Fairway Pines Estates Owners Association, Inc., a Colorado non-profit corporation, and that he being authorized to do so executed the foregoing instrument for the purposes therein contained.

Witness my hand and official seal.

My commission expires Feb 4, 2025



Notary Public

