

RECORDED AT 4:45 O'CLOCK P.M. DATE: June 2, 1970

EXCEPTION NO. 137196 BOOK 285 PAGES 116-125 C. A. Prescott
RECORDER

PROTECTIVE COVENANTS FOR
"THE PINERY" FILING NO. 1
DOUGLAS COUNTY, COLORADO

KNOW ALL MEN BY THESE PRESENTS: That Terracor, a Utah Corporation, is the owner of the following described property, in Douglas County, State of Colorado, to-wit:

"The Pinery" Filing No. 1, according to the official plat on file with the Douglas County Recorder; and it is the intention of the owners to include all of the legally described property in said plat and that said premises are to be divided into lots and blocks as shown on said plat, and that donation of streets shown on said plat is hereby made to the public. The easements indicated on said plat are hereby perpetually reserved for public utilities and for any other uses as designated hereon and no other structures other than for such utility purposes are to be erected within the lines of said easements.

NOW, THEREFORE, said owners hereby declare that all of the property described above is held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions and covenants, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the lands; and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the lands and every part thereof. The acceptance of any deed or conveyance thereof by the grantee or grantees therein, and their heirs, executors, administrators, successors and assigns shall constitute their covenant and agreement with the undersigned and with each other, to accept and hold the property described or conveyed in or by such deed or conveyance, subject to said covenants and restrictions, as follows, to-wit:

ARTICLE I - GENERAL RESTRICTIONS

1. LAND USE AND BUILDING TYPE: No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted on any lot other than one detached single family dwelling not to exceed two stories in height and a private garage for not more than three (3) cars. "Family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law.

2. ARCHITECTURAL CONTROL: No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the architectural control committee as to quality of workmanship and materials, harmony of exterior design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved. Approval shall be as provided in Section 6, Article II of these covenants.

3. DWELLING COST QUALITY AND SIZE: No dwelling shall be permitted on any lot at a cost of less than \$25,000.00* based on cost levels prevailing on the date these covenants are recorded, it being the

*Updated by THE PINERY ARCHITECTURAL CONTROL COMMITTEE, INC. on May 17, 1987, to \$85,000.00.

intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 1,500 square feet for a one-story dwelling, no less than 800 square feet for a dwelling of more than one story.

4. BUILDING LOCATION: (A) No building shall be located on any lot nearer to the street line than the minimum building setback lines shown on the recorded plat. In any event no building shall be located on any lot nearer than thirty (30) feet to the front lot line or nearer than twenty-five (25) feet to any side street line.

(B) No building shall be located nearer than ten (10) feet to an interior lot line. No dwelling shall be located on any interior lot nearer than fifty (50) feet to the rear lot line.

(C) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

(D) With written approval of the architectural control committee a one story attached garage may be located nearer to a street than above provided, but not nearer than twenty-five (25) feet to any street line, where the natural elevation of the lot along the established minimum building setback line is more than eight (8) feet above or four (4) feet below the established roadway level along the abutting street and where in the opinion of the committee the location and architectural design of such proposed garage will not detract materially from the value of other properties. Furthermore, under similar conditions and approval, a dwelling may be located nearer to a street than above provided, but not nearer than twenty-five (25) feet to any street line.

5. EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water thru drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

6. NUISANCES: No noxious or offensive activity shall be carried upon any lot, except for those improvements for which a public authority or utility company is responsible.

7. TEMPORARY AND OTHER STRUCTURES: No structures of a temporary nature, trailer, basement house, tent, shack, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently nor shall said structures be permitted on said property at any time. No old or secondhand structures shall be moved

onto any of said lots, it being the intention hereof that all dwellings and other buildings to be erected on said lots, or within said subdivisions, shall be new construction of good quality workmanship and materials.

8. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than one square foot, one sign of not more than five square feet advertising the property for sale or rent or signs used by a builder to advertise the property during the construction or sales period.

9. OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

10. LIVESTOCK, POULTRY, AGRICULTURE: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to County ordinances.

11. GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. No rubbish, trash, papers, junk or debris shall be burned upon any lot except that trash may be burned inside homes that are properly equipped with inside incinerator units.

12. WATER SUPPLY: No individual water supply system shall be used or permitted to be used on any lot or group of lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department. Approval of such system as installed shall be obtained from such authority.

13. SEWAGE DISPOSAL: No individual sewage disposal system shall be permitted on any lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the State Health Department. Approval of such system as installed shall be obtained from such authority.

14. SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of said sight lines.

15. OVERNIGHT PARKING: No vehicle of any kind, including but not limited to, automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two- and three-wheeled motor vehicles, or other wheeled vehicles shall be permitted to be parked on any public street within the subdivision projects between the hours of 2:00 o'clock A.M. and 6:00 o'clock A.M. of any morning.

16. LANDSCAPING: Within six (6) months of occupancy of any home, the homeowner must have substantially completed the landscaping of his lot. Such landscaping shall include, but not be limited to the preparation for and planting of lawn, grass or other appropriate ground cover, appropriate shrubbery and the planting of at least one (1) tree in the front yard. Should any homeowner fail to comply with the provisions of this section, the architectural control committee shall have power to obtain an order from a court of proper jurisdiction requiring specific performance or alternatively may complete the landscaping and require the homeowner to pay a reasonable amount for such completion. The amount owing shall constitute a lien on the homeowner's lot and home until such payment is made.

Upon approval and/or completion of the landscaping plan pursuant to this section, no healthy tree shall be removed, nor other major changes be made without approval of the architectural control committee. However, notwithstanding this section, all diseased trees must be removed by the homeowner within a reasonable time after the diseased condition is discovered.

17. DWELLING CONSTRUCTION AND FENCE RESTRICTIONS: In order to promote a harmonious community development and protect the character of the neighborhood, the following guidelines are set out:

(A) Dwelling style, design, alterations or additions will conform to standards determined by the architectural control committee.

(B) Exterior construction materials will be limited to stone, stone veneer, brick or brick veneer, rough sawn or resawn wood siding, or stucco and shall be in earth tones indigenous to the area. Specifications regarding the color, texture, finish and quality for the above will be posted and made available by The Pinery Architectural Control Committee.

(C) Roof design shall be limited to a minimum of a 4/12 pitch.

(D) Location of all storage or utility buildings, garbage and refuse containers, air conditioning equipment, clothes drying lines, and utility pipes, etc., must be placed at the rear of the dwelling and located on the site in such a manner as not to be conspicuous from the frontage street.

(E) Any light used to illuminate garages, patios, parking areas or for any other purpose shall be so arranged as to reflect light away from adjacent residences and away from the vision of passing motorists.

(F) Fences. 1. Materials: Fences or walls shall be of wood or brick. No fence or walls of chain link, wire mesh, slump block or unpainted concrete block shall be allowed.

2. Height: Fences, walls or hedges shall not exceed six feet and shall not extend beyond the front yard set back at any point. The rear yard may be fenced with the restriction that no wall, fence or hedge shall be placed nearer than twenty-five (25) feet to the rear boundary line. It is the intent of this limitation to provide an undisturbed buffer along the rear lot lines to protect the aesthetic natural beauty of the project.

ARTICLE II - DURATION, ENFORCEMENT, AMENDMENT

1. DURATION OF RESTRICTIONS: All of the conditions, covenants, and reservations set forth in this declaration of restrictions shall continue and remain in force and effect at all times against said property and the owners thereof, subject to the right of change or modification provided for in this Article, until forty (40) years, and shall as then in force be continued for a period of twenty (20) years, and thereafter for successive periods of twenty (20) years each without limitation, unless a written agreement is executed by more than three-fourths (3/4) of the then record owners in the area of said property with one vote per lot and lot owner, exclusive of streets, parks, and open spaces to be placed on record in the Office of the County Recorder of Douglas County, by the terms of which agreement of any of said conditions or covenants are changed, modified or extinguished in whole or in part as to all or any part of the property originally subject thereto, in the manner and to the extent therein provided. In the event that any such written agreement of change or modification be duly executed and recorded, the original conditions and covenants, as therein modified shall continue in force for successive periods of twenty (20) years each unless and until further changed, modified or extinguished in the manner herein provided for, by mutual written agreement with not less than seventy percent (70%) of the then owners of record title of said property (including the mortgagees under recorded mortgages and the trustees under recorded deeds of trust) with one vote per lot and lot owner, duly executed and placed on record in the Office of the County Recorder of Douglas County, Colorado, provided, however, that no change or modification shall be made without the written consent duly executed and recorded of the owners of record of not less than two-thirds (2/3) in area of all lands which are a part of said property and which are held in private ownership within five hundred feet in any direction from any direction from the exterior boundaries of the property concerning which a change or modification is sought to be made.

2. ENFORCEMENT: Each and all of said conditions, covenants, and reservations is and are for the benefit of each owner of land (or any interest therein), in said property and they and each thereof shall inure to and pass with each and every parcel of said property and shall apply to and bind the respective successors in interest of said Grantor. Each Grantee of the Grantor of any part or portion of said property by acceptance of a deed incorporating the substance of this declaration either by setting it forth or by reference therein, accepts the same subject to all of such restrictions, conditions, covenants and reservations. As to each lot owner, the said restrictions, conditions and covenants shall be covenants of equitable servitude and the breach of any thereof, and the continuance of such breach may be enjoined, abated or remedied by appropriate proceedings by any such owner of other lots or parcels in said property, but no such breach shall affect or impair the lien of any bona fide mortgage or deed of trust which shall have been given in good faith, and for value; provided, however, that any subsequent owner of said property shall be bound by the said conditions and covenants, whether obtained by foreclosure or at a trustee's sale or otherwise.

3. VIOLATION CONSTITUTES NUISANCE: Every act or omission, whereby any restriction, condition or covenant in this declaration set forth, if violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by Grantor or its successors in interest and/or by lot owner, and such remedy shall be deemed cumulative and not exclusive.

4. CONSTRUCTION AND VALIDITY OF RESTRICTIONS: All of said conditions, covenants and reservations contained in this declaration shall be construed together, but if it shall at any time be held that any one of said condi-

tions, covenants, or reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the Grantor and Grantee, their successors, heirs, and/or assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this declaration irrespective of the fact that any article, section, subsection, paragraph, sentence, clause or phrase be declared invalid or inoperative or for any reason becomes unenforceable.

5. RIGHT TO ENFORCE: The provisions contained in this declaration shall bind and inure to the benefits of and be enforceable by Grantor, by the owner or owners of any portion of said property, their and each of their legal representatives; heirs, successors and assigns, and failure by Grantor, or any property owner, or their legal representatives, heirs, successors, or assigns to enforce any of said restrictions, conditions, covenants, or reservations shall in no event be deemed a waiver of the right to do so thereafter.

6. ARCHITECTURAL CONTROL COMMITTEE: The architectural control committee which is vested with the powers described herein shall consist of three (3) persons appointed by the Grantor. Prior to the commencement of any excavations, construction, or remodeling or adding to any structure, theretofore completed, there shall first be filed with the architectural control committee two (2) complete sets of building plans and specifications theretofore, together with a block or plot plan indicating the exact part of the building site the improvements will cover and said work shall not commence unless the architectural control committee shall endorse said plans as being in compliance with these covenants and are otherwise approved by the committee. The committee shall have the right to refuse to approve any such plans and shall have the right to take into consideration the suitability of the proposed building and of the materials of which it is to be built to the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure so planned on the outlook from the adjacent or neighboring property. The committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this section. The second set of said plans shall be filed as a permanent record with the architectural control committee. In the event said committee fails to approve or disapprove in writing said plans within thirty (30) days after their submission, then said approval shall not be required. The said architectural control committee shall be the same persons for all of the subdivisions within the Grantor's development, which is known as Pinery. When ninety per cent (90%) of all of the lots in said development have been sold by Grantor, the owners exclusively of said lots shall vote for election by a majority of said owners or members of said architectural control committee. The Grantor shall have the right to appoint members of the architectural control committee until such time as ninety per cent (90%) of the lots in said development have been sold by the Grantor.

7. ASSIGNMENT OF POWERS: Any and all rights and powers of the Grantor herein contained may be delegated, transferred or assigned. Wherever the term "Grantor" is used herein, it includes assigns or successors it includes assigns or successors in interest of the Grantor.

IN WITNESS WHEREOF, we have hereunto set our hands and seal the 1st day of June, 1970.

TERRACOR, A UTAH CORPORATION

By: *F. Franklin Johnson*
Its: President

Attest:

James N. Kimball
Secretary