

PROPOSED REVISIONS TO OUR DECLARATION OF PROTECTIVE COVENANTS



Pine Cone Acres Homeowners Association, Inc.
Declaration of Protective Covenants
Revised and Approved _____

PINE CONE ACRES
A Covenant Neighborhood

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WHEREAS it is desired to maintain Pine Cone Acres as an exclusive planned community residential subdivision and to mutually protect and benefit said properties, property owners and future owners, Pine Cone Acres Homeowners Association, Inc. (hereafter "PCAHA" or "Association"), does hereby declare that the following Declaration of Protective Covenants and the applicable provisions of the Colorado Common Interest Ownership Act ("CCIOA") will apply to all lots (hereafter "Lot") within Pine Cone Acres, El Paso County, Colorado.

1. Definitions:

- (a) "Association" shall mean and refer to Pine Cone Acres Homeowners Association, Inc., a Colorado nonprofit corporation, and its legitimate successors and assigns.
- (b) "Declarations" shall mean and refer to the Declaration of Protective Covenants – Pine Cone Acres recorded in the records of the Clerk and Recorder of El Paso County, Colorado and any amendments thereto.
- (c) "Deep Water Rights" shall refer to the Homeowner's right granted by the State of Colorado to use water from deeper aquifers as deeded and recorded in the records of the El Paso County Clerk and Recorder.
- (d) "Director" shall mean an elected or appointed Member of the Association's Executive Board.
- (e) "Improvements" shall mean all changes to the exterior of a dwelling or Lot, including without limitation all structures and any appurtenances thereto or components thereof of every type or kind, including, but not limited to, buildings, outbuildings, concrete additions or pavers, supporting structures, painting or other finish material of any exterior surfaces or any visible structure, additions, garages, carports, fences, screening walls, retaining walls, and exterior tanks, and solar equipment. "Improvements" shall also mean an excavation or fill the volume of which exceeds two cubic yards (e.g. ponds), and 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.
- (f) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Pine Cone Acres subdivision.
- (g) "Member" shall refer to a Lot Owner in the Pine Cone Acres subdivision who is automatically a Member in PCAHA by virtue of ownership of a Lot in the Association.
- (h) "Member in good standing" shall mean and refer to a Member who is current on his/her Assessment(s), any other sums owed to the Association and is not in violation of the Association's Governing Documents.
- (i) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers but excluding those having such interest merely as security for the performance of an obligation.
- (j) "PCAHA" shall mean and refer to Pine Cone Acres Homeowners Association, Inc.
- (k) "Policies and Procedures" are adopted and amended by the Board to assist the Board with conducting the Association's actions or business and providing a set of principles to help with decision making.

- (l) “Properties” shall mean all of the forty-five Lots in the Pine Cone Acres Subdivision, according to the recorded plat thereof, El Paso County, State of Colorado.
- (m) “Small domestic house pets” shall mean commonly accepted small domestic house pets that are given access to the property Owner’s domicile.

2. **Membership:** All Lot Owners in Pine Cone Acres subdivision are automatically Members of PCAHA. Members include every person or entity (e.g. trusts) that holds membership in PCAHA. Membership by an Owner in the Association may not be separated from the interest of such Owner in and to a Lot. The membership of the Association at all times shall consist exclusively of Owners.

3. **Board of Directors:** The affairs of PCAHA will be governed by the Board of Directors, which will consist of at least three and up to seven PCAHA Members in good standing. Elections to the Board of Directors will be for three-year terms. The Members shall elect the Board of Directors, with one verifiable vote for each Lot owned. PCAHA shall conduct elections for positions of the Board of Directors prior to the Annual Meeting by mail-in ballot. Members may cast their vote in person or by proxy at the Annual Meeting. An Owner must be a Member in good standing to vote on any matter, including for dissolution of the Association. The Board of Directors shall not be entitled to any compensation for services performed pursuant to this Covenant.

4. **Architectural Control Committee (ACC):**

- (a) Purpose: To assure ACC of building and Improvement design, placement and construction, so that Pine Cone Acres remains an attractive residential community, and to uphold and **enhance consistently maintain** property values.
- (b) Membership: The ACC is composed of two (2) to three (3) **persons Members in good standing** elected by the PCAHA membership prior to the Annual Meeting or after a special meeting **by mail-in ballot**. Term of membership on the committee is two (2) years, after which time new elections shall be held. A majority of the ACC may designate one of the ACC members as a representative to act for it. In the event of death or resignation of any member of the ACC, the PCAHA Board shall designate a successor to complete the remainder of that member's term. Neither the members of the ACC nor its designated representative is entitled to any compensation for services performed pursuant to this covenant.
- (c) Responsibility: PCAHA Members shall submit an architectural request form including the following: type of Improvement, a drawing of the plan, type of materials, size/dimensions, color and location. No improvement, including walls and fences, will be erected, converted, placed, added to or altered on any Lot until the construction plans and specifications have been approved in writing by the Board, and, if needed, must **apply and** be pre-approved by the State of Colorado (e.g. for the purpose of building a pond). Barbed wire fences are prohibited in Pine Cone Acres.
- (d) Authority: No structure or Improvement, including walls and fences, shall be erected, converted, placed, added to or altered on any Lot until the construction plans and specifications to include materials to be used and a plan showing the location of the structure or Improvement have been approved in writing by the Board as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to other structures planned, to topography and to finished grade elevation. Disapproval of plans and specifications may be based on any ground including

purely aesthetic grounds. Installation of renewable energy must follow the same ACC guidelines.

- (e) **Procedure:** The Board or designated representative shall approve or disapprove the plans and specifications within 30 calendar days. If plans have not been approved **in writing** within 30 calendar days they are deemed to have been disapproved. The 30 calendar day timeframe applies when the ACC form has been completed and submitted to the Board with all required attachments, including supporting documentation. Incomplete applications will not be processed and will be returned to the Owner by the Board of Directors with instructions for resubmission.
- (f) **Liability:** The Association, Board, individual Board Members, and any agent, employee or and any other persons acting in good faith therein shall not liable for damages of any type to any person or entity, including Lot Owners or tenants, by reason of any action, failure to act, approval, or disapproval.

- 5. **Building Type and Use:** All Lots will be known and described as rural residential Lots and must be used only for a free-standing residential building, commonly described **by El Paso County** as a single-family residential (SFR) home. Group homes of any type or description are prohibited. Manufactured or mobile homes for use as a primary residence or guest house are prohibited. No structure or Improvement will be erected, altered, converted, placed, or permitted to be built on any Lot other than one residential dwelling not to exceed two and one-half stories in height and a private garage and/or carport. Any freestanding or attached garage or carport must match the architecture of the main house. Appropriate ancillary buildings with no minimum dimensions, in keeping with the architecture of the existing house, will be permitted if such are not used for any commercial purpose pending approval by the Board.
- 6. **Dwelling Size:** The ground floor area of the main structure exclusive of one-story open porches, decks, patios and garages, must not be less than fourteen hundred (1400) square feet for a one-story dwelling, or less than eleven hundred (1100) square feet for a dwelling of more than one-story. For a tri-level dwelling the two lower levels must have total combined square feet of (1400) exclusive of any porches, decks, patios or garages.
- 7. **Building Location:** No building or Improvement will be erected nearer than fifty (50) feet to any boundary along a street, or so that any part of said building or Improvement is closer than thirty (30) feet to any of the other boundary lines of said premises. For the purpose of this Covenant, eaves, steps and open porches must be considered as a part of the building or Improvement.
- 8. **Temporary Residences:** No structure of temporary character, trailer, tent or accessory building will be used on any Lot as a residence, temporarily or permanently, provided, however, PCAHA may grant a permit for such use and location during the construction phase of the permanent dwelling, such permit to be in writing and with a time limitation. This Covenant does not preclude camping or other use by Lot Owners and their families, and guests for durations of less than 90 days within a single calendar year.
- 9. **Time of Construction:** Once construction has been initiated on any structure or Improvement including walls, fences, residences, ancillary buildings or any other structure which has been previously approved by the Board, construction of that particular structure or Improvement must be completed within one (1) year of the time such construction was initiated. If extensions are required due to unusual circumstances, the Board may grant written approval.

10. **Resubdivision:** None of the forty-five Lots within Pine Cone Acres may be re-subdivided or combined to make smaller or larger Lots.
11. **Easements:** Easements for installation and maintenance of utilities, roadways, bridle paths and such other purposes, incident to development of the property are reserved as described or shown as set forth in the original plat record, Reception No. 613850, Book 2245, Page 114, of the records of the El Paso County Clerk and Recorder. Which provides: "There shall be a minimum 20 foot utility easement and bridle path on all sides and rear lot lines, ten feet on either side and a 20 foot utility easement and bridle path adjacent to boundaries." Such easements will not be fenced and will be kept open and readily accessible. Easements are for the benefit of the Association and Owners, their tenants and guests to use the roadways and bridle paths, provided that no trail bikes, mini-bikes, motorcycles, all-terrain vehicles, snowmobiles, or other such noise polluting vehicles will be permitted to be used on them. Residents are responsible for their guests on easements. Anyone who uses these easements does so at their own risk. Users accept all risk of injury and damage to person and property due to manmade or natural conditions and are responsible for any damage caused to the easements as a result of their use. In the case of ownership of adjoined Lots, the easement Covenant will still apply.
12. **Obstructions to Vision at Intersections:** No Improvement, including but not limited to signs, fences, walls, hedges, trees, or shrub plantings should obstruct sight lines at elevations between two and six feet above the roadways. Furthermore, no obstructions should be placed or permitted to remain on any corner Lot within 25 feet from the street lines. Each Lot should have a clear sight line where the driveways or access roads intersect the street.
13. **Nuisances:** No noxious or offensive activities, lights, noises or smells will be permitted on any Lot, which are deemed an annoyance or nuisance to the neighborhood. No off-highway vehicles are permitted **within PCAHA** or on any public roadway as stated in C.R.S. 33-14.5-108, and by the El Paso County Sheriff's office. Any commercial activity must be limited to: work from home, home-based, or internet-based activity with no commercial storefront located within the Association. Any use of drones must be confined to the Homeowners Lot and are deemed a trespass if entered over or onto a neighbors Lot. No activity will be permitted which interferes with electronic equipment (including TVs, radios, computer equipment, etc.) on any adjoining or nearby Lots. Outside lights should not be offensive to neighbors. No hunting of any kind or the sustained or excessive discharge of firearms will be permitted in Pine Cone Acres. Use of fireworks within the Association and on Lots must be in accordance with the guidelines set by the El Paso County Sheriff's Office.
14. **Refuse, Rubbish and Burning:** Rubbish, garbage or other waste will be kept and disposed of in a sanitary manner. Containers or other equipment for the storage or disposal of garbage, trash, rubbish or other refuse must be kept in a clean, sanitary condition. All garbage or trash containers, oil tanks, and bottle gas tanks must be underground or placed in walled-in areas so that they will not be visible from adjoining properties or from public streets. No trash, litter, or junk will be permitted to remain exposed upon the premises and visible from public roads or adjoining or nearby premises. All refuse and other waste must be removed from all Lots and will not be allowed to accumulate. Burning of refuse, or other waste, and bonfires will not be permitted in the Association or upon any Lots.
15. **Fireplaces and Chimneys:** All fireplaces and chimneys must be equipped with spark arrestor screens. Other recreational wood burning fire pits must be approved by the Black Forest Fire

Department. Please visit the Black Forest Fire Department's website at <http://www.bffire.org> and El Paso County Ordinances for the current rules and regulations.

16. **Drilling:** No fracking, oil drilling, oil development operations, oil refining, quarry, or mining operations of any kind will be permitted on or in any Lot, nor will 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 will be erected, maintained, or permitted upon any Lot.
17. **Clothes Drying Area:** Outdoor clothes drying will be permitted only in the rear yard and in the case of corner Lots, must not be closer than sixty (60) feet from the side street line.
18. **Signs:** All signs displayed upon any of the premises or Lots must be first approved by the PCAHA Board or by the ACC. This Covenant does not preclude the display of reasonably sized builders or realty signs, or small professional signs as determined solely in the Board's discretion. The Association shall permit at least one political sign per political office or ballot issue that is contested in a pending election. The Board of Directors reserves the right, however, to require modifications or removal of such signs if deemed not in keeping with the area. The maximum size allowed shall be the same as set forth in El Paso County ordinance that regulates the size of political signs on residential property; or thirty-six inches by forty-eight inches, whichever is greater. The Association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day.
19. **Vehicle Roadside Parking:** No vehicle, trailers, vehicular equipment, storage unit, or any other large object will be habitually parked or placed along any public road within PCAHA.
20. **Water, Sewage, and Deep Water Rights:** All water wells and sewage disposal systems (On-Site Wastewater Treatment Systems – OWTS) placed upon any Lot must comply with the requirements of the Colorado Department of Natural Resources – Colorado Division of Water Resources and El Paso County Public Health. Inspection and approval of such systems as installed must be obtained from such authorities.

Deep Water Rights were deeded to participating Pine Cone Acres Homeowners in 2008, ensuring Pine Cone Acres Homeowners maintain the rights to drill deeper wells if their current aquifer should ever reach its production capacity. Deep Water Rights granted to Members of Pine Cone Acres by the State of Colorado will not be sold, leased or bequeathed to any person(s) or group(s) outside of Pine Cone Acres; and whereas Ownership and use of those rights, including transfer of Ownership must remain to Members who purchase property from the Owner(s) who own selling property within Pine Cone Acres.

21. **Mitigation:** All tree and brush debris from mitigation efforts must be disposed of in such a way that all Lots, whether vacant or occupied by buildings, will be kept free of accumulation of brush, trash or other materials which may constitute a fire hazard or render a Lot unsightly. However, this will not restrict Homeowners from storing fireplace wood in neat stacks on their Lots. Homeowners shall be responsible for immediately removing disease infested trees on their Lots which might contaminate or spread to adjacent trees and Lots. Furthermore, Homeowners must also meet any other Colorado State Forest Service recommendations or requirements pertaining to thinning of trees, removal or treatment of mistletoe or pine beetle infested trees. Clear-cutting will not be permitted on any Lot in Pine Cone Acres.

22. Animals:

- (a) PCAHA follows the El Paso County Code Enforcement animal restrictions. One of the following animals; horses (no stallions), mules and nanny goats may be kept for each 1-1/4 acres or a combination up to four horses, mules or nanny goats per five acres. Additionally, up to six permanently housed hen chickens (no roosters); and, common small domestic house pets are permitted in the Association. No other animals or livestock of any kind will be housed, raised or kept on any Lot, either temporarily, permanently or for any commercial purposes. PCAHA shall not permit variances for other animals with the exception of 4-H and/or school projects.
- (b) Horses, mules, nanny goats and hen chickens must be kept in permanently enclosed spaces and never allowed to roam freely. All enclosures and fencing must be approved by the Board. No stables, corrals, or any structure for the housing or feeding of horses, mules, nanny goats or hen chickens will be located or placed closer than thirty (30) feet to any adjoining Lot line or closer than fifty (50) feet to the public street. All stables, corrals or any structure for the housing or feeding of horses, mules, nanny goats or hen chickens must be approved as to location and design by the Board and must be maintained in compliance with all lawful El Paso County sanitary regulations. In case of single ownership of more than one adjoining Lot, then the setback restrictions of this Covenant concerning animals will apply to each single five-acre parcel in the event that either property were to be sold separately in the future.
- (c) PCAHA follows El Paso County regulations regarding the care and keeping of dogs and cats. Dogs must be kept in control and on the Member's Lot. Dogs are not allowed to roam free or to trespass on other properties. Any dog(s) causing excessive noise (see 13. Nuisances) must be confined to indoor spaces from 10 p.m. to 6 a.m., so as not to cause a nuisance to neighbors during regular sleeping hours.
- (d) Any Member-owned domesticated animals must be housed and kept from becoming a nuisance to other residents or a danger to the environment.
- (e) 4-H Projects: Applications for 4-H animal and/or school projects must be submitted to and approved by the Board of Directors. Project applications shall be renewed yearly.

23. Function of the PCAHA: PCAHA has assumed, from Wakonda Western Inc., original developer of Pine Cones Acres subdivision, responsibility in regard to Architectural Control Committee, approval of signs, control of nuisances and unsightly objects, etc. PCAHA has the overall responsibility for administration and enforcement of the Pine Cone Acres Declaration of Protective Covenants and shall act in accordance with the Bylaws of the Association. While acting in good faith in the performance of their duties in compliance with the enforcement of the Pine Cone Acres Declaration of Protective Covenants and Bylaws, the Board of Directors, Officers, Committee Members, or agents of PCAHA shall not be liable in damages to any person or Member. All Members of PCAHA are required to pay the Assessment amount as established, voted and approved by the Members in good standing in accordance with the Bylaws and as outlined in the Assessment Collection Policy. Annual or special meetings of PCAHA must be held on a date to be determined by the Board and as provided in the Bylaws.

24. Proxies: Voting by proxy will be permitted if received in writing or by email from the Member granting the proxy to be counted if received prior to the Annual Meeting or as outlined in the Election Procedures Policy. Such proxy will be filed with the Secretary of PCAHA before or at the time of the meeting. No proxy will be valid after eleven (11) months from the date of its

execution, unless otherwise provided in the proxy. The Board will work to resolve any discrepancies as needed.

25. Assessments:

The Board of Directors will assess Assessments annually to each Lot. The Annual Assessments can be established, increased or decreased from the current amount by the consent of a simple majority of Members in good standing by mail-in ballot prior to or by proxy at the Annual Meeting or after a special meeting by mail-in ballot of Members in good standing 30 days after the ballots have been mailed called for the purpose of considering changing the Annual Assessment. Assessments are assessed on a fiscal year basis to run August 1 to July 31 and to be paid on or before the Annual Meeting in August of each year.

- (a) Creation of the Obligation for Assessment: Each Owner, for each Lot owned within the Association, by acceptance of a deed therefore or interest therein, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay to the Association, in the manner, amounts and times prescribed herein, all Assessments, charges, fees, fines and other sums which are described in this Declaration and which shall be both a personal obligation of the Owner and a Lien against ~~his~~ the Owner's Lot as provided herein. Each Owner shall be jointly and severally liable to the Association for the payment of all Assessments. No Owner may waive or otherwise escape personal liability for the payment of the Assessments by non-use of any common properties or services, by abandonment or leasing of his Lot, or by asserting any claims or defenses against the Association, the Declarant or any other person or entity (e.g. trust).
- (b) Purpose of Assessment: The Annual Assessments levied by the Association shall be used exclusively to promote the overall benefits of PCAHA.

Collection of Assessments:

- (a) Personal Liability: Any Assessment which is not paid when due shall be delinquent and the Association may impose a late charge for each month any Assessment is delinquent, and may also collect the attorney's fees, costs and expenses of any collection from the delinquent Owner. Additionally, the Association may bring an action at law against any Owner personally obligated to pay any Assessment, and, in the event of any lawsuit, the delinquent Owner shall pay all attorney's fees, court costs and any expenses of such lawsuit.
- (b) Lien: **A Lien is a legal filing stating the Owner has an outstanding debt. If the property is ever sold, the Seller ~~could~~ cannot transfer ownership without having that debt satisfied in full.** Additionally, any such unpaid Assessment, together with all expenses of collection and attorney's fees, shall be a continuing Lien upon the Lot against which such Assessment was made. The Association may enforce such Lien by filing with the Clerk and Recorder of El Paso County a statement of Lien with respect to said Lot, setting forth such information as the Association may deem appropriate. Said Lien shall run with the land and shall additionally secure all Assessments and expenses which become due after its filing. Said Lien may be foreclosed by the Association in the manner provided for foreclosures of mortgages under the laws and statutes of the State of Colorado. All rights and remedies of the Associations are cumulative, and foreclosure of the Lien shall not prevent a lawsuit against the Owner personally liable therefore whether taken before,

after or during such foreclosure. Said Lien may be released by recording an appropriate document executed by an officer or agent of the Association **at such time as any and all arrearages have been cured by payment by the Owner or through the Title Company.** Such Lien is in addition to any other Lien allowed to the Association by statute, law or equity. Said Lien shall be superior and prior to any homestead rights or similar exemption now or hereafter provided under state or federal law to any Owner, whose acceptance of a deed to a Lot shall constitute a waiver of such homestead or other rights. The Association shall also have the right to have a receiver appointed to collect unpaid Assessments and Owners are deemed to consent to the appointment of such a receiver.

- 26. Term of Covenants:** These Covenants are to run with the land and shall remain in full force and effective for twenty (20) years from the date these Covenants are recorded, after which time said Covenants will be automatically extended for successive periods of (10) years unless changes approved by a simple majority of all Members in good standing by mail-in ballot prior to the Annual Meeting or after a special meeting, or by proxy where the votes will be tallied, announced and then recorded **at the El Paso County Clerk and Recorder's Office**, changing said Covenants in whole or part.
- 27. Enforcement:** Enforcement must be by legal proceeding at law or in equity against any person or persons violating or attempting to violate any Covenant either to restrain violation or to recover damages. The failure to enforce any of these Declaration of Protective Covenants or conditions contained herein, however long continued, shall not be deemed a waiver of the right to do so. The same breach or a breach occurring prior to or subsequently will not bar or affect its enforcement. The invalidation by any court of any restriction herein contained will not in any way affect any of the other restrictions and they shall remain in full force and effect.

I hereby certify that the above and foregoing Declaration of Protective Covenants were revised and adopted as the Declaration of Protective Covenants for Pine Cone Acres Homeowners Association, Inc. by the required simple majority vote of all Members in good standing by mail-in ballot of the Members on _____.

SIGNED: _____
Linda Sweeney, PCAHA President

SIGNED: _____
Monika Eckmann, PCAHA Secretary

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

The foregoing instrument was signed and acknowledged before me on the ___th day of _____ 2018, by Linda Sweeney, President of Pine Cone Acres Homeowners Association, Inc. and Monika Eckmann, Secretary of Pine Cone Acres Homeowners Association, Inc.

WITNESS my hand and official seal.

My commission expires: _____

NOTARY PUBLIC

DRAFT