

## D E C L A R A T I O N

of

Conditions, Covenants, Restrictions and Easements

for

THE PINNACLE AT PINECLIFF

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Marac, Inc. a Colorado corporation (called "Declarant" in this Declaration), is the sole owner of property described as follows:

Lots 1 through 26, inclusive, all in The Pinnacle at Pinecliff according to the plat thereof recorded in El Paso County, Colorado. This land is called the "Subdivision" and individual single family residential lots designated by the recorded plat are called "Lots."

A map of the Subdivision showing all the Lots is attached hereto as Exhibit A. Declarant desires to place protective covenants, conditions, restrictions, reservations, liens and charges upon the Subdivision to protect the Subdivision's quality residential living environment and also to protect its desirability, attractiveness and value. Consequently, the Subdivision is hereby subjected to the following easements, covenants, restrictions and conditions (collectively referred to as "Covenants"), all of which shall run with the Subdivision and shall be binding upon all parties having or acquiring any rights, title or interest in it or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE ICOVENANTS TO PRESERVE THE RESIDENTIAL  
CHARACTER OF THE SUBDIVISION

Section 101. Property Uses. All single family residential Lots and Building Sites in the Subdivision shall be used exclusively for private residential purposes. No dwelling erected or maintained within the Subdivision shall be used or occupied for any purpose other than for a single family dwelling. No business, profession or other activity conducted for gain shall be carried on or within any Lot or Building Site, except as provided in Section 107.

Section 102. Structures. No Structure shall be erected within the Subdivision except single family dwellings and those Accessory Buildings and accessory Structures which have been approved by the Approving Authority. No Structure other than a dwelling, no Accessory Building other than storage facilities and garages, no trailer, tent or other similar or dissimilar temporary quarters may be used for living purposes. No other Structure may be placed on any Building Site except with the permission of the Approving Authority.

Section 103. Construction Type. All construction shall be new. No building previously used at another location nor any building or Structure originally constructed as a mobile dwelling or Structure may be moved onto a Lot or Building Site except as expressly hereinafter provided for temporary buildings.

Section 104. Storage. No building materials shall be stored on any Lot except temporarily during continuous construction of a building or its alteration or improvement.

Section 105. Substantial Completion. A Structure shall not be occupied in the course of original construction until substantially completed. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 106. Construction Completion. The exterior of all buildings or other Structures must be completed within one year after the commencement of construction except where such completion is impossible or would result in great hardship due to strikes, fires, national emergency or natural calamities. If not so completed, or if construction shall cease for a period of sixty days without permission of the Approving Authority, the Approving Authority will give the Owner thereof Due Notice of such fact, and if construction on such Structure is not diligently commenced within thirty days after such notice, the unfinished Structure or unfinished portion thereof shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner.

Section 107. Construction or Sales Offices. Temporary buildings for construction or administration purposes or for sales offices may be erected or maintained only by Declarant or with the permission of the Approving Authority. Model homes may be used and exhibited only by Declarant or with the permission of the Approving Authority. Temporary buildings permitted for construction or administration purposes or for sales offices shall be promptly removed when they cease to be used for these purposes.

Section 108. Drilling Structures. No derrick or other Structure designed or used for boring or drilling for water, oil or natural gas shall be permitted upon or above the surface of any Lot, nor shall any water, oil, natural gas, petroleum, asphaltum or other hydrocarbon substances be produced from any well located upon, in or under any Lot.

Section 109. Easements. There are hereby reserved to Declarant, its successors and assigns, perpetual, alienable, divisible and releasable easements and the right from time to time to grant such easements to others over, under, in and across each of the seven foot strips along and adjoining each rear Lot Line of each Lot, and each of the five foot strips along and adjoining each side Lot Line of each Lot for use of all or part of such areas for lines for transmission of electric current or impulses or electronic signals, for heat and fuel lines, for water lines, for utility lines, for drainage and for other similar or dissimilar facilities and purposes, and for any one or more of such purposes.

Section 110. Underground Utilities. All utilities, except lighting standards and customary service devices for meters, transformers, access, control or use of utilities, shall be installed underground.

Section 111. Access Restriction. All persons or entities having any interest in any of the Lots are required to and shall arrange and maintain any drives, dwellings or other Structures so that ingress and egress to and from their Lots is exclusively from a publicly-dedicated street and not through other private property. The above restriction shall not, however, apply to Lots for which the Approving Authority has specifically approved the use of shared driveways.

Section 112. Declarant's Installation of Standard Fence. Declarant reserves the right to construct, at its expense, a fence along the side and/or rear lot lines of Lots 1, 17, 18 and 26. Said fence may be constructed within the limits of the applicable setback from the street, shall not obstruct the site lines reasonably needed to view approaching motor vehicle traffic, and shall comply with all other applicable City requirements. If such fence is constructed of a material through which one cannot see (such as wood), the fence shall not be greater than five feet in height and shall be lower as is reasonably necessary for visibility purposes.

Section 113. Fence and Landscaping Maintenance. The Owner of the adjacent Lot shall maintain, in good condition, the portion of the fence referred to in Section 112 (these are called "Declarant Improvements") located on and/or immediately adjacent to their Lots. If such maintenance is not properly performed, Declarant also has the right (but not the obligation) to enter any Lot which is subject to this easement and perform this maintenance at Declarant's expense. Except in cases of emergency, Due Notice will be given to Owners of these Lots prior to any such entry and maintenance by Declarant. The party performing the maintenance shall not be liable for any loss, costs or damages to any Owner of a Lot on account of its performance of such maintenance, except for any such loss, cost or damage caused by gross negligence or willful misconduct. Once the Declarant Improvements have been installed, no modifications shall be made to them without the prior approval of the Approving Authority, and the Approving Authority may require Owners of the affected Lots to perform maintenance in such a way as to preserve the uniform and harmonious visual appearance of the Declarant Improvements.

Section 114. No Building Areas. Certain areas within some of the Lots have been designated as "No Building Areas" on either the recorded plat or the Map. These No Building Areas shall be used by Owner only in such a manner as is consistent with preservation of the natural vegetation and shall not be subjected to any kind of intensive or destructive use or any activity which might result in permanent damage to the existing natural growth. In amplification and not in limitation of this general restriction, the following specific restrictions apply to No Building Areas:

(a) no planting or cultivation shall be permitted except planting and cultivation of plants native to the Pikes Peak region pursuant to an approved landscaping plan;

(b) no alteration of ground conditions and no clearing of living growth or the existing dead and weathered tree trunks shall be permitted;

(c) no structures or installations of any kind shall be permitted, except with the prior approval of the Approving Authority;

(d) no vehicles or conveyances of any type shall be permitted except to preserve order or to protect, preserve or maintain the natural vegetation; and

(e) no activity tending to produce litter shall be permitted.

Section 115. Soils. The Pinnacle at Pinecliff is located within an area that has been identified as having expansive soils and bedrock present and the south mesa edge of this area is potentially unstable. Owner shall take all reasonable steps during construction and afterwards so as to

minimize the potential impact of such conditions, including but not limited to, employing the services of a geotechnical engineer and/or other professional experts to further investigate conditions of Owner's Lot. Owner assumes all risks associated with building and/or residing in this area and hereby releases Declarant from any and all liability as a result of loss, injury or property damage of whatever kind or nature caused by any geological hazards.

## ARTICLE II

### DENSITY, SETBACK AND QUALITY STANDARDS

Section 201. Resubdivision. No more than one dwelling shall be erected or maintained within any Lot or the combination of two or more Lots or portions thereof as approved by the Approving Authority and aggregating not less than 7,000 square feet.

Section 202. Setback Areas. Except with approval of the Approving Authority, no building, porch, eave, overhang, projection or other part of a building shall be located closer to Lot Lines than permitted by applicable zoning ordinances and the recorded plat of the Subdivision. The Approving Authority's approval may be given for (a) fireplace projections integral with the building; (b) eaves and overhangs; (c) decks and patios; and (d) construction which extends less than five feet into the setback area and which the Approving Authority determines to have only minor impact, to be minor in nature and to be consistent with the Lot's shape, topography and in the interest of superior design. All construction must also conform to the building codes, zoning codes and subdivision regulations of the City, which regulations may vary from the provisions of this Declaration.

Section 203. Architectural Standards. Architectural standards are established to the end that the Subdivision may benefit from the natural advantages of its particular location. While the standards for architectural style are flexible, compatibility with the informal natural environment is required. Contemporary, southwestern and western styles typical of the Pikes Peak Region are desirable. All buildings must be designed to fit the natural or presently existing contours of the Lot without excessive grading.

Section 204. Building Materials. All buildings shall conform to the following material and appearance standards:

- (a) Exterior materials shall be natural wood, brick, stone, stucco or manufactured siding material approved by Declarant.
- (b) Aluminum or wood windows are permitted. All aluminum windows shall be anodized and painted or coated a color to blend with the color of the building.
- (c) Gutters, if installed, shall be painted the same color as the adjoining trim color of the building.
- (d) Exposed concrete shall be stuccoed and painted or textured in a manner approved by Declarant.

Section 205. Dwelling Area Requirements. No dwelling shall be erected which, exclusive of porches, patios, covered but unenclosed areas, garages and any attached Accessory Building, has a gross livable finished floor area of less than 1,700 square feet. The Approving Authority shall use its best efforts to help ensure that the price range of dwellings at the time of initial construction will be compatible with the value of existing dwellings in the neighborhood.

Section 206. Height Restrictions. No dwelling or other Structure shall exceed twenty-five feet in height. Height shall be the vertical distance measured from the average elevation of the finished grade adjoining the building to the highest point of the roof surface of a flat roof; to the deck line of a mansard roof; and to the average height between the plate and the ridge of a gable, hipped or gambrel roof, provided that no part of such roofs shall extend more than five feet above the permitted height. The average elevation of the finished grade adjoining the building shall be the average of the exposed exterior elevations of all corners of the building. The height of a stepped or terraced building is the maximum height of any segment of the building.

Section 207. Roofs. All roof areas shall be of wood shakes, wood shingles, tile or slate. Other roofing materials may also be used, but only if approved by the Approving Authority. The Approving Authority shall not, however, approve asphalt roofs in connection with the initial construction of any Structure.

Section 208. Accessory Buildings. Any Accessory Building or Structure shall harmonize in appearance with the dwelling situated on the same lot and shall be constructed using substantially the same exterior building materials as the dwelling.

Section 209. Antennas. No aerial, antenna, satellite dish or other device for reception or transmission of radio or television or other electronic signals shall be maintained on the roof of any building, nor shall they be maintained at any other exterior location unless screened in a manner approved by the Approving Authority. Plans for such Structures must be submitted to and approved by the Approving Authority prior to installation. If the Approving Authority disapproves, the party requesting approval may modify its plans to eliminate the Approving Authority's objections and resubmit them for approval. If any such aerial, antenna, satellite dish or other device is installed without the approval of the Approving Authority, Declarant and/or the Approving Authority shall have the right, but not the obligation, to enter the lot in question and remove the aerial, antenna, satellite dish or other device. Declarant and the Approving Authority shall not be liable for any losses, costs or damages to any Owner of the lot on account of such removal of the offending device, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct. Declarant and the Approving Authority may delegate their entry and removal rights hereunder to agents and independent contractors. In the event Declarant or the Approving Authority elects to remove a device pursuant to this section, Declarant or the Approving Authority will submit to the Owner of the lot from which the device was removed, a written statement of the costs incurred by Declarant or the Approving Authority in removing the device. These costs shall be paid to Declarant or the Approving Authority within twenty days after receipt of such notice. If the costs of Declarant or the Approving Authority have not been paid after expiration of this twenty-day period, Declarant or the Approving Authority may thereafter record a lien against the lot involved for all costs (including reasonable attorneys' fees) incurred by Declarant or the Approving Authority in removing the device and in collecting such costs and foreclosing upon the lien, which lien shall be junior to all other liens or encumbrances of record with respect to the lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide that all sums expended by Declarant or the Approving Authority in foreclosing the lien and collecting the amounts due Declarant or

the Approving Authority (including reasonable attorneys' fees) shall be additional indebtedness secured by the lien.

Section 210. Owner Maintenance. Each Owner shall maintain the exterior of the dwelling, any Accessory Building and all other Structures, lawns and landscaping, walks and driveways, in good condition, shall cause dead or diseased landscaping to be promptly replaced and shall cause such other items to be repaired or replaced as the effects of damage or deterioration become apparent. Exterior building surfaces and trim shall be repainted, sealed or stained periodically and before the surfacing becomes weatherbeaten or worn off.

Section 211. Rebuilding or Restoration. Any dwelling or building which may be destroyed in whole or in part by fire, windstorm or from any other cause or act of God must be rebuilt or all debris must be removed and the Lot restored to a sightly condition, such rebuilding or restoration to be completed with reasonable promptness and in any event within six months from the time the damage occurred.

Section 212. Fences. To preserve the unique character of Lots 5 through 11, inclusive, fencing in the entire Lot or its entire back yard, will not be permitted. To preserve the unique character of Lots 1 through 4, inclusive, fencing is discouraged. If, however, any Owner of Lots 1 through 4 inclusive elects to fence his Lot in accordance with the provisions of these Covenants, no such fence will be permitted to cause any portion of that certain eight-foot landscaping easement recorded at Book 5786 at Page 1109 of the records of El Paso County, Colorado located within the Lot to be contained within the fenced portion of the Lot. Such fencing may, however, be situated in a manner which would cause the landscape easement to be excluded from the fenced-in portion of the Lot. The height, location and material of all privacy fences, animal pens, dog runs and other similar items must be approved by the Approving Authority. Fencing shall be limited to privacy or activity areas and animal control areas adjoining the primary dwelling. Chainlink, similar wire, wiremesh or concrete block fencing shall not be allowed as the primary fencing material. All fences and walls shall be designed and constructed as a visual extension of the architecture of the primary dwelling, including both scale and use of materials. All Owners of Lots that have fencing which is visible from a street are encouraged to install landscaping in front thereof in order to obstruct the view of at least portions of such fencing. Except with approval of the Approving Authority, no fence or hedge shall be installed closer to an adjoining street than the dwelling or any other building located on the Lot.

Section 213. Chimneys. All fireplaces and chimneys or other devices for open flames will be equipped with a spark arresting screen or other similar device.

Section 214. Driveways. All drives, driveways and walks for vehicular or pedestrian ingress and egress shall be constructed of concrete or other material approved in writing by the Approving Authority.

### ARTICLE III

#### LIVING ENVIRONMENT STANDARDS

Section 301. Building and Grounds Conditions. Each Owner shall prevent the development of any unclean, unsightly or unkept conditions of buildings or grounds on his Lot which tends to substantially decrease the beauty of the neighborhood as a whole or in the specific area. No building material shall be stored on any Lot, except temporarily during continuous construction or repair of a building.

Section 302. Garage Doors. Garage doors shall be kept closed except when being used to permit ingress or egress to or from the garage. Automatic garage doors are encouraged.

Section 303. Maintenance Equipment. All maintenance equipment shall be stored in an enclosed Structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 304. Clotheslines. All outdoor clothespoles, clotheslines or other facilities for drying or airing of clothing or household goods are prohibited.

Section 305. Refuse. No ashes, trash, rubbish, garbage, grass or shrub clippings, scrap material or other refuse, or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any neighboring property or street, except during refuse collections.

Section 306. Nuisances. No noxious or offensive activity shall be carried on upon any Lot or anything done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No offensive or hazardous activities may be carried on on any Lot or in any living unit. No annoying lights, sounds or odors shall be permitted to emanate from any living units.

Section 307. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes shall be located, used or placed on any Structure or within any Building Site.

Section 308. Landscaping. At completion of construction of the dwelling, all front, side and/or rear yards and open spaces disturbed by or during the construction of the dwelling shall be landscaped according to a landscaping plan previously approved by the Approving Authority. Each landscaping plan shall include at least two native evergreen trees (pinon, pine, ponderosa, spruce or fir) at least twelve feet in height and at least one deciduous tree having a caliber of not less than two inches and sod or other approved ground covers. The Owner's responsibility for landscaping shall also extend from the boundary of his Lot to the curb on any street bordering his Lot. If weather conditions will not allow the immediate installation of the landscaping, the Approving Authority, upon written request, may grant an extension of up to six months for its completion.

Section 309. Weeds. All yards and open spaces and the entire area of every Lot on which no building has been constructed, shall be kept free from noxious insects or plant diseases which in the reasonable opinion of the Approving Authority, are likely to cause the spread of infection to neighboring property and free from other growth or trash which in the reasonable opinion of the Approving Authority causes undue danger of fire.

Section 310. Mowing and Pruning. In order to effect insect, weed and fire control and to prevent and remove nuisances, the Owner of any Lot upon which a building has not been constructed shall mow, cut, prune, clear and remove from the premises unsightly brush, weeds and other unsightly growth and shall remove any trash which may collect or accumulate on the Lot. Declarant has the right (but not the duty) to, at its expense, enter any Lot and perform this work after Due Notice to the Owner.

Section 311. Grading Patterns. No material change may be made in the ground level, slope, pitch or drainage patterns of any Lot as fixed by the original finish grading or existing topography. Grading shall be maintained at all times so as to conduct irrigation and surface waters away from buildings and so as to protect foundations and footings from excess moisture.

Section 312. Animals. No animals except domesticated birds or fish and other small domestic animals permanently confined indoors, and except an aggregate of three domesticated dogs or cats shall be maintained in or on any Lot within the Subdivision and then only if kept as pets. No animal of any kind shall be permitted which in the opinion of the Approving Authority makes an unreasonable amount of noise or odor or is a nuisance. No animals shall be kept, bred or maintained within the Subdivision for any commercial purposes.

Section 313. Trailers, Campers, etc. No boat, trailer, camper (on or off supporting vehicles), tractor, commercial vehicle, mobile home, motor home, motorcycle, any towed trailer unit or truck, excepting only pickup trucks solely for the private use of the residents of a dwelling, shall be parked overnight on any street or within any Lot or building site except in a completely enclosed structure. If any such vehicle is not removed from the Subdivision or placed in a completely enclosed structure, within three days after notice is delivered to the Owner of the Lot on or adjacent to which the offending vehicle is parked, then Declarant and/or the Approving Authority shall have the right, but not the obligation to enter the Lot in question, remove or cause to be towed the offending vehicle, and store such vehicle. Declarant and the Approving Authority shall not be liable for any losses, costs or damages to any Owner of the Lot or the owner of the vehicle on account of such removal of the offending vehicle, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct. Declarant and the Approving Authority may delegate their entry and removal rights hereunder to agents and independent contractors. In the event Declarant or the Approving Authority elects to remove a vehicle pursuant to this section, Declarant or the Approving Authority will submit to the Owner of the Lot from which the vehicle was removed or adjacent to the place on a public street from which the vehicle was removed, or in the case where the owner of the vehicle owns a different Lot, then to the owner of the vehicle, a written statement of the costs incurred by Declarant or the Approving Authority in removing the vehicle. These costs shall be paid to Declarant or the Approving Authority within twenty days after receipt of such notice. If the costs of Declarant or the Approving Authority have not been paid after expiration of this twenty-day period, Declarant or the Approving Authority may thereafter record a lien against the Lot involved for all costs (including reasonable attorney's fees) incurred by Declarant or the Approving Authority in removing and storing the vehicle and in collecting such costs and foreclosing upon the lien, which lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide that all sums expended by Declarant or the Approving Authority in foreclosing the lien and collecting the amounts due Declarant or the Approving Authority (including reasonable attorneys' fees) shall be additional indebtedness secured by the lien.

Section 314. Junk Cars. No stripped down, partially wrecked or junk motor vehicle or part thereof, shall be permitted to be parked on any street or on any Lot except in a completely enclosed structure. In the event of a violation of this



provision, Declarant and the Approving Authority shall have the same rights and remedies contained in Section 313 with respect to the offending motor vehicle or part thereof.

Section 315. Parked Vehicles. Automobiles shall be parked overnight only in the garage or on the driveway surface of the residence and not on the landscaped portions of the Lot or the street adjacent to the front yard or side yard of the Lot.

Section 316. Vehicle Repairs. No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on within the Subdivision except within a completely enclosed Structure which screens the sight and sound of the activity from the street and from adjoining property.

Section 317. Signs. The only signs permitted on any Lot or Structure shall be:

- (a) one sign of customary size for offering of the signed property for sale or for rent;
- (b) one sign of customary size for identification of the occupant and address of any dwelling;
- (c) multiple signs for information, banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale, administration and directional purposes installed by, or with the permission of Declarant during development and sales of Lots and/or homes and project identification signs installed by Declarant;
- (d) signs as may be necessary to advise of rules and regulations or to caution or warn of danger; or
- (e) such signs as may be required by law.

Except for permitted signs, there shall not be used or displayed on any Lot or Structure any signs or any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental. All permitted signs must be professionally painted, lettered and constructed.

Section 318. Solar Collectors. Solar collectors or other devices are permitted so long as they are designed and installed to blend in with the overall architecture of other improvements on the Lot. Any roof or wallmounted collectors or solar devices must be built-in to the roof or wall, be flush with, and of the same pitch as, the adjacent portions of the building, and be architecturally compatible with the building upon which they are affixed. Ground level freestanding solar collectors or devices will be permitted so long as they are designed or screened in a manner accepted by the Approving Authority so as to be visually compatible with the buildings and landscaping on the Lot involved and to not impact views from adjacent lots. Plans for any such solar collectors or other devices must be submitted to the Approving Authority for its review and approval prior to installation. If the Approving Authority disapproves, the party requesting approval may modify its plans to eliminate the Approving Authority's objections and resubmit them for approval. If any such solar collectors or other devices are installed without the approval of the Approving Authority, then Declarant and/or the Approving Authority shall have, with respect to such solar collectors or other devices, the right, but not the obligation, to enter the Lot in question and remove the solar collector or other device. Declarant and the Approving Authority shall not be liable for any losses, costs or damages to any Owner of the Lot on account of such removal of the

offending device, except for any such loss, cost or damage caused by Declarant's or the Approving Authority's gross negligence or willful misconduct. Declarant and the Approving Authority may delegate their entry and removal rights hereunder to agents and independent contractors. In the event Declarant or the Approving Authority elects to remove a device pursuant to this section, Declarant or the Approving Authority will submit to the Owner of the Lot from which the device was removed, a written statement of the costs incurred by Declarant or the Approving Authority in removing the device. These costs shall be paid to Declarant or the Approving Authority within twenty days after receipt of such notice. If the costs of Declarant or the Approving Authority have not been paid after expiration of this twenty-day period, Declarant or the Approving Authority may thereafter record a lien against the Lot involved for all costs (including reasonable attorneys' fees) incurred by Declarant or the Approving Authority in removing the device and in collecting such costs and foreclosing upon the lien, which lien shall be junior to all other liens or encumbrances of record with respect to the Lot on the date this lien is recorded. This lien may thereafter be foreclosed upon in the manner provided by Colorado law for foreclosing upon real estate mortgages. This lien shall provide that all sums expended by Declarant or the Approving Authority in foreclosing the lien and collecting the amounts due Declarant or the Approving Authority (including reasonable attorneys' fees) shall be additional indebtedness secured by the lien.

#### ARTICLE IV

##### ARCHITECTURAL CONTROL

Section 401. Building Approval. No Structure shall be commenced, erected, placed, moved onto a Lot, permitted to remain on any Lot or altered in any way so as to materially change the Lot's previously existing exterior appearance, except in accordance with plans, specifications and other information submitted to the Approving Authority and approved by the Approving Authority no more than three months before start of the construction, alteration or installation. Matters which require the approval of the Approving Authority include but are not limited to: the exterior appearance, material, color, height and location of each Structure, covering, drive, walk and fence, and grading of site. All Structures shall be painted, stained or otherwise dyed an earthtone or other soft color as deemed acceptable to the Approving Authority. In granting or withholding approval, the Approving Authority shall consider among other things: the adequacy of the materials for their intended use, the harmonization of the external appearance with the surroundings, the proper relation of the Structure or covering to the environment and to surrounding uses, the degree to which the proposed sighting preserves existing natural vegetation, the degree, if any, to which the proposed Structure or covering will cause intrusions of sound, light or other effect on neighboring sites beyond those reasonably to be expected in a quality urban residential area from considerate neighbors.

Section 402. Plans Submissions. All plans, samples and other materials to be submitted to the Approving Authority shall be submitted in duplicate. The minimum scale of these plans shall be one-twentieth inch equals one foot. The plot plan in this minimum scale shall show the location of all buildings, drives, walks, fences and any other Structures. Proposed new contours throughout the Lot and abutting street elevations on all sides shall be shown. Structure plans shall show all exterior elevations, and shall indicate and locate on each elevation the materials to be used and designate each exterior color to be used by means of actual color samples. If approval is being sought for construction of a dwelling, the plans shall include a landscaping plan for the Lot.

Section 403. Approval Process. All action required or permitted to be taken by the Approving Authority shall be in writing and any such written statement shall establish the action of the Approving Authority and shall protect any person relying on the statement. If the Approving Authority does not execute and acknowledge such a statement within thirty days after delivery of all the required materials to the Approving Authority, the materials so delivered shall be deemed approved for the purpose of these Covenants. The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples and materials submitted pursuant to this Declaration, exclusive of reimbursement to the members of the Approving Authority for their services. The Approving Authority shall be entitled to retain one copy of all approved plans as part of its files and records.

Section 404. Variances. The Approving Authority shall have the authority to grant for a Lot or Building Site a variance from the terms of one or more of Sections 106, 110, 202, 205, 206, 211 and 213 subject to terms and conditions which may be fixed by the Approving Authority and will not be contrary to the interests of the Owners and residents of the Subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of all of those sections will result in unnecessary hardship. Following an application for a variance:

(a) The Approving Authority shall, within thirty days after the request for the variance was delivered, determine whether to grant or deny the variance. If the Approving Authority fails to act on the request for a variance within this thirty day period, the variance will be deemed granted.

(b) A variance granted hereunder shall run with the Lot or Building Site for which granted.

(c) A variance shall not be granted unless the Approving Authority shall find that all of the following conditions exist:

(i) the variance will not authorize the operation of a use other than private, single family residential use;

(ii) owing to the exceptional and extraordinary circumstances, literal enforcement of the section above enumerated will result in unnecessary hardship;

(iii) the variance will not substantially or permanently injure the use of other property in the Subdivision;

(iv) the variance will not alter the essential character of the Subdivision;

(v) the variance will not weaken the general purposes of these Covenants;

(vi) the variance will be in harmony with the spirit and purpose of these Covenants; and

(vii) the circumstances leading the applicant to seek a variance are unique to the Lot or Building Site or its Owner and are not applicable generally to Lots in the Subdivision or their Owners.

(d) If the Approving Authority denies the request for a variance, the applicant may request a meeting of the Owners be held to reconsider the denial. In this case, the Approving Authority shall call a meeting of Owners of Lots in the Subdivision, to be held at the Approving Authority's principal office, notice of which meeting shall be given to the Owners at least ten days in advance, at which meeting all Owners shall have an opportunity to appear and express their views. Whether or not anyone appears at the meeting in support of or in opposition to the application for variance, the Approving Authority shall within one week after the meeting either grant or confirm its denial of the variance. The decision to grant or deny the variance shall always rest with the Approving Authority.

(e) If a variance is denied, another application for a substantially similar variance for the same Lot or Building Site may not be made for a period of one year after submittal of the original request.

#### ARTICLE V

##### APPROVING AUTHORITY

###### Section 501. Composition of the Approving Authority.

The Approving Authority shall consist of three individuals. The Declarant reserves the right, until December 31, 1999, to appoint all members of the Approving Authority. Thereafter, the Owners of Lots within the Subdivision may, by majority vote, change the membership of the Approving Authority, so long as the members of the Approving Authority so appointed are all Owners of Lots within the Subdivision. Whenever a member shall be deceased or unwilling or unqualified to act, the remaining members of the Approving Authority shall appoint an Owner of a Lot within the Subdivision as a member of the Approving Authority so as to fill the existing vacancies, except until December 31, 1999, any such vacancy may be filled by Declarant. Any residents appointed to the Approving Authority by Declarant may be removed and replaced by the record Owners of a majority of Lots in the Subdivision. Any appointment, removal or replacement of residents as members of the Approving Authority shall be by written instrument signed and acknowledged by Declarant or other person or persons above authorized to make appointment, removal or replacement and filed for record with the Clerk and Recorder of the County of El Paso, State of Colorado. The Approving Authority may delegate to one of its members any or all of the functions and powers of the Approving Authority and until such delegation is revoked or modified, the action of the member to whom such delegation is made shall constitute the action of the Approving Authority for purposes of these Covenants. The Approving Authority may take action without a meeting by a written statement signed by the members of the Approving Authority or by their delegate.

Section 502. Delivery of Items. Any item required or permitted to be delivered to the Approving Authority shall be deemed properly delivered when actually received by the Approving Authority at such address as it may from time to time designate.

Section 503. Liability. Members of the Approving Authority shall not be liable to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

Section 504. Mergers. The Approving Authority may, if it determines such action to be in the best interest of the Owners, cause the Approving Authority to be merged with the Architectural Control Committees or Approving Authority of other single-family residential subdivisions in the same general area

that contain lots of substantially similar size, character and value as the Lots. Such merger shall be accomplished by filing with the Clerk and Recorder of El Paso County a written document signed by the Approving Authority and the Architectural Control Committee for each subdivision participating in such merger, acknowledging the action and appointing an Architectural Control Committee for the merged group. Thereafter, all functions of the predecessor individual Architectural Control Committee will be performed by the new Architectural Control Committee, and the substitution of members provided for in Section 501 will require action by 50 percent of the owners of lots in all of the subdivisions contained within the merged group.

## ARTICLE VI

### GENERAL PROVISIONS FOR EFFECT OF THE COVENANTS

Section 601. Definitions. The following words and expressions used in these Covenants have the meanings indicated below unless the context clearly requires another meaning:

(a) Accessory Building: Detached garages, patios, swimming pools, covers, enclosures, dressing rooms or other similar Structures, recreation facilities and other buildings customarily used in connection with the single family residence.

(b) Approving Authority. The architectural review board established pursuant to Section 501 of these Covenants.

(c) Building Site. A Lot as established by the recorded plat or the combination of two or more Lots or portions thereof as approved by Declarant and aggregating not less than 7,000 square feet.

(d) City. The City of Colorado Springs.

(e) These Covenants. This Declaration and the provisions contained in it.

(f) Lot. Each area designated as a Lot in any recorded plat of the Subdivision.

(g) Lot Lines. Front, side and rear Lot Lines shall be the same as defined in the zoning regulations of the City in effect from time to time. In the absence of such a definition, a front Lot Line is each boundary line (whether one or more) between the Lot and any public street. A side Lot Line is any boundary line which meets and forms an angle with a public street except that for a corner Lot with two front Lot Lines, the side Lot Line is the boundary which forms an angle with the street which affords the principal access to the Lot.

(h) Map. The generalized map of the Subdivision attached hereto as Exhibit A.

(i) Owner. Person having fee simple legal title to a Lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an Owner through such one of them as they may designate from time to time. A vote of Owners shall be determined on the basis of one vote for each Lot.

(j) Structure. Any thing or device other than trees and landscaping the placement of which upon any Building Site might affect its architectural appearance, including by way of illustration and not limitation, any

dwelling, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, tennis court, fence, wall, tent, covering, antenna, mailbox, solar collector or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel upon or across any Lot.

(k) The Subdivision. The area subdivided as The Pinnacle at Pinecliff according to the plat recorded in the office of the Clerk and Recorder of the County of El Paso and State of Colorado.

(l) Enumerations Inclusive. A designation which describes parcels or other things as from one number, letter or other designation to another includes both such numbers, letters or other designations and all in between.

(m) Gender and Number. Whenever the context permits, Owner or Owners shall be deemed to refer equally to persons of both sexes and to corporations, singular to include plural and plural to include singular.

(n) Due Notice. Due Notice means written notice delivered in accordance with the requirements of these Covenants at least ten days prior to the action required by the notice.

Section 602. Captions. Captions, titles and headings in these Covenants are for convenience only and do not expand or limit the meaning of the section and shall not be taken into account in construing the section.

Section 603. Approving Authority Resolves Questions of Construction. If any doubt or questions shall arise concerning the true intent and meaning of any of these Covenants, the Approving Authority shall determine the proper construction of the provision in question and shall set forth in written instrument duly acknowledged by the Approving Authority and filed for record with the Clerk and Recorder of El Paso County, the meaning, effect and application of the provision. This definition will thereafter be binding on all parties so long as it is not arbitrary or capricious. Matters of interpretation involving Declarant shall not be subject to this Section 603.

Section 604. Covenants Run With the Land. These Covenants shall run with the land and shall inure to and be binding on each Lot and upon each person or entity hereafter acquiring ownership or any right, title and interest in any Lot in the Subdivision.

Section 605. Covenants are Cumulative. Each of these Covenants is cumulative and independent and is to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. A provision shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 606. Waivers. Except as these Covenants may be amended or terminated in the manner hereinafter set forth, they may not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these Covenants. Every person bound by these Covenants is deemed to recognize and agree that it is not the intent of these Covenants to require constant, harsh or

literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these Covenants or any part of them, nor operate as an impediment to their subsequent enforcement and each such person agrees not to plead as a defense in any civil action to enforce these Covenants that these Covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 607. Enforcement. These Covenants are for the benefit of the Owners, jointly and severally, and the Approving Authority and may be enforced by action for damages, suit for injunction, mandatory and prohibitive, and other relief, and by any other appropriate legal remedy, instituted by one or more Owners, or the Approving Authority, or any combination of these. Until seven years after these Covenants were filed of record, or when Declarant owns no property within the Subdivision, whichever is sooner, Declarant may also enforce these Covenants in any of the manners permitted above. All costs, including reasonable attorneys' fees, incurred by the Approving Authority in connection with any successful enforcement proceeding initiated by them (alone or in combination with Owners) or, during the period it is permitted to enforce these Covenants, incurred by Declarant, shall be paid by the party determined to have violated these Covenants. Any party exercising its right to enforce these Covenants shall not be required to post any bond as a condition to the granting of any restraining order, temporary or permanent injunction or other order. The rights and remedies for enforcement of these Covenants shall be cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any of the others.

Section 608. Duration of Restrictions. Unless sooner terminated as provided in Section 609, the restrictions and other provisions set forth in these Covenants shall remain in force until the year 2015 and shall be automatically renewed for successive periods of ten years unless before the year 2015 or before the end of any ten year extension, there is filed for record with the Clerk and Recorder of El Paso County an instrument stating that extension is not desired, signed and acknowledged by a majority vote of Owners of the Lots in the Subdivision.

Section 609. Amendment and Extensions. From time to time any one section of these Covenants (except Section 109) may be amended or a new section may be added to these Covenants by an instrument signed and acknowledged by the holders of at least two-thirds of the votes of Owners of Lots and filed for record with the Clerk and Recorder of El Paso County.

Section 610. Termination. All sections of these Covenants (except Section 109) may be terminated at any time, and from time to time any two or more sections of these Covenants (except Section 109) may be amended or two or more new sections may be added to these Covenants by an instrument signed and acknowledged by the Owners of at least three-fourths of votes of Owners of Lots and filed for record with the Clerk and Recorder of El Paso County.

Section 611. Partial Amendments. These Covenants may be amended for only a portion of the Subdivision by a written instrument executed by Declarant and one hundred percent of the then Owners of such portion of the Subdivision if:

- (a) the portion of the Subdivision affected by such amendment contains at least ten contiguous Lots;
- (b) no improvements have been erected on any such Lots; and

(c) Declarant reasonably determines that the amendments will not materially adversely affect the general living environment contemplated by these Covenants for the remaining Lots.

Section 612. Severability. If any of these Covenants shall be held invalid or become unenforceable, the other Covenants shall not be affected or impaired but shall remain in full force and effect.

Section 613. Action in Writing. Notices, approval, consents, applications and other action provided for or contemplated by these Covenants shall be in writing and shall be signed on behalf of the party who originates the notice, approval, consent, applications or other action.

Section 614. Notices. Any writing described in Section 613, including but not limited to any communication from the Approving Authority to an Owner, shall be sufficiently served if delivered by mail or otherwise: (a) to the dwelling situate on the lot owned by that Owner; or (b) if there is no dwelling, then to the address furnished by the Owner to the Approving Authority and if the Owner has not furnished an address, then to the most recent address of which the Approving Authority has a record.

Section 615. VA/FHA Approvals. In addition to the terms of Section 609 of this Declaration, Declarant reserves the right to make technical amendments to this Declaration as may be required in order to obtain VA or FHA approval of the Subdivision.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 6th day of November, 1990.

DECLARANT:

MARAC, INC., a Colorado corporation

By C. Michael Hausman  
C. Michael Hausman, President



STATE OF COLORADO )  
COUNTY OF EL PASO )

6th The foregoing instrument was acknowledged before me this day of November, 1990 by C. Michael Hausman as President of Marac, Inc., a Colorado corporation, Declarant.

Witness my hand and official seal.



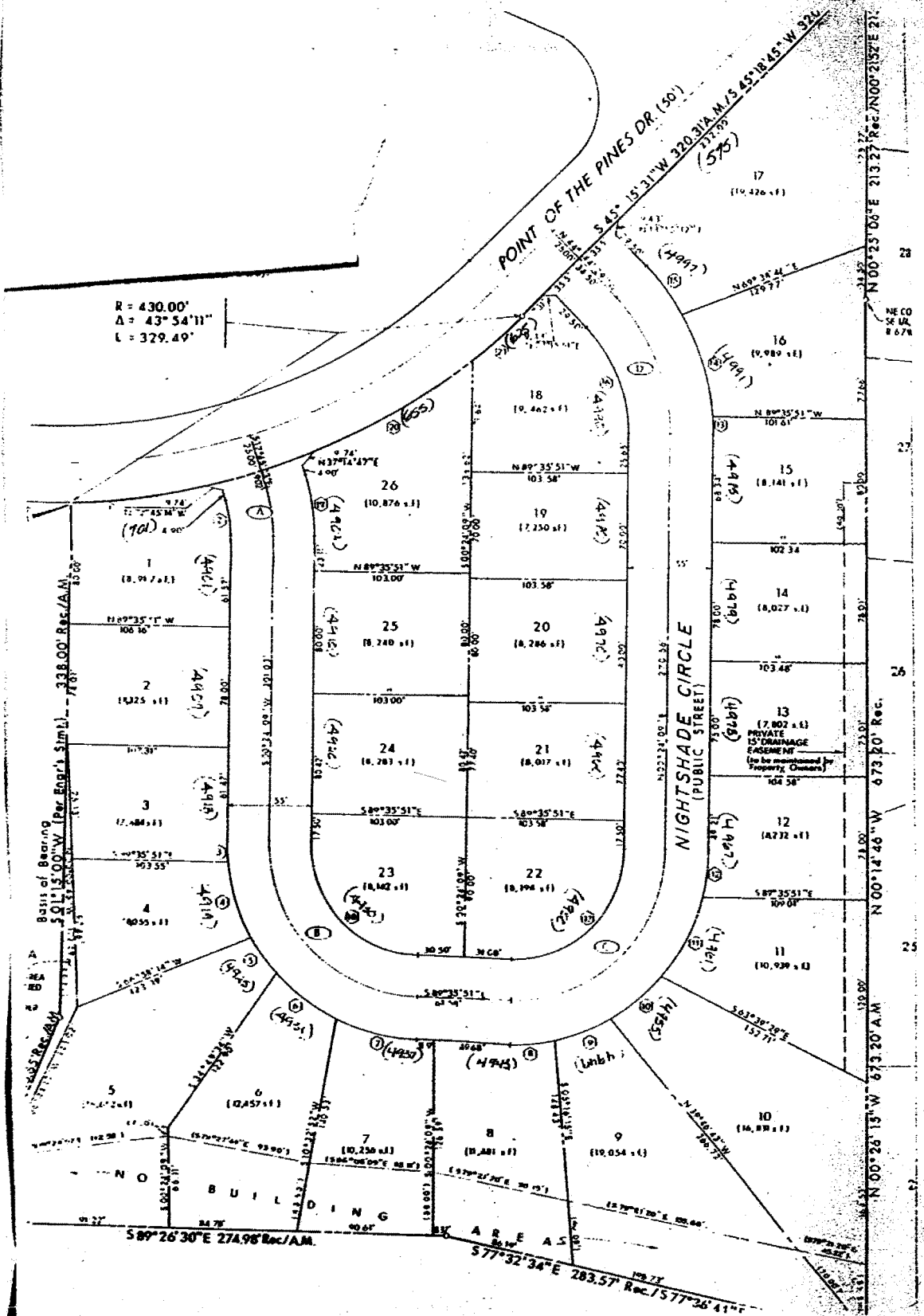
commission expires 11/03/93

Connie R. [Signature]  
Notary Public

CFD:PTS



Exhibit A  
Subdivision Map



ROGER CARLSON  
125 SUNBIRD CLIFFS LN COLO. S. 80919

To: County Clerk and Recorder  
El Paso County, Colorado

ROBERT C. "BOB" BALINK  
04/09/2007 03:49:05 PM  
Doc \$0.00 Page  
Rec \$5.00 1 of 1

El Paso County, CO



207047813

Merger of The Pinnacle at Pinecliff and Pinecliff Home Owners Associations  
Re: Article V, Section 504, affecting the real property known as:

The Pinnacle at Pinecliff  
lots 1 through 26, block 1, Pinecliff 1

City of Colorado Springs, El Paso County, Colorado,  
as recorded in plat book K-2, page 69.

As provided in Section 504, of the controlling document, the Approving Authority of Pinnacle agrees to merge with the Pinecliff Home Owners Association (PHOA) in the best interest of Pinnacle homeowners, a majority of those current homeowners concurring by written vote. (Listing Attached)

Further, a majority of homeowners as specified in Section 504, agree to designate a Pinnacle representative to augment the PHOA Architectural Control Committee (ACC) for such purposes as enforcement of covenant specification. Continuing Approving Authority conditions and remedies for Pinnacle shall remain as specified in Article V of the Pinnacle controlling document.

The above action is in concert with the desires of the current Board of Directors and Architectural Control Committee for PHOA, and a majority of current Pinnacle homeowners as represented by the current Pinnacle Block Captain.

STATE OF COLORADO)

)ss

COUNTY OF EL PASO)

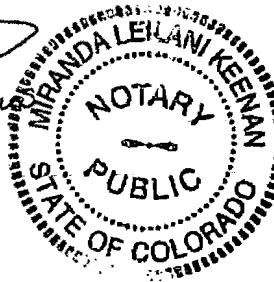
The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of March 2007. Witness my hand and official seal:

My commission expires: 9/6/09

Miranda Leilani Keenan

Notary Public

Title/Address: Realtor, Keller Williams  
1283 Kelly Johnson Blvd  
Co Springs, CO 80920



STATE OF COLORADO)

)ss

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of March 2007. Witness my hand and official seal:

My commission expires: 11/13/10

Paula M. Lydon

Notary Public

Title/Address: Realtor, Prudential Brokerage of Colorado

4005 N. Sutton Rd #157

Colorado Springs, CO 80907

PAULA M. LYDON

Notary Public

State of Colorado

My Commission Expires November 13, 2010

STATE OF COLORADO)

)ss

COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of March 2007. Witness my hand and official seal:

My commission expires: 11/13/10

Paula M. Lydon

Notary Public

Title/Address: Realtor, Prudential Brokerage of Colorado

4005 N. Sutton Rd #157

Colorado Springs, CO 80907

PAULA M. LYDON

Notary Public

State of Colorado

My Commission Expires November 13, 2010

Roger W. Carlson,  
Chairman Pinecliff ACC

Roger W. Carlson