

401131322 09/20/91 02:32 PM REAL ESTATE RECORDS  
F1693 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

290

THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

THE NYLAND SUBDIVISION

Copyright © 1991  
By William A. Love  
All Rights Reserved

# TABLE OF CONTENTS

ARTICLE	PARAGRAPH	PAGE
ONE	PREAMBLE.....	1
	DEFINITIONS.....	2
	1.1 Articles.....	2
	1.2 Assessments.....	2
	1.3 Association.....	2
	1.4 Board of Directors or Board.....	2
	1.5 Building.....	2
	1.6 Bylaws.....	2
	1.7 Common Areas.....	2
	1.8 Common Expenses.....	2
	1.9 Declarant.....	2
	1.10 Declaration.....	3
	1.11 Dwelling Unit.....	3
	1.12 Eligible Holder.....	3
	1.13 First Mortgagee.....	3
	1.14 Guest.....	3
	1.15 Lot.....	3
	1.16 Managing Agent.....	3
	1.17 Member.....	3
	1.18 Notice and Hearing.....	3
	1.19 Owner.....	3
	1.20 Party Wall.....	4
	1.21 Person.....	4
	1.22 Rules.....	4
	1.23 The Properties.....	4
	1.24 VA and/or FHA Approval.....	4
TWO	SCOPE OF THE DECLARATION.....	5
	2.1 Property Subject to this Declaration.....	5
	2.2 Conveyances Subject to this Declaration.....	5
	2.3 Owner's Rights Subject to this Declaration.....	5
THREE	THE COMMON AREAS.....	6
	3.1 Common Area Dedication.....	6
	3.2 Title to the Common Areas.....	6
	3.3 Duty to Accept Common Areas Transferred by Declarant.....	6
	3.4 Duty to Manage and Care for the Common Areas.....	6

## TABLE OF CONTENTS

ARTICLE	PARAGRAPH	PAGE
	3.5 Owner's Easements.....	6
	3.6 Delegation of Use/Compliance with the Provisions of the Declaration, Articles, Bylaws, and Rules, Regulations and Guidelines of the Association.....	7
	3.7 Restrictions.....	7
FOUR	THE ASSOCIATION.....	9
	4.1 General Purposes and Powers.....	9
	4.2 Board of Directors.....	9
	4.3 Articles and Bylaws.....	9
	4.4 Membership.....	9
	4.5 Voting Rights.....	9
	4.6 Indemnification.....	9
	4.7 Association Agreements.....	10
	4.8 Certain Rights and Obligations of the Association.....	10
FIVE	ASSESSMENTS.....	11
	5.1 Creation of the Lien and Personal Obligation of the Assessment.....	11
	5.2 Purpose of the Assessments.....	11
	5.3 Basis of Assessments.....	11
	5.4 Maximum Assessment.....	13
	5.5 Maximum Insurance Assessment....	14
	5.6 Special Assessments.....	14
	5.7 Notice and Quorum Required to Increase the Maximum Assessment or Assess a Special Assessment..	15
	5.8 Uniform Manner of Assessment....	15
	5.9 Date of Commencement of Assessments; Prorations.....	15
	5.10 Due Date, Non-Payment of Assessments, Remedies of the Association.....	15
	5.11 Declarant's Obligations.....	17
	5.12 Working Capital Fund.....	18
	5.13 No Offsets.....	18
SIX	DESIGN REVIEW.....	19
	6.1 Design Review Committee.....	19
	6.2 Approval Process.....	19

## TABLE OF CONTENTS

ARTICLE	PARAGRAPH	PAGE
	6.3 No Liability for Design Review Committee Action.....	19
	6.4 Inspection and Enforcement.....	20
SEVEN	LAND USE AND OTHER RESTRICTIONS.....	21
	7.1 Land Use Committee.....	21
	7.2 Land Use and Building Type.....	21
	7.3 Building Locations and Height Restrictions.....	21
	7.4 Temporary Structures.....	21
	7.5 Restrictions on Garbage, Trash and Recycling.....	22
	7.6 Actions Upon The Properties.....	22
	7.7 No Hazardous Activities.....	23
	7.8 No Unsightliness.....	23
	7.9 Utilities.....	23
	7.10 Restrictions on Signs and Advertising Devices.....	23
	7.11 Fences.....	23
	7.12 Compliance with Insurance Requirements.....	23
	7.13 Compliance with Laws.....	23
	7.14 Restoration in the Event of Damage or Destruction.....	23
	7.15 Household Pets.....	24
	7.16 Vehicular Parking, Storage and Repairs.....	25
	7.17 Pedestrian Ways.....	25
	7.18 Vehicle Maintenance and Storage.	25
	7.19 Personal Storage.....	25
	7.20 Landscaping.....	26
	7.21 Owner Caused Damages.....	26
	7.22 Outside Installations.....	27
	7.23 Lease of Dwelling Unit.....	27
	7.24 Sale of a Lot and/or Dwelling Unit.....	27
	7.25 Restrictions on Mortgaging a Lot and/or Dwelling Unit.....	27
	7.26 Street Lighting.....	27
	7.27 Leachfield Lots.....	28
	7.28 Carports.....	28
	7.29 Exemptions for the Declarant....	28
	7.30 Waiver of Summary Abatement.....	28

# TABLE OF CONTENTS

ARTICLE	PARAGRAPH	PAGE
EIGHT	EASEMENTS.....	29
	8.1 Easements for Encroachments.....	29
	8.2 Zero Lot Line Easements.....	29
	8.3 Utility Easements.....	30
	8.4 Easements for the Board of Directors.....	30
	8.5 Emergency Easements.....	30
	8.6 Easements Deemed Appurtenant....	30
NINE	CONDEMNATION.....	31
	9.1 Condemnation of Common Areas....	31
	9.2 Condemnation of Dwelling Units..	31
	9.3 Lien Holders.....	31
TEN	INSURANCE.....	32
	10.1 Authority to Purchase/General Requirements.....	32
	10.2 Hazard Insurance.....	33
	10.3 Rebuilding of Damaged Common Areas.....	35
	10.4 Rebuilding of Damaged Dwelling Units.....	37
	10.5 Liability Insurance.....	37
	10.6 Fidelity Insurance.....	38
	10.7 Additional Insurance.....	38
	10.8 Payment of Insurance Premiums...	39
	10.9 Separate Insurance.....	39
ELEVEN	MAINTENANCE.....	40
	11.1 Maintenance of the Common Areas.....	40
	11.2 Maintenance of Dwelling Units...	40
	11.3 Maintenance of Drainage Pattern.	41
	11.4 Design Review Committee's Responsibility.....	41
TWELVE	PARTY WALLS.....	42
	12.1 Existence.....	42
	12.2 Repair and Maintenance.....	42
	12.3 Arbitration.....	42

TABLE OF CONTENTS

ARTICLE	PARAGRAPH	PAGE
THIRTEEN	FIRST MORTGAGEE PROVISIONS.....	44
	13.1 Notices of Action.....	44
	13.2 Amendment to Documents/Special Approvals.....	44
	13.3 Special FHLMC Provisions.....	45
	13.4 Payment of Charges.....	46
	13.5 Books and Records.....	46
FOURTEEN	DURATION AND AMENDMENTS.....	47
	14.1 Duration.....	47
	14.2 Amendments by Owners.....	47
	14.3 Amendments by Declarant.....	47
	14.4 Consent of Declarant Required...	48
FIFTEEN	GENERAL PROVISIONS.....	49
	15.1 Right of Action.....	49
	15.2 Successors and Assigns.....	49
	15.3 Severability.....	49
	15.4 No Waiver.....	49
	15.5 Registration by Owner of Mailing Address.....	49
	15.6 Attorneys' fees and Costs.....	49
	15.7 Captions.....	50
	15.8 Numbers and Genders.....	50
EXHIBITS		
A	LEGAL DESCRIPTION OF THE REAL PROPERTY SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF THE NYLAND SUBDIVISION	
B	LEGAL DESCRIPTION OF THE COMMON AREAS SUBMITTED TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION	

THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE NYLAND SUBDIVISION

---

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by the COLORADO COHOUSING DEVELOPMENT CORPORATION, a Colorado Corporation, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of certain real property situated in the County of Boulder, State of Colorado, and is more particularly described on Exhibits A and B attached hereto and incorporated herein by reference; and

WHEREAS, Declarant shall construct a residential community on the said real property together with other improvements thereon; and

WHEREAS, Declarant will convey said real property, subject to the protective covenants, restrictions, reservations, and obligations as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that the said real property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, use and obligations, all of which are declared and agreed to be for the protection of the value of the said real property and for the benefit of any person having any right, title or interest in the said real property and which shall be deemed to run with the land, and shall be a burden and benefit to any persons acquiring such interests, their grantees, successors, heirs, legal representatives and assigns.

## ARTICLE ONE: DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the terms hereinafter set forth shall have the following meanings:

1.1 ARTICLES means the Articles of Incorporation of the Association.

1.2 ASSESSMENTS means all monies due the Association from members as duly assessed against the membership by the Board of Directors of the Association in accordance with ARTICLE FIVE hereof.

1.3 ASSOCIATION means THE NYLAND COMMUNITY ASSOCIATION, a Colorado Corporation, not for profit, its successors and assigns, the Articles of Incorporation and Bylaws of which, as herein defined, along with this Declaration, shall govern the administration of The Properties, the Members of which shall be all of the Owners of the Lots within The Properties.

1.4 BOARD OF DIRECTORS or BOARD means the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by the Declarant as therein provided. The Board of Directors is the governing body of the Association.

1.5 BUILDING means any building built upon a Lot or Lots within The Properties containing two or more Dwelling Units under one roof.

1.6 BYLAWS means the Bylaws adopted by the Association as amended from time to time.

1.7 COMMON AREAS means that portion of The Properties (including all improvements thereon) owned or to be owned by the Association for the common use and enjoyment of the Owners more fully described on Exhibit B attached hereto.

1.8 COMMON EXPENSES means expenditures made by, or financial liabilities incurred by the Association, together with an allocation to reserves, all as may be found to be reasonable and appropriate by the Board of Directors pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association.

1.9 DECLARANT means the COLORADO COHOUSING DEVELOPMENT CORPORATION, a Colorado Corporation, its successors and assigns, if such successors or assigns shall acquire any portion of The Properties for the purpose of development and be designated by the Declarant or a successor Declarant, as a Declarant for the purposes hereof by a duly recorded written instrument. Any such designation by the Declarant or a successor Declarant may include the right of redesignation by such successor or further successors.



1.10 DECLARATION means this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, as may be amended from time to time.

1.11 DWELLING UNIT means the residence constructed on each Lot within The Properties and any replacement thereof, including the patio, fence, basement and garage, if applicable. Dwelling Unit shall include the Lot upon which such Dwelling Unit is constructed.

1.12 ELIGIBLE HOLDER means a First Mortgagee as defined in Paragraph 1.13 hereof who has delivered a written request to receive information from the Association as provided for in Paragraph 13.1 hereof. Such request shall contain the First Mortgagee's name, address, the legal description and the address of the Lot encumbered by its mortgage.

1.13 FIRST MORTGAGEE means any person, corporation, partnership, trust, company, association, or other legal entity which owns, holds, insures or is a governmental guarantor of a mortgage or deed of trust, which mortgage or deed of trust is a first and prior lien encumbering a Lot within The Properties. A First Mortgagee shall also include the holder of every executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is Seller, whether such contract is recorded or not.

1.14 GUEST means (a) any person who resides with an Owner within The Properties; (b) a guest or invitee of an Owner; (c) an occupant or tenant of a Lot or Dwelling Unit within The Properties, and any members of his or her household, invitee or cohabitant of any such person; or (d) a contract purchaser.

1.15 LOT means any plot of land shown upon any recorded subdivision plat of The Properties which is subject to this Declaration, with the exception of the Outlots together with all appurtenances and improvements now or hereafter located thereon. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is herein defined.

1.16 MANAGING AGENT means any one or more persons employed by the Association who is engaged to perform any of the duties, powers or functions of the Association.

1.17 MEMBER means all those who are members of the Association as provided in Paragraph 4.4 hereof.

1.18 NOTICE AND HEARING means a written notice and a public hearing before the Board of Directors in the manner provided in the Bylaws.

1.19 OWNER means the record Owner of the fee simple title or a seller under a Land Installment Contract of any Lot which is a part of The Properties, whether one or more persons or entities,

including the Declarant, so long as any Lot remains unsold, excluding, however, those having an interest merely as security for the performance of any obligation.

1.20 PARTY WALL means the wall or fence, including the foundations thereof, which is built as a part of the original improvements on a Lot within The Properties and constructed on the boundary line between adjoining lots. Such wall or fence, including foundations thereof, which constitute a Party Wall shall be shared, owned and used in common by the Owners of two or more Dwelling Units located in the same building as more fully defined in ARTICLE TWELVE hereof.

1.21 PERSON means a natural person, corporation, partnership, association, trustee or any other entity recognized as being capable of owning real property under Colorado law.

1.22 RULES means the Rules, Regulations and Guidelines adopted by the Board of Directors as amended from time to time.

1.23 THE PROPERTIES means such real property and the improvements located thereon as more fully described on Exhibits A and B attached hereto. The term "Outlots" as used herein shall be synonymous with the term "Tracts" as the latter term is used on the recorded Plat of The Properties.

1.24 VA AND/OR FHA APPROVAL means that The Properties have been approved by the Veterans Administration and/or the Federal Housing Administration so that such agencies will insure or guarantee loans made upon the Lots and Dwelling Units within The Properties.

ARTICLE TWO: SCOPE OF THE DECLARATION

2.1 Property Subject to this Declaration. Declarant, as the Owner of fee simple title to The Properties, expressly intends to and, by recording this Declaration, does hereby subject The Properties to the provisions of this Declaration.

2.2 Conveyances Subject to this Declaration. All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in The Properties, and their respective heirs, successors, representatives or assigns.

Any instrument recorded subsequent to this Declaration and purporting to establish and effect any interest in The Properties shall be subject to the provisions of this Declaration despite any failure to make reference thereto.

2.3 Owner's Rights Subject to this Declaration. Each Owner shall own his or her Lot in fee simple and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

ARTICLE THREE: THE COMMON AREAS

3.1 Common Area Dedication. The Declarant in recording the Plat of The Properties, in the records of the County Clerk and Recorder of Boulder County, Colorado, has designated certain areas of The Properties as Common Areas as more fully described on Exhibit B attached hereto.

The designated Common Areas are not dedicated for use by the general public, except where public easements have been granted, but are dedicated to the common use and enjoyment of the Owners of Lots located within The Properties and such Owners' Guests, as more fully provided for in this Declaration.

Said Plat is hereby incorporated herein and made a part of this Declaration.

3.2 Title to the Common Areas. The Declarant hereby covenants that it will convey to the Association fee simple title to the Common Areas prior to the conveyance of the first Lot within The Properties to an Owner other than Declarant.

3.3 Duty to Accept Common Areas Transferred by Declarant. The Association shall accept title to said Common Areas and agrees to own and maintain any property, including all improvements located thereon, and personal property relating thereto, transferred to the Association by Declarant as Common Areas. Any property or interest in property transferred to the Association by Declarant shall be transferred to the Association free and clear of all liens and encumbrances (other than the lien of real estate taxes not then due and payable) and Declarant shall furnish and pay for the title insurance policy reflecting same.

3.4 Duty to Manage and Care for the Common Areas. The Association shall manage, operate, care for, insure, maintain, repair and reconstruct all of the Common Areas and the improvements located thereon and keep the same in a safe, attractive and desirable condition for the use and enjoyment of all of the Owners.

3.5 Owner's Easements. Every Owner and such Owner's Guests shall have the right and easement of use and enjoyment in and to the Common Areas, which shall be appurtenant to and shall pass with the title to the Lot of such Owner subject to the following rights:

\* a) The right of the Board of Directors to make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration. The Board of Directors, in its sole discretion, may from time to time grant easements and rights of way on, across, under and over the Common Areas.

b) The right of the Board of Directors to dedicate, sell, assign or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication, sale, assignment or transfer shall be effective unless an instrument agreeing to such dedication, sale, transfer or assignment signed by Owners who are entitled to cast at least eighty percent of the votes in the Association.

c) The right of the Board of Directors to make such reasonable Rules, Regulations and Guidelines regarding the use of the Common Areas and facilities located thereon by Owners and other persons entitled to such use.

d) The rights reserved in this Declaration to the Declarant, the Owners and the Association.

e) The right of the Board of Directors to suspend the voting rights of a Member for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty days for any infraction of its published Rules, Regulations and Guidelines.

3.6 Delegation of Use/Compliance with the Provisions of the Declaration, Articles, Bylaws, and Rules, Regulations and Guidelines of the Association. Any Owner may delegate, in accordance with the Bylaws and Rules, Regulations and Guidelines of the Association, his or her right of enjoyment of the Common Areas to his or her Guests. Each Owner shall comply strictly with, and shall cause such Owner's Guests to comply with, all of the provisions of this Declaration and the Articles and Bylaws of the Association, and the decisions, Rules, Regulations and Guidelines and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Each Owner is fully responsible for the actions of his or her Guests. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, along with the costs of suit and reasonable attorneys' fees, maintainable by the Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner.

3.7 Restrictions. The Board of Directors has the right to limit or restrict the use of or access to any Common Areas that it deems appropriate in the performance of its duties or to maintain the integrity of the goals and purposes of the Association.

The Board of Directors has the right to limit the number of Guests of Owners using Common Areas.

The Board of Directors has the right to regulate and restrict use and access of any portion of the Common Areas or Facilities or

any part thereof including without limitation prohibiting entirely certain uses.

\* Within the Common Areas, no structures, plantings, materials, or anything shall be placed or permitted to remain which may damage or interfere with any pedestrian ways, the installation or maintenance of utilities or disturb in any way the drainage channels or patterns of irrigation established in or through easements.

ARTICLE FOUR: THE ASSOCIATION

4.1 General Purposes and Powers. The Association, through its Board of Directors, shall perform functions and manage The Properties as provided in this Declaration so as to further the interests of the residents of The Properties and Members of the Association. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designations and management. The Association shall have all the power necessary or desirable to effectuate such purposes.

4.2 Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may by resolution delegate authority to a Committee and/or Managing Agent for the Association as more fully provided for in the Bylaws, provided no such delegation shall relieve the Board of final responsibility.

4.3 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members set forth in this Declaration may and shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association and the Rules, Regulations and Guidelines of the Association. In the event either the Articles or Bylaws conflict with the Declaration, the Declaration shall control. In the event the Articles conflict with the Bylaws, the Articles shall control. In the event either shall conflict with the Declaration, the Declaration shall control.

4.4 Membership. Every Person who is a record Owner of a fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a Member of the Association, including contract sellers. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person holds interest in any Lot, all such persons shall be Members.

4.5 Voting Rights. Members shall be all Owners, and shall be entitled to one vote for each Lot owned. The vote for such Lot, the ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest in the Lot is made prior to the completion of the vote, in which case the vote for such Lot shall be exercised as the persons holding such interest shall determine between themselves. Should the joint owners of a Lot be unable, within a reasonable time, to agree upon how they will vote on any issue, they shall be passed over and their right to vote on such issue shall be lost. In no event shall more than one vote be cast with respect to any such Lot.

4.6 Indemnification. The Association shall indemnify every present and former director, officer, agent or employee, and any former director, officer, agent or employee against loss, costs,

and expense, including attorneys' fees reasonably incurred in connection with any action, suit, or proceeding in which such person may be made a party by reason of being, or having been such director, officer, agent or employee of the Association, except as to matters concerning which such person shall be finally adjudged to be liable for gross negligence or fraud. Any such indemnification shall be limited to and may only be paid out of the insurance proceeds provided by an insurer furnishing Officers and Directors Errors and Omissions insurance coverage or similar protection and any other insurance protecting the Association from liability because of the negligent acts of its servants, including insurance covering motor vehicles or public liability, property damage, medical and other similar coverage, it being the intent and purpose of this Paragraph to limit all payments or settlements in indemnification to the actual proceeds of insurance policies received by the Association, provided however, any deductible shall be paid by the Association.

In the event of a settlement, the settlement shall be approved by the Board of Directors and paid for by the insurance carrier out of the insurance proceeds.

**4.7 Association Agreements.** Any agreement for professional management of The Properties or any contract providing for services of the Declarant, may not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or penalty upon thirty days' written notice.

**4.8 Certain Rights and Obligations of the Association.**

(a) **Contracts, Easements and Other Agreements:** The Board of Directors shall have the right to enter into, grant, perform, enforce and vacate: contracts, easements, licenses, leases, agreements, and/or rights-of-way, for the use by Owners, their Guests, and other persons, concerning the Common Areas and any improvements located thereon. Any of such contracts, licenses, leases, agreements, easements and/or rights-of-way, shall be upon such terms and conditions as may be agreed to from time to time by the Board of Directors, without the necessity of the consent thereto, or joinder therein, by the Owners or First Mortgagees.

(b) **Other Association Functions:** The Association may undertake any activity, function or service for the benefit of or to further the interests of all, some or any Members on a self-supporting, Special Assessment or Annual Assessment for Common Expenses basis.



ARTICLE FIVE: ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of the Assessment. The Declarant for each Lot owned, within The Properties, hereby covenants, and each Owner other than the Declarant of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association certain assessments to be fixed, established and collected from time to time as herein provided. All assessments created and defined in this Declaration, together with late fees, costs, and reasonable attorneys' fees shall be:

a) a charge on the Lot and shall be a continuing lien upon the property against which each such assessment was levied, which lien shall attach as of the date the assessment was levied and shall continue until such assessment, together with any late fees, costs of collection, and attorneys' fees are paid; and

b) a personal obligation of the person who was the Owner of such Lot or of the persons jointly and severally, who were the Owners of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them.

5.2 Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of The Properties and the Members of the Association, for the improvement, repair, maintenance and reconstruction of the Common Areas, providing insurance therefor, paying taxes thereon, and providing for the exterior maintenance and blanket hazard insurance for the Dwelling Units located within The Properties, reserving for a Sewer Tap Fee and any other purpose reasonable, necessary or incidental to such purposes. Such assessments shall include the establishment and maintenance of a reserve fund for the improvement, maintenance, reconstruction, and repair of the Common Areas and of the Dwelling Unit exteriors which the Association has an ongoing duty to replace, repair and/or maintain on a periodic basis.

5.3 Basis of Assessments.

a) Annual Assessment for Common Expenses. The Board of Directors shall assess against each Owner of a Lot within The Properties an Annual Assessment for Common Expenses to pay for the Common Expenses as herein defined of the Association. Said assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement, reconstruction and repair of those portions of the Common Areas which the Association has a duty to replace, repair, maintain and/or reconstruct on a periodic basis. Such assessment shall be paid by the Owners in the proportion which the number of Lots owned by an Owner bears to the total number of Lots within The Properties. Said assessment shall

commence in accordance with Paragraph 5.9 hereof, subject to the provisions of Paragraph 5.11 hereof.

The Annual Assessment for Common Expenses shall not include the expense of procuring and maintaining the insurance coverages required by Paragraph 10.2 hereof, but shall be assessed as provided for in Paragraph 5.3(d).

b) Exterior Maintenance Assessment. The Board of Directors shall assess each Owner of a Dwelling Unit located within The Properties the cost of providing exterior maintenance and exterior repair of the Dwelling Unit in accordance with Paragraph 11.2 hereof. Such assessment shall include the establishment and maintenance of a reserve fund for maintenance, replacement, repair and reconstruction of the Dwelling Units' exterior which the Association has an ongoing duty to replace, repair and maintain on a periodic basis.

Such assessment shall be prorated and paid by the Owners based on the exterior square footage of such Owner's Dwelling Unit as determined by the Board of Directors. Said assessment shall commence in accordance with Paragraph 5.9 hereof, but shall be subject to the provisions of Paragraph 5.11 hereof.

c) Individual Assessments. The Board of Directors shall have the right to individually assess any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 6.4, 7.5, 7.15, 7.18, 7.20, 7.21, 7.27, 8.2, 10.3, 10.4, 10.8, 11.1 and 11.2 hereof. No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

d) Insurance Assessment. The Board of Directors shall assess each Owner of a Dwelling Unit located upon The Properties the cost of procuring, maintaining and administering the blanket property hazard insurance coverage for such Dwelling Units.

Such assessment shall be prorated and paid by the Owners based on the finished square footage of such Owner's Dwelling Unit as determined by the Board of Directors. Said assessment shall commence in accordance with Paragraph 5.9 hereof, but shall be subject to the provisions of Paragraph 5.11 hereof.

e) Sewer Tap Fee Reserve Assessment. The Board of Directors shall assess each Owner of a Dwelling Unit located on The Properties an amount to create a reserve for the payment of a Sewer Tap when such Sewer Tap becomes available.

Such assessment shall be prorated and paid by the Owner in the proportion which the number of Lots owned by an Owner bears to the total number of Lots within The Properties. Said assessment shall

commence in accordance with Paragraph 5.9 hereof, but shall be subject to the provisions of Paragraph 5.11 hereof.

f) Fines. The Board of Directors of the Association shall have the right to levy a Fine against an Owner or Owners for each violation of this Declaration, the Bylaws, the Articles and the Rules, Regulations and Guidelines of the Association. No Fine shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of The Association.

Fines may be levied in a reasonable amount as determined from time to time by the Board of Directors in its discretion and uniformly applied.

g) Levy of Assessments. At least sixty days prior to the close of the Association's fiscal year, the Board of Directors shall determine the Insurance Assessment; and, subject to the provisions of Paragraph 5.4, the Annual Assessment for Common Expenses, the Exterior Maintenance Assessment and the Sewer Tap Fee Reserve Assessment, all of which are payable monthly by each Owner; provided, however, that said assessments may be adjusted upon a finding of necessity by the Board, but no more than twice in any one year. Written notice of such Assessment shall be sent to every Owner subject thereto.

The omission or failure of the Board of Directors to levy the Assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay. No assessment may be levied retroactively.

Fines and Individual Assessments may be levied at any time as required. Both assessments are exempt from any voting requirements by the membership required for other assessments called for under the Declaration.

h) Non-exemption. No Owner may waive or otherwise escape liability for any assessments provided for herein by the non-use of the Common Areas or abandonment of his or her Lot.

#### 5.4 Maximum Assessment.

a) Until the commencement of the Association's second fiscal year, the Maximum Annual Assessment (Annual Assessment for Common Expenses, Exterior Maintenance Assessment and Sewer Tap Fee Reserve Assessment), which may be levied by the Board of Directors, excluding the Individual Assessments, Fines and the Insurance Assessment, shall be One Thousand, Eight Hundred and no/hundredths Dollars (\$1,800.00) per Lot per year.

b) The Maximum Annual Assessment shall be increased effective with the commencement of the Association's second and

each subsequent fiscal year thereafter without a vote of the membership as required by Paragraph 5.4(d) by an amount equal to ten percent of the previous fiscal year's Maximum Assessment or in conformance with the rise, if any, of the Consumer Price Index published by the U.S. Department of Labor, Washington, D.C. for All Items and Major Group Figures for the Denver, Colorado Metropolitan Area, (1967=100) for the one-year period ending with the preceding month of December, whichever is greater. This annual increase in the Maximum Assessment shall occur automatically upon the commencement of each fiscal year of the Association without the necessity of any action being taken with regard thereto by the Board of Directors of the Association.

In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the Maximum Assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board of Directors.

c) After consideration of current maintenance costs and future needs of the Association, the Board of Directors shall levy the Annual Assessment for Common Expenses and the Exterior Maintenance Assessment and the Sewer Tap Fee Reserve Assessment at an amount not in excess of the Maximum Assessment without any voting or approval requirements of the Membership.

d) The Maximum Annual Assessment may be increased above that established by the rise in the Consumer Price Index or the ten percent formula whichever is greater by the assent of Members who are entitled to cast at least sixty-seven percent of the votes of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

5.5 Maximum Insurance Assessment. The Maximum Insurance Assessment shall be the insurance premium paid by the Association to insure the Dwelling Units within The Properties in accordance with Paragraph 10.2 hereof prorated to each Owner in accordance with Paragraph 5.3(d).

5.6 Special Assessments. In addition to the assessments authorized above, the Board of Directors may levy a Special Assessment for the purpose of defraying, in whole or in part, any unexpected expense to include but not be limited to, the cost of any construction, reconstruction, repair or replacement of any of the Common Areas or Dwelling Units provided that any such assessment shall have the assent of Members who are entitled to cast at least sixty-seven percent of the votes of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

The limitation set forth above shall not apply to any expenditures made by the Board of Directors for the repair in the event of damage or destruction, as set forth in ARTICLE TEN hereof.

5.7 Notice and Quorum Required to Increase the Maximum Assessments or Assess a Special Assessment. Written notice of any meeting called for the purpose of taking any action authorized under Paragraphs 5.4(d) and 5.6 shall be sent to all Members not less than fifteen days nor more than sixty days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty days following the preceding meeting.

5.8 Uniform Manner of Assessment. All assessments must be levied in uniform manner upon all Lots which are subject to such assessment, subject to the provisions of Paragraph 5.11 hereof.

5.9 Date of Commencement of Assessments, Prorations. Subject to the provisions of Paragraph 5.11 hereof, the Annual Assessment for Common Expenses provided for herein shall commence as to all Lots the first day of the month following the conveyance of the Common Areas to the Association. The Exterior Maintenance Assessment, Insurance Assessment and Sewer Tap Fee-Reserve Assessment as to a Lot shall commence upon the issuance of a Certificate of Occupancy for the Dwelling Unit located on that Lot.

Assessments shall be prorated respectively according to the number of months remaining in the Association's fiscal year at the time of the issuance of a Certificate of Occupancy for that Dwelling Unit.

5.10 Due Date, Non-Payment of Assessments, Remedies of the Association.

a) Fines and Individual Assessments shall be due and payable as established by the Board of Directors.

b) All assessments shall be levied on an annual basis but shall be due and payable on the first day of each month on an installment basis. Special Assessments shall be due and payable as established by the Board of Directors but may be payable on an installment basis as determined by the Board of Directors.

c) Written notice of all assessments shall be sent to each Owner subject thereto specifying the type of assessment, the amount and the date such assessment is due.

d) All assessments shall become delinquent unless paid by their due date. If such assessments are not paid by their due date, the Owner obligated to pay such assessment may be required to

pay a reasonable late fee, as determined by the Board of Directors from time to time in its discretion and uniformly applied.

Failure to make payment within sixty days of the due date thereof shall cause the full amount of such Owner's total yearly Assessment (Annual Assessment for Common Expenses, Exterior Maintenance Assessment plus the Insurance Assessment) for the remainder of that fiscal year to become immediately due and payable at the option of the Board.

In the event it shall become necessary for the Board to collect any delinquent assessments, whether by foreclosure of a lien hereinafter created or otherwise, the delinquent Owner shall pay, in addition to the assessment and late fees as herein provided, all costs of collection including a reasonable attorneys' fees and costs incurred by the Association in enforcing payment. In the event a "Notice of Lien" is required to be filed to enforce collection, the cost of preparation, filing and release shall be considered a cost of collection.

e) The Association is hereby granted a lien against the Owner's Lot for any payment of an assessment which the Owner fails to make as required by this Declaration. The lien of the assessments together with late fees, costs of collection to include reasonable attorneys' fees and Fines, provided for herein shall be subordinate to the lien of any loan evidenced by a first mortgage of record (including deed of trust) and to any executory land sales contract wherein the Administrator of Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not. Such lien attaches at the time of levy of the assessment, and continues until such assessment, together with late fees and all costs of collection including reasonable attorneys' fees are paid.

The lien hereby given shall also be a lien upon all of the rents and profits of the encumbered Lot; provided however, the lien shall be subject and subordinate to the rights of any First Mortgagee of a Lot under any assignment of rents given in connection with a first deed of trust.

If a foreclosure action is filed to foreclose any assessment lien, and an Owner abandons or leaves vacant his or her Dwelling Unit, the Board may take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee as set forth in its deed of trust or mortgage (including any assignment of rents) which creates that First Mortgagee's Interest in the Lot.

In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to

pay any amounts assessed against his or her Lot, and obtain judgment for the amount of the assessments due together with late fees, plus all costs of collection, including reasonable attorneys' fees in collecting the judgment.

f) The lien accruing hereunder shall be foreclosed upon as provided by the laws of the State of Colorado for foreclosure of mortgages on real property. The Board shall have the power to bid at the foreclosure sale, and if title is obtained, hold, lease, mortgage, and encumber or convey the same.

g) The lien of all assessments created and defined by the Declaration shall be superior to any homestead exemption as is now or may hereafter be provided by Colorado or Federal law. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead exemption as against such assessment lien.

h) Sale or transfer of an interest in any Lot shall not affect the liens for unpaid assessments except that sale or transfer of any Lot pursuant to a first mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of all unpaid assessments as to assessments which became due prior to such transfer of title or cancellation or forfeiture of executory of land sales contract i.e. the date the First Mortgagee acquires fee simple title to the Lot. Provided however, the Association shall still have the right to recover such amount from the delinquent Owner. No transfer of title, or cancellation or forfeiture of executory land sales contract shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

i) The Association shall upon demand, and for a reasonable charge, furnish to an Owner or his or her First Mortgagee, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the Assessments against a Lot is binding upon the Association as of the date of its issuance.

5.11 Declarant's Obligations. The Declarant, for each Lot owned within The Properties, shall pay the Association twenty-five percent of the Annual Assessment for Common Expenses or Special Assessment until such time as a Certificate of Occupancy is issued for the Dwelling Unit located on such Lot. Upon the issuance of such Certificate, the Declarant shall pay the full Annual Assessment for Common Expenses, Exterior Maintenance Assessment, Insurance Assessment and Sewer Tap Fee Reserve Assessment for that particular Lot.

In addition, Declarant agrees to pay to the Association for eighteen months from the date of the recording of this Declaration a sum equal to the difference between the operating expenses of the Association, exclusive of reserves, and the amount of funds payable by the other Owners to the Association.

5.12 Working Capital Fund. The Association shall establish a Working Capital Fund. Each Lot's contribution to such Working Capital Fund shall be Two Hundred and 00/100 Dollars. Each Lot's nonrefundable contribution shall be collected and transferred to the Association at the closing of the initial sale of such Lot and be maintained in a segregated account for the use and benefit of the Association. The purpose of the Fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Contributions paid into the Fund are not considered as advance payments of the assessments and each Owner must pay all of the assessments as they become due.

5.13 No Offsets. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof shall be permitted for any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.



## ARTICLE SIX: DESIGN REVIEW

6.1 Design Review Committee. The Design Review Committee shall have the exclusive jurisdiction to review and approve all original construction on any portion of The Properties. Construction shall be defined as the erection of any building, structure or other improvement, and the demolition or destruction, by voluntary action of any building, structure or other improvement. Said Committee is charged with maintaining the quality and architectural integrity of all of the improvements constructed upon The Properties.

The Design Review Committee shall also have the exclusive jurisdiction to review and approve any change, alteration, modification, expansion or addition to any previously approved improvement, including any change of exterior appearance, finish material, color or texture to ensure and maintain the quality and architectural integrity of all of the improvements constructed on any portion of The Properties.

The Design Review Committee shall promulgate detailed standards and procedures governing its area of responsibility and practice through Design Review Rules, Regulations and Guidelines which shall be available to Owners.

6.2 Approval Process. Prior to the commencement of any construction, remodeling, addition to, or alteration of any building, wall, fence, driveway, or any structure whatsoever on any Lot, written approval must be given by the Design Review Committee. Prior approval may be waived or certain improvements may be exempted under the written Rules, Regulations, and Guidelines promulgated by the Design Review Committee.

Plans and specifications showing the nature, kind, additions, expansions or alterations shall be submitted to the Design Review Committee for approval as to the quality of workmanship and design and harmony in relation to the surrounding structures, topography, and finish grade level.

No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his or her Dwelling Unit.

6.3 No Liability for Design Review Committee. There shall be no liability imposed on the Design Review Committee, any member of the Design Review Committee, an authorized representative of the Design Review Committee, the Association, any member of the Board of Directors, or officer of the Association for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Design Review Committee, if such party acted in good faith and without malice. In reviewing any matter, the

Committee shall not be responsible for passing on safety, whether structural or otherwise, or being in conformance with building codes or other governmental laws or regulations, nor shall its approval of the project plans be deemed approval of such matters.

6.4 Inspection and Enforcement. Inspection of completed projects from approved plans shall proceed as follows once the project is complete: a) upon completion of an approved project the Owner thereof shall give written notice of completion to the Design Review Committee; b) within 30 days thereafter the Design Review Committee or its representative shall inspect the project and make a determination as to whether the owner is in compliance with the project plans; and c) notify the owner of the decision within the 30 day period.

If the decision of the Design Review Committee is that the Owner is in noncompliance with the approved plans the Committee will proceed as follows: a) The Design Review Committee shall notify the Owner of the improvement which is in noncompliance with specific details in regard to the particulars of the noncompliance and shall require the Owner to meet with the Committee in order to decide how to remedy the noncompliance. A mediator will be called in, if necessary, in order to come to an agreement in regards to rectifying the noncompliance; b) a forty-five day period is set aside to resolve the noncompliance; c) if an agreement is not reached, the Design Review Committee has the right to record a Notice of Noncompliance with the County and peacefully remedy the noncompliance and charge the Owner for the expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, an Individual Assessment 5.3(c) levy will be filed by the Board of Directors for such expenses; d) if for any reason the Design Review Committee fails to notify the Owner of any noncompliance within the thirty days after receipt from the Owner of written notice of completion of any construction, such construction shall be deemed to be in compliance with the previously issued approval of the Design Review Committee.

ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Land Use Committee. All Lots and Common Areas shall be held, used and enjoyed subject to the limitations and restrictions stated herein.

The Land Use Committee shall be responsible for overseeing these limitations and restrictions and shall approve and plan all uses of The Properties which shall include the management, development and maintenance of the Common Areas. Committee approval is needed for any grading, excavation, filling or similar disturbance to the surface of the land including without limitation any change of grade, change of ground level, change of drainage pattern, landscaping, planting, clearing or removal of trees, shrubs, grass and perennial plants.

The Land Use Committee shall promulgate detailed standards and procedures governing its area of responsibility and practice through written Land Use Rules, Regulations and Guidelines.

The strict application of the following limitations and restrictions or of the Rules, Regulations and Guidelines in any specific case may be modified or waived in whole or in part by the Land Use Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

All Owners and their Guests or anyone on The Properties must abide by the Rules, Regulations and Guidelines.

7.2 Land Use and Building Type. No Lot within The Properties shall be used for any purpose other than residential purposes as generally defined or for a home occupation so long as such occupation is allowed by the local Zoning Codes. No improvement shall be constructed on any part of The Properties which is not compatible with the character, quality and amenities associated with the neighborhood and approved in writing by the Design Review Committee in accordance with ARTICLE SIX hereof.

7.3 Building Locations and Height Restrictions. The Design Review Committee and the Land Use Committee shall approve the location and height of any structure placed on any Lot. Such approval must be obtained before commencement of any construction or alteration in accordance with ARTICLE SIX hereof.

7.4 Temporary Structures. Subject to the provisions of Paragraph 7.29 hereof, no temporary house trailer, tent, garage or outbuilding shall be placed or erected upon part of The Properties except with the prior written approval of either the Design Review Committee or the Land Use Committee obtained in each instance.

Garages, trailers, campers, motor homes, or recreational vehicles shall not be used as residences on The Properties without written approval of the Land Use Committee.

No Dwelling Unit located upon The Properties shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans nor shall any Dwelling Unit when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth.

7.5 Restrictions on Garbage, Trash and Recycling. All trash, rubbish, garbage, or other waste materials shall be kept in an appropriate sanitary, enclosed container on the Owner's Lot or in the approved recycling and/or trash collection area of the Association. The Association will provide for trash collection, recycling, and composting for The Properties. No scrap or refuse such as lumber, grass, clippings from plants and trees, plant waste, metals, bulk materials, or any kind of trash or waste material shall be kept, stored, or allowed to accumulate on any portion of The Properties or upon any Owner's Lot except within approved enclosed structures or appropriately screened areas identified by the Land Use Committee.

The intent of the restrictions stated herein is to stay aligned with the ecological and energy goals and purposes of the community and land, and to avoid unsanitary, unsightly, or offensive conditions that might be a detriment to The Properties, the people on The Properties, and adjacent land and peoples. Each Owner shall keep his or her Lot at all times in a neat and clean condition.

The Board of Directors shall have the right and duty, through its agent and employees, after Notice and Hearing to enter upon any Lot and remove such unsightly objects and materials. The cost of such removal shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c).

Each Lot is subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) for providing the removal in accordance with the above.

7.6 Actions Upon The Properties. No noxious or offensive activity shall be conducted upon The Properties or any part thereof, nor shall anything be done or maintained thereon which may be or become an annoyance or nuisance to the neighborhood or which does not reflect the goals and values of the Association. Examples given here are not intended to define or restrict the intent of this ARTICLE. These examples are drawn from other communities and include: habitually barking, howling or yelping dogs; glaring light; noisy or smoky vehicles; unlicensed off-road motor vehicles; or activities that interfere with TV or radio reception.

Any oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind; oil wells, tanks, tunnels, mineral excavations or shafts, derricks, or other structures designed for use in boring for oil or natural gas shall not be allowed on The Properties.

7.7 No Hazardous Activities. No activity shall be conducted on any portion of The Properties which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any portion of The Properties and no open fires shall be lighted or permitted on any portion of The Properties except in a contained barbecue unit while attended and in use for cooking purposes or within a fireplace designed to prevent the dispersal of burning embers.

7.8 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within a structure, including snow removal equipment and garden or maintenance equipment, except when actually in use.

7.9 Utilities. All electric, television, radio and telephone line installations and connections from the Owner's property line to the Dwelling Unit shall be placed underground. All types of refrigerating, cooling or heating apparatus must be concealed except solar collector panels. All solar collector installations must be approved by the Land Use Committee.

7.10 Restrictions on Signs and Advertising Devices. No sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere within The Properties that does not comply with local sign codes and with all other applicable statutes, ordinances, and regulations and have prior written approval by the Land Use Committee.

7.11 Fences. The design, type of construction, and location of fences must be approved by the Design Review and Land Use Committee.

7.12 Compliance with Insurance Requirements. Except as may be approved in writing by the Board of Directors, nothing shall be done or kept on The Properties which may result in a material increase in the rates of insurance or would result in the cancellation of any insurance maintained by the Association.

7.13 Compliance with Laws. Nothing shall be done or kept on The Properties in violation of any law, ordinance, rule or regulation of any governmental authority having jurisdiction.

7.14 Restoration in the Event of Damage or Destruction. In the event of damage to or destruction of any Dwelling Unit, the Owner thereof shall, subject to the approval of either the Design Review

Committee or Land Use Committee: (a) cause the damaged or destroyed Dwelling Unit to be restored or replaced to its original condition or such other condition as may be approved in writing by the Committee; or (b) cause the damaged or destroyed Dwelling Unit to be demolished and the Lot to be suitably landscaped, so as to present a pleasing and attractive appearance.

7.15 Household Pets. The Land Use Committee in matters of pets and animals guides its actions and decisions with an intent to integrate animals into the community and onto The Properties in a way that is aligned with the Association's goals and purposes, that respects The Properties and preserves its wild inhabitants and its natural or landscaped state. The intent of the Land Use Committee and this Paragraph is not to keep any Owner from having an animal but rather to monitor the number and kinds of animals and their impact and compatibility with The Properties and the community on an ongoing basis.

The Land Use Committee must be notified of any animal kept on the Properties. Animals must be approved in writing by the Land Use Committee. The only exceptions to these are animals such as birds, fish or reptiles that are kept within an Owner's dwelling unit that have no outside needs or use.

No animal may be kept within The Properties for commercial purposes.

Any animal that needs the Common Areas for housing such as horses, goats, chickens requires that the Owner submit plans for the animal's care and maintenance for written approval by the Land Use Committee before the animal can be brought onto The Properties. Animals (except wild) shall not be allowed to run at large within The Properties but at all times shall be under the control of the Owner or the Association member responsible for their care. Any animals on The Properties shall be cared for and their living area maintained so they are healthy, not neglected in any way, and do not become a nuisance to others. All household pet litter in the Common Areas shall be cleaned up immediately by the Owner or caretaker in charge at the time. Animal living areas shall be maintained so that they do not become an odorous or visual nuisance.

Animals belonging to or being cared for by any Owner or his or her Guests within The Properties must abide by the provisions stated herein.

The Board of Directors shall take such action or actions as it deems reasonably necessary to correct the violation of these provisions to include, after Notice and Hearing, directing permanent removal of the pet or pets from The Properties.

Reimbursement for damages caused by such pets and costs incurred by the Association, to include attorneys' fees and costs, in the removal of a pet or pets from The Properties or incurred by the Association in cleanup after such pets may be levied after Notice and Hearing against such pet's Owner as an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

No dog runs, animal pens or fences of any kind shall be permitted on any Lot except with the prior written approval of the Design Review Committee and Land Use Committee for the structure and the Land Use Committee for the animal.

7.16 Vehicular Parking, Storage and Repairs. No house trailer, camping trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than 3/4 ton, recreational vehicle or equipment, or commercial vehicle may be parked or stored anywhere within The Properties except on the Owner's designated parking spaces or at places defined by the Land Use Committee.

No household shall park more than the designated two vehicles per household on The Properties without prior written permission by the Land Use Committee.

Parking is allowed only in the designated parking areas and car shelters, or an Owner's own attached garage or driveway. No parking is allowed on landscaped areas, Common Areas, pedestrian ways, or access roads.

7.17 Pedestrian Ways. Pedestrian ways are intended for vehicular use only in emergency situations. Emergency, utility, and maintenance vehicles have access through the pedestrian ways. At no time can the pedestrian ways be obstructed in any way. It is the intent of the Association and these covenants that the pedestrian ways be used exclusively by people and non-motorized vehicles.

7.18 Vehicle Maintenance and Storage. All vehicle maintenance activities must occur within the auto workshop, parking areas, or an Owner's own garage. No abandoned, unlicensed, wrecked or inoperable vehicle of any kind shall be stored or parked within The Properties except in garages or except in emergencies. The Board of Directors shall have the right to remove and store a vehicle in violation of this Paragraph after Notice and Hearing, the expenses of which shall be levied against the Owner of the vehicle as an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

7.19 Personal Storage. Storage of personal items; small equipment; small recreational vehicles and equipment; or any such personal property must be stored within the Owner's Dwelling, or in the Owner's garage or storage locker. Any storage by an Owner outside

of these personally owned areas can only be done with approval from the Land Use Committee.

Certain common facilities are designated for activities of Association members and for storage of items, equipment, and vehicles owned and/or used in common by Association members.

7.20 Landscaping. Each Owner shall be responsible for landscaping and maintaining the landscape upon his/her own Lot. All landscaping and maintenance thereof must comply with the Rules, Regulations and Guidelines established by the Land Use Committee and be in compliance with the City of Lafayette's approved landscape plan.

The Land Use Committee is responsible for: a) overseeing the landscaping, use, and maintenance of all Common Areas including existing vegetation; b) coordinating all the activities and uses on The Properties including the Common Areas in regards to landscape and maintenance; and c) coordinating with the Board of Directors to recommend any assessment necessary to landscape and maintain the Common Areas.

No Owner shall cause or permit any improvement, activity, or other condition to exist upon his/her Lot that interferes or would interfere with the established drainage pattern. The established drainage pattern shall mean the drainage existing immediately subsequent to the time of the overall grading of The Properties or any addition or change approved and made by the Land Use Committee.

If any Owner fails to comply with this Paragraph and with the Guidelines of the Committee, the Board of Directors, after Notice and Hearing shall have the right and power to enter upon the Lot and bring it into compliance, the cost of which shall be chargeable to such Owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

Each Lot is subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) for providing the installation and/or maintenance in accordance with the above.

7.21 Owner Caused Damages. If, due to the act or neglect of an Owner or such Owner's Guests, loss or damage shall be caused to any person or property within The Common Areas, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with costs of collection and reasonable attorneys' fees, if necessary, may be collected by the Board of Directors after Notice and Hearing, from such Owner as an Individual Assessment against such Owner in accordance with Paragraph 5.3(c) hereof.

Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this



Paragraph 7.21 shall be made by the Board of Directors and shall be final.

7.22 Outside Installations. Any outside installation of antennas such as TV, CB, radio or shortwave or any projection on any physical structure including such things as sports apparatus but excluding chimneys and vent stacks shall fall under the guidelines of the Design Review Committee. Satellite dishes may be installed within The Properties so long as such installation is approved by the Design Review Committee and the Land Use Committee.

7.23 Lease of a Dwelling Unit. Any Owner shall have the right to lease his or her Dwelling Unit upon such terms and conditions as the Owner may deem advisable, subject to the following: a) no Owner may lease for transient or hotel purposes or for a term of less than thirty days; b) any such lease or rental agreement shall be in writing and shall provide that the lease or rental agreement is subject to the terms of this Declaration, the Bylaws of the Association and the Articles of Incorporation, and the Rules and Regulations of the Association; c) such lease or rental agreement shall state that the failure of the lessee or renter to comply with the terms of the Declaration or Bylaws of the Association, Articles of Incorporation or the Rules and Regulations of the Association shall constitute a default and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them; d) any Owner who leases his or her Dwelling Unit shall, within three days after the execution of such lease, forward a copy of same to the Board of Directors.

7.24 Sale of a Lot and/or Dwelling Unit. The right of an Owner to sell, transfer or otherwise convey his or her Lot and Dwelling Unit shall not be subject to any right of first refusal or similar restriction and such Lot and Dwelling Unit may be sold free of any such restrictions.

7.25 Restrictions on Mortgaging a Lot and/or Dwelling Unit. There are no restrictions on the right of an Owner to mortgage or otherwise encumber his or her Lot and Dwelling Unit. There is no requirement for the use of a specific lending institution or particular type lender.

7.26 Street Lighting. All Lots are subject to and bound by Public Service Company tariffs which are now and may in the future be filed with the Public Utilities Commission of the State of Colorado relating to street lighting within The Properties, together with rates, Rules, Regulations and Guidelines therein provided and subject to all future amendments and changes thereto. Each Owner shall pay as billed a portion of the cost of public street lighting in The Properties according to Public Service Company rates, Rules, Regulations and Guidelines, including future amendments and changes on file with the Public Utilities Commission of the State of Colorado.

7.27 Leachfield Lots. Lots 43 through 76 are owned and maintained by the Association as Common Areas subject to the right reserved to the Board of Directors to convey Lots to Owners to allow Owners to construct leachfields on said Lots for the adequate operation of their septic systems if so required by a health agency. The Lots are conveyed subject to the duty of the Lot Owner to reconvey said Lot to the Association when the need for the leachfield no longer exists. The Lots are also conveyed subject to the duty of the Lot Owner to maintain the leachfield at the Lot Owner's expense. In the event the Owner shall fail to maintain said leachfield in a manner acceptable to the Board of Directors, the Board of Directors shall have the right and duty, after Notice and Hearing, to maintain said leachfield. The cost of such maintenance shall be charged to the Owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof. Each Lot is conveyed subject to an easement in favor of the Board of Directors to perform said maintenance. No structures other than a leachfield may be placed on Lots 43 through 76 of The Properties unless approved by the Board of Directors and the City of Lafayette.

7.28 Carports. The Declarant may construct Carports on the Common Areas, namely Outlots C and D, and sell the "right to use" of same to Owners. In the event Carports are constructed, an easement for the encroachment and existence of these Carports upon the Common Areas shall exist and extend for whatever period of time the Carports shall exist. The "right to use" said Carports shall be conveyed by Bill of Sale.

Each Owner shall maintain the interior of his or her Carport Space in a clean, safe and attractive condition and shall keep the same free from litter and debris. The Association shall have the authority to establish reasonable rules and regulations regarding the sightliness and cleanliness of the Carport Space and the use thereof by its owner. Any use of a Carport Space that does not allow an automobile or truck to be parked within such space is expressly prohibited. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.3(f) hereof.

7.29 Exemptions for the Declarant. The Declarant shall be exempt from the provisions of Paragraphs 7.2, 7.4, 7.5, 7.10 and 7.16 and shall be exempt from any other restrictions in this Article to the extent that it impedes Declarant's development, marketing sales, or leasing activities.

7.30 Waiver of Summary Abatement. The Declarant and the Association waive the right to use summary abatement or similar means to enforce the restrictions herein contained against any Lot or its use. Judicial proceedings must be instituted before any items of construction can be altered or demolished.

ARTICLE EIGHT: EASEMENTS

8.1 Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Dwelling Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling Unit encroaches or shall hereafter encroach upon the Common Areas, or upon another Dwelling Unit, the Owner of that Dwelling Unit shall and does have an easement for such encroachment and for the maintenance of same. Such easements shall extend for whatever period of time the encroachment shall exist. Such encroachments shall not be considered to be encumbrances either upon the Common Areas or upon a Dwelling Unit. Encroachments referred to herein include, but are not limited to, encroachments made by error in original construction of the Dwelling Unit, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of Dwelling Units within The Properties or any part thereof.

8.2 Zero Lot Line Easements. Due to the anticipated style of Dwelling Units to be placed on certain Lots, (a) a Dwelling Unit may be located on or so close to its property line or (b) a Dwelling Unit's roof overhang may encroach upon an adjoining Lot or Lots so as to make entry upon an adjoining Lot or Lots a necessary incident to the construction and maintenance of such Dwelling Unit. In the event the above situation shall exist, then at the time of the commencement of the construction of such improvement, provided such construction shall commence within twenty years after the date of recording of this Declaration, there shall thereby be created an easement or easements for the existence of such overhang if one shall encroach not to exceed two feet in depth and for the construction, maintenance, repair, replacement and/or reconstruction of such Dwelling Unit which encroaches or is so located on or near its property line. Said easement or easements (a) shall be over and across the Lot or Lots immediately adjoining the lot upon which such Dwelling Unit is so located, and (b) shall extend the full depth of the adjoining Lot or Lots, and (c) shall extend into so much of the adjoining Lot or Lots as is necessary to provide the Owner of such Dwelling Unit so located with an easement of such width that, when added to the space lying between the Dwelling Unit and its property line, such easement shall be six feet in width; provided that such Owner shall immediately repair, and be liable to make full reimbursement for any damages caused by any failure immediately to repair any damage to the Lot or the Dwelling Unit or other property thereon resulting from the use of this easement. The amount of such reimbursement may be collected by the Board of Directors from such Owner as an Individual Assessment in accordance with Paragraph 5.3(c) hereof. Construction of any structure shall be prohibited within these easements except as such structure shall be approved in writing by the Board of Directors. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

8.3 Utility Easements. Easements for pedestrian walks, drainage, irrigation or utilities over and across the Common Areas shall be those shown upon the recorded plat of The Properties, and such other easements as may be established pursuant to the provisions of this Declaration or as may be hereinafter be granted over and across the Common Areas by the Board of Directors of the Association.

8.4 Easements for the Board of Directors. Each Lot shall be subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) to perform its obligations pursuant to this Declaration.

8.5 Emergency Easements. A nonexclusive easement for ingress and egress is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons, now or hereafter servicing the Properties, to enter upon any part of The Properties in the performance of their duties.

8.6 Easements Deemed Appurtenant. Every Owner has a non-exclusive right and easement of enjoyment in and to the Common Areas. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights of way as provided herein, as though set forth in said document in full, even though no specific reference to such easements or rights of way appear.

## ARTICLE NINE: CONDEMNATION

9.1 Condemnation of Common Areas. In the event of a proceeding in condemnation or partial condemnation of the Common Areas by any governmental authority authorized to do so, then the proceeds from such condemnation attributable to the Common Areas shall be distributed to the Board of Directors for repair of the Common Areas after condemnation and the balance remaining shall be distributed to all Owners in the same proportion as the Annual Assessments for Common Expenses are assessed in accordance with Paragraph 5.3(a) hereof; subject to the provisions of Paragraph 9.3 below.

9.2 Condemnation of Dwelling Units. If a Dwelling Unit is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Owner of such Dwelling Unit and the entity performing the condemnation, subject however, to the provisions of 9.3 below.

9.3 Lien Holders. When condemnation occurs, either to the Common Areas or to a Dwelling Unit within The Properties and such Dwelling Unit is subject to an encumbrance, the proceeds payable hereunder shall be distributed by checks made jointly payable to Owners and their respective First Mortgagees. No Owner or other parties shall be entitled to priority over First Mortgagees with respect to any such distribution.

## ARTICLE TEN: INSURANCE

10.1 Authority to Purchase/General Requirements. Except as otherwise provided in Paragraph 10.9 hereof, all insurance policies relating to The Properties shall be purchased by the Board of Directors. The Board of Directors, the Managing Agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages are available only at demonstrably unreasonable cost. The Board of Directors shall promptly furnish to each Owner and/or such Owner's First Mortgagee requesting same, written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where (a) under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, Owner, First Mortgagee or such First Mortgagee's successor and assigns, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or (c) the policy includes any limited clauses (other than insurance conditions) which could prevent Owners or First Mortgagees, their successors and assigns from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the Declarant, the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households.
- b) Such policy shall not be canceled, invalidated or suspended due to the conduct of any Owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within thirty days after such demand;
- c) Such policy, including any fidelity insurance, may not be canceled, or substantially modified by any party (including cancellation for nonpayment of premium) without at least thirty days' prior written notice to the Board of

Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;

- d) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Lot superior to the lien of a First Mortgagee;
- e) The Declarant, so long as Declarant shall own any Lot, shall be protected by all such policies as an Owner, if such coverage is available;

All policies of insurance shall be written with a company licensed to do business in Colorado which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

The name of the insured under the policies shall be the Association for the use and benefit of the individual Owners. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and the insurance proceeds for that loss shall be payable to the Association as trustee for each Owner and such Owner's First Mortgagee. Each Owner and such Owner's First Mortgagee, if any, shall be beneficiaries of the insurance policy or policies according to each Owner's interest as such interest appears in the policy or policies.

All insurance policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) in which it appropriately names the First Mortgagee in the policy, its successors and assigns, as beneficiary.

**10.2 Hazard Insurance.** The Board of Directors shall obtain and maintain a blanket, "all-risk" form policy of hazard insurance with extended coverage, vandalism, malicious mischief, windstorm, sprinkler leakage (if applicable), debris removal, cost of demolition and water damage endorsements, insuring all the Dwelling Units located upon The Properties, including all insurable improvements located on The Common Areas including fixtures, machinery, equipment and supplies maintained for the service of the Common Areas as well as common personal property and supplies and other personal property belonging to the Association, including fixtures and building service equipment to the extent that they are part of the Common Areas. Such insurance shall also include, among other things, all fixtures, installations or additions comprising a part of the individual Dwelling Units within the unfinished interior surfaces of the perimeter walls, floors, and ceilings of

the Dwelling Unit initially installed or replacements thereof made in accordance with the original plans and specifications, or installed by or at the expense of the Owner. All references herein to a "blanket" type policy of property insurance are intended to denote "Single Entity" insurance coverage.

Such insurance shall at all times represent one hundred percent of the current replacement cost based on the most recent appraisal of each Dwelling Unit as defined above and all insurable improvements in the Common Areas as defined above. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for co-insurance. The Board of Directors shall review at least annually all of its insurance policies in order to ensure that the coverages contained in the policies are sufficient. The Board of Directors shall, consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes, which shall be maintained as a permanent record, showing that the insurance represents one hundred percent of the current replacement cost as defined above for all of the Dwelling Units located upon The Properties and all insurable improvements located on the Common Areas, together with any personal property owned by the Association.

Such policies shall also provide:

- a) The following endorsements or their equivalent: No Control Endorsement, Contingent Liability from Operation of Building Laws or Codes Endorsement, Cost of Demolition Endorsement, Increased Cost of Construction Endorsement, Agreed Amount Endorsement, and Inflation Guard Endorsement, if available.
- b) That any "no other insurance" clause expressly exclude individual Owners' policies from its operation so that the property insurance policy purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual Owners or their First Mortgagees, unless otherwise required by law.

A duplicate original of the policy of hazard insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First



Mortgagee requesting the same, at least thirty days prior to expiration of then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the individual Owners and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. Any loss covered by the policies carried under this Article shall be adjusted exclusively by the Board of Directors and provide that all claims are to be settled on a replacement cost basis. The Association shall hold any insurance proceeds received in trust for the Owners and their First Mortgagees as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas and Dwelling Units. Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas and Dwelling Units have been repaired or restored.

Title to each Lot within The Properties is declared and expressly made subject to the terms and conditions hereto, and acceptance by the grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their Dwelling Units upon its damage or destruction as is hereinafter provided. As attorney-in-fact, the Board of Directors of the Association shall have full and complete authorization, power and right to make, execute and deliver any contract or any other instrument with respect to the interest of such Dwelling Unit which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the damaged Dwelling Units and Common Areas shall be done in accordance with Paragraphs 10.3 and 10.4 below.

Such appointment of the Association as the attorney-in-fact for all Owners may be revoked and a new attorney-in-fact appointed by an amendment to this Declaration in accordance with Paragraph 14.2 hereof.

The deductible, if any, on such insurance policy shall be as the Directors determine to be consistent with good business practice and which shall be consistent with the requirements of the First Mortgagees, not to exceed, however, Ten Thousand Dollars or one percent of the face amount of the policy whichever is less. Any loss falling within the deductible portion of a policy shall be paid by the Association. Funds to cover the deductible amounts shall be included in the Association's Reserve Funds and be so designated.

10.3 Rebuilding of Damaged Common Areas. Any portion of the insurable Common Areas as defined in Paragraph 10.2 that are

damaged or destroyed shall be repaired or replaced promptly by the Board of Directors unless a "Declaration Not to Rebuild" signed by Owners who are entitled to cast at least sixty-seven percent of the votes in the Association and by fifty-one percent of the Eligible Holders of Mortgages recorded against Lots within The Properties subject to Eligible Holders mortgages is recorded within one hundred days of the date of damage or destruction indicating their intention not to rebuild, in the office of the County Clerk and Recorder, Boulder County, Colorado.

In the event of any repair and/or reconstruction of any portion of the said Common Areas, the Board of Directors shall promptly repair or reconstruct the same in a workmanlike manner substantially in accordance with this Declaration and in accordance with original plans and specifications for such Common Areas unless other action is approved by Owners who are entitled to cast at least sixty-seven percent of the votes in the Association and by sixty-seven percent of the Eligible Holders of Mortgages recorded against Lots within The Properties subject to Eligible Holders mortgages.

The Board of Directors shall not be relieved of this obligation to repair and/or reconstruct by the fact that proceeds received from the Insurer to repair or rebuild are not sufficient to cover the cost thereof.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Common Areas, such excess cost shall be assessed as an Individual Assessment against all Owners in accordance with Paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Owners. Such Individual Assessment shall be assessed in the same proportion as the Annual Assessment for Common Expenses is assessed in Paragraph 5.3(a) hereof. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the assessment was levied.

If any portion of the damaged Common Areas is not repaired or replaced, the insurance proceeds shall be used to restore the damaged Common Areas to a condition compatible with the remainder of the Common Areas and the remainder of the proceeds shall be distributed to all Owners in the same proportions as the Annual Assessments for Common Expenses are levied. Proceeds hereunder shall be distributed by checks made jointly payable to the Owners and their respective First Mortgagee. No Owner or other party

shall be entitled to priority over a First Mortgagee with respect to any such distribution.

10.4 Rebuilding of Damaged Dwelling Units. In the event of damage to or destruction of a Dwelling Unit or any other casualty for which the Association is carrying insurance in accordance with the above, the Board of Directors shall promptly repair or reconstruct the same in a workmanlike manner substantially in accordance with the original plans and specifications for the original structure.

Neither the Owner nor the Board of Directors shall be relieved of this obligation to repair or rebuild by the fact that proceeds received from the insurer to repair or rebuild the original structure are not sufficient to cover the cost thereof.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Dwelling Units, such excess cost shall be assessed as an Individual Assessment against all Owners in accordance with Paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Owners. Such Individual Assessment shall be assessed in the same proportion as the Insurance Assessment is assessed in Paragraph 5.3(d) hereof. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and reconstruction. In the event amounts collected are in excess of the amounts required for such repair and reconstruction, the excess shall be returned to the Owners by the Association in the same proportion as the assessment was levied.

10.5 Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy) and property damage insurance covering all of the Common Areas, public ways within The Properties and any other areas that are under the Association's responsibility and commercial spaces owned by the Association, whether or not they are leased to some third party, insuring each officer, director, the Managing Agent and each Owner, to include the Declarant in its capacity as an Owner. Such coverage under this policy shall include, without limitation, the legal liability of the insureds for property damage, bodily injuries and death of persons that result from the operation, maintenance or use of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party.

Such insurance shall be issued on a comprehensive liability basis. Additional coverages may be required to include protection against such other risks as are customarily covered with respect to The Properties similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with

respect to events sponsored by the Association, Contractual and All-Written Contract Insurance, Workmen's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance and Severability of Interest Endorsement.

The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury, including death of persons and property damage arising out of a single occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits may also be obtained.

10.6 Fidelity Insurance. The Board of Directors shall obtain and maintain adequate fidelity insurance coverage, to protect against dishonest acts on the part of the Directors, Officers, Trustees, Employees or Volunteers of the Association and all others who handle or are responsible for handling funds collected and held for the benefit of the Association, provided however, the Board of Directors shall not maintain fidelity coverage to cover any Managing Agent.

Such fidelity coverage shall name the Association as the named insured and be written in an amount sufficient to cover the maximum funds that will be in the custody of the Association or its Managing Agent at any time while the insurance is in force. In addition, the fidelity insurance coverage must at least equal the sum of three months' portion of the Annual Assessment for Common Expenses, assessed on all Lots within The Properties, plus the Association's Reserve Funds, and contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

In the event the Association has delegated some or all of its responsibility for the management of its funds to a Managing Agent, such Managing Agent must be covered by its own fidelity insurance providing the same coverage required of the Association's Agent's fidelity insurance, and evidence of such coverage must be submitted to the Association.

10.7 Additional Insurance.

a) Adequate Directors' and Officers' Liability Insurance, if available, and if deemed consistent with good business practices, for errors and omissions of all Directors and Officers to be written in an amount which the Board of Directors deems adequate;

b) Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law;

c) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to The Properties;

10.8 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article, other than the insurance referred to in Paragraph 10.2 hereof pertaining to the Blanket "All-Risk" Policy insuring all of the Dwelling Units, and except for premiums on fidelity insurance maintained by a Managing Agent for its officers, employees and agents shall be paid from Association funds and shall be collected from the Owners as part of the Annual Assessment for Common Expenses as provided for in Paragraph 5.3(a) hereof.

In the event there are not sufficient funds generated for the Annual Assessment for Common Expenses to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof and such assessment shall be exempt from any special voting requirements of the Membership. Such assessment shall be prorated among Owners in the same proportion as the Annual Assessment for Common Expenses.

The cost of procuring and maintaining the Blanket "All Risk" Policy, as provided in Paragraph 10.2 hereof, insuring the Dwelling Units, shall be paid for from Association funds and be collected from the Owners of such Dwelling Units in the following manner: the cost of insurance attributable to the Owner's Dwelling Unit for one full year shall be prorated according to the number of days remaining between closing and that Dwelling Unit's insurance policy Renewal Date and shall be paid at closing. Thereafter, the cost of such insurance shall be paid by the Owners as an Insurance Assessment in accordance with Paragraph 5.3(d) hereof commencing with the first assessment after closing.

10.9 Separate Insurance. Each Owner shall have the right, at such Owner's expense, to obtain insurance for his or her Dwelling Unit for his or her own benefit and to obtain insurance coverage upon his or her personal property, furnishings and for his or her personal liability, provided, however, that no Owner shall be entitled to exercise his or her right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this Paragraph.

## ARTICLE ELEVEN: MAINTENANCE

11.1 Maintenance of the Common Areas. The Association shall provide for the repair, maintenance and/or replacement of the Common Areas and the landscaped island located in the cul-de-sac on Nyland Way located within The Properties to include maintenance of the areas existing between the edge of the gutter on the city streets and the property line of the Lot. In the event this area is not properly maintained, the City of Lafayette may, at its option, enforce the maintenance of this area. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas safe, attractive, clean, functional and in good repair and may make necessary or desirable alterations or improvements thereon.

In the event such repair, maintenance and/or replacement is resulting from the willful neglect or destruction by an Owner or such Owner's Guest, the Board of Directors shall have the right and duty, after Notice and Hearing, to charge the costs of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

Determination with respect to whether or not a particular activity by occurrence shall constitute a violation of this Paragraph 11.1 shall be made by the Design Review Committee and shall be final.

\* No planting or gardening shall be done, and no fences, hedges or walls shall be erected upon the said Common Areas to benefit a Dwelling Unit, except such as are installed in accordance with the initial construction of the Dwelling Unit or as approved by the Land Use and Design Review Committee. If such improvements are made to the Common Areas, then such improvements must be maintained by the Owner of the Dwelling Unit benefitted in a manner acceptable to the Board of Directors. In the event the Owner shall fail to maintain such improvements in a manner acceptable to the Board of Directors, the Board of Directors shall have the right and duty, after Notice and Hearing, to remove the improvement and restore the Common Areas to a condition compatible with the remainder of the Common Areas. The cost of such removal and restoration shall be charged to the benefitted Owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

11.2 Maintenance of the Lots and Dwelling Units. To provide and maintain exterior harmony for all of the Dwelling Units located within The Properties, the Association shall maintain and repair the exterior of the Dwelling Unit located upon each Lot within The Properties to include but not be limited to the painting, repairing, replacing and maintaining of roofs, gutters, down spouts, exterior building surfaces, patios, decks and perimeter fence. Such maintenance shall not include the maintenance, repair or replacement of glass in doors or windows or screened surfaces,

entry door or door frames or hardware, all of which shall be the sole responsibility of the Dwelling Unit's Owner.

The maintenance obligation on the part of the Association shall apply to such maintenance required by ordinary wear and tear and shall not apply to maintenance, repair or restoration resulting from willful neglect or destruction.

In the event such repair, maintenance and/or replacement is resulting from the willful neglect or destruction by an Owner or such Owner's Guest, as defined herein, the Board of Directors shall have the right and duty, after Notice and Hearing to charge the costs of such repair, maintenance and/or replacement, to such Owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof.

Determination of whether such repair or maintenance is the obligation of the Association, or if the Association's obligation is necessary, shall rest solely with the Design Review Committee, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

All other Dwelling Unit maintenance and repair shall be the sole responsibility and at the sole expense of the Owner together with the maintenance of the lawn and landscaping upon each Owner's Lot. Each Owner is responsible for the maintenance of his or her Lot to their respective Lot lines as shown on the recorded Plat of The Properties.

11.3 Maintenance of Drainage Pattern. There shall be no interference with the established drainage pattern initially established by the Declarant over any of the Lots and Common Areas within The Properties, except as approved in writing by the Land Use Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The established drainage pattern shall mean the drainage pattern which exists at the time the overall grading of any property is completed by the Declarant and shall include any established drainage pattern shown on the plans approved by the Land Use Committee. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots with The Properties and from any Lot within The Properties over the Common Areas, or from any Lot over another Lot.

11.4 Design Review Committee's Responsibility. The determination of when and the magnitude and the manner of the above described maintenance and repair shall be determined solely at the discretion of the Design Review Committee.

Each Lot and the Common Areas within The Properties is subject to an easement in favor of the Board of Directors (including its agents, employees and contractors) for providing repair, maintenance and/or reconstruction in accordance with the above.

## ARTICLE TWELVE: PARTY WALLS

12.1 Existence. The Owner shall possess, in fee simple, that portion of the Party Wall, as defined herein, lying within his or her Lot. Each Owner having a Party Wall is hereby granted a mutual reciprocal easement for repair or replacement of said Party Wall. No Owner shall commit or omit any act, the result of which is infringement of the adjoining Owner's rights in the Party Wall absent written agreement between such Owners. In the event that any portion of any structure originally constructed by the Declarant, including any Party Wall, shall protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot nor shall any action be maintained for the removal of or for damage because of such protrusion. The foregoing shall also apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the original Party Wall constructed by Declarant.

12.2 Repair and Maintenance. If a Party Wall is in need of repair or is destroyed or damaged by any casualty, the Owners of Lots abutting such Party Wall jointly shall repair, restore or reconstruct it substantially to its original form, and they shall contribute in proportion to such Owner's use of such Party Wall to the cost of repair, restoration or reconstruction thereof without the prejudice, however, to the right of any such Owner to call for a larger contribution from any other Owner under any rules of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of any Owner to any contribution from any such Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title; provided however, the right of such Owner to any contribution shall in any event be subordinate to the First Mortgagees of any Lots. Destruction or damage to the Party Wall shall not cause the termination of any rights of any of the adjoining Owners thereto, and such Owners will retain those rights herein set forth concerning any reconstruction or replacement of a Party Wall.

12.3 Arbitration. All claims, demands, disputes, controversies and misunderstandings arising concerning a Party Wall, or under the provisions of this Article, shall be submitted to and be determined and settled by arbitration. As established hereunder each party shall select one arbitrator and the two arbitrators so selected shall jointly select a third arbitrator. In the event one of the parties refuses to select an arbitrator in the time frame outlined below, then the Board of Directors shall act on such parties' behalf and appoint such arbitrator. The appointment of arbitrators hereunder shall be made within thirty days after notice by one party to the other party and to the Board of Directors that a



dispute exists. The three arbitrators shall meet and shall give the opportunity to each party to present his or her case in the presence of the other party and shall then make their award. The award of a majority of the arbitrators shall be final and binding upon the parties and judgment may be entered thereon in any court having jurisdiction. The cost of arbitration, the party or parties responsible for payment thereof, and the manner of payment will be decided by the arbitrators. In the event the arbitration award is for money damages, then such award, together with any attorneys' fees and costs awarded shall be a lien against the losing parties' Lot in favor of the prevailing party, which lien shall attach in the manner as provided for in Paragraph 5.10 hereof for unpaid assessments until paid. Any lien hereby created shall have the same priority as the lien provided for in Paragraph 5.10 hereof.

## ARTICLE THIRTEEN: FIRST MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers, or guarantors of holders of first mortgages recorded against Lots within The Properties. To the extent applicable, necessary, or proper, the provisions of this ARTICLE THIRTEEN apply to this Declaration and also to the Articles and Bylaws of the Association.

13.1 Notices of Action. An Eligible Holder as defined in Paragraph 1.12 hereof shall be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of The Properties or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such Eligible Holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty days; provided however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under this Declaration or Articles or Bylaws of the Association which is not cured within sixty days;

(c) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2 Amendment to Documents/Special Approvals.

(a) The consent of Owners who are entitled to cast at least eighty percent of the votes in the Association and the approval of at least eighty percent of the Eligible Holders of mortgages recorded against Lots within The Properties subject to Eligible Holder mortgages shall be required to commence any action to terminate the legal status of The Properties for reasons other than substantial destruction or condemnation of The Properties.

(b) The consent of Owners who are entitled to cast at least sixty-seven percent of the votes in the Association and the approval of at least fifty-one percent of the Eligible Holders of mortgages recorded against a Lot within The Properties subject to Eligible Holder mortgages shall be required to do any of the following or to amend any material provisions of this Declaration or the Articles or Bylaws of the Association which establish, provide for, govern, or regulate any of the following:

(i) voting rights;

- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs of the Common Areas;
- (v) reallocation of interests in the Common Areas or the rights to its use;
- (vi) redefinition of the boundaries of any Lot;
- (vii) convertibility of Lots into Common Areas or vice versa;
- (viii) the expansion or contraction of The Properties or the addition, annexation or withdrawal of property to or from The Properties;
- (ix) insurance or fidelity bonds;
- (x) leasing of Dwelling Units;
- (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot or Dwelling Unit;
- (xii) any provision that expressly benefits the Eligible Holders;
- (xiii) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Holder;
- (xiv) restore or repair of The Properties (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
- (xv) act to terminate the legal status of The Properties after substantial destruction or condemnation occurs.

13.3 Special FHLMC Provisions. So long as required by the Federal Home Loan Mortgage Corporation, the following requirements apply in addition to and not in lieu of the foregoing, unless at least sixty-seven percent of the First Mortgagees (based on one vote for each first mortgage owned) or Owners (other than Declarant) have given their prior written approval, the Association is not entitled to take any of the following actions:

- (a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the common property owned directly or

indirectly, by the Association for the benefit of the Owners. The granting of easements for public utilities or other public purposes consistent with the intended use of the common property by the Association is not a transfer in the meaning of this paragraph;

(b) change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or their enforcement pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of the common property party walks, common fences and driveways, and the upkeep of lawns and plantings in The Properties;

(d) fail to maintain fire and extended coverage on insurable common property on a current replacement cost basis in an amount at least one hundred percent of the insurable value (based on current replacement cost); and

(e) use hazard insurance proceeds for losses to any common property for other than the repair, replacement, or reconstruction of such common property.

13.4 Payment of Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of any Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association. Entitlement to such reimbursement is to be reflected in an agreement in favor of all First Mortgagees duly executed by the Association.

13.5 Books and Records. Owners and their mortgagees shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association and upon reasonable notice. Copies are available at reasonable cost.

## ARTICLE FOURTEEN: DURATION AND AMENDMENTS

14.1 Duration. The covenants, restrictions and obligations of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten years.

If and to the extent that any of these covenants, easements, rights and restrictions as contained herein would otherwise be unlawful or void for violation of (a) the rule against perpetuities; (b) the rule restricting restraints on alienation; or (c) any other applicable statute or common law rule analogous thereto or otherwise imposing limitation upon the time for which such covenants or restrictions may be valid, then the provisions concerned shall continue and endure only for ninety years from the date this Declaration is recorded or until this Declaration is terminated as above provided, whichever shall first occur.

14.2 Amendments By Owners. Except as permitted in Paragraph 15.5 and except in cases of amendments that may be executed by the Declarant pursuant to Paragraph 14.3 and except as restricted by Paragraphs 13.2, 13.3 and 14.4, any provision, covenant, condition or restriction contained in this Declaration may be amended at any time and from time to time upon written approval of the amendment by Owners who are entitled to cast at least sixty-seven percent of the votes in the Association.

Any such amendment shall be effective upon the recording of the amendment together with a duly authenticated Certificate of the Secretary of the Association certifying that Owners representing the requisite number of votes in the Association and that the requisite percentage of First Mortgagees, if required, have given their written consent to the amendment. The Secretary must further certify that originals of such written consents by Owners and First Mortgagees, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

14.3 Amendments by Declarant. Declarant also hereby reserves and is granted the right and power to make technical amendments to this Declaration, the Articles of Incorporation and the Bylaws of the Association until such time as the last Lot within The Properties has been conveyed by Declarant to an Owner other than Declarant for the purposes of correcting spelling, grammar, dates, cross references, or typographical errors, or as may otherwise be required to clarify the meaning of any provision of any or all of such documents.

Any such amendments shall be effective upon the recording of the amendment duly executed by the Declarant.

14.4 Consent of Declarant Required. Notwithstanding any other provision in this Declaration to the contrary, any proposed amendment or repeal of any provision of this Declaration shall not be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of any certificate of amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot has been conveyed by Declarant to an Owner other than Declarant.

## ARTICLE FIFTEEN: GENERAL PROVISIONS

15.1 Right of Action. The Association and any aggrieved Owner shall have an appropriate right of action against an Owner for such Owner's failure to comply with this Declaration, the Articles of Incorporation and Bylaws of the Association, the Rules, Regulations and Guidelines of the Association or with decisions of the Board of Directors of the Association which are made pursuant thereto. Owners shall have a similar right of action against the Association.

15.2 Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Owner and the heirs, personal representatives, successors and assigns of each of them.

15.3 Severability. Any portion of this Declaration invalidated in any manner whatsoever shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

15.4 No Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

15.5 Registration by Owner of Mailing Address. Each Owner shall register his or her mailing address with the Association, and except for monthly statements and other routine notices, which shall be personally delivered or sent by regular mail, all other notices or demands intended to be served upon an Owner shall be delivered personally or sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Board of Directors of the Association or the Association shall be sent by certified mail, postage prepaid to Edward Trunck, 745 Poplar Avenue, Boulder, CO 80304, Registered Agent for the Association until the Registered Agent is changed by a notice duly filed with the Office of the Secretary of State of Colorado (Change of Registered Agent).

15.6 Attorneys' Fees and Costs. If any action is brought in a court of law or put into arbitration as to the enforcement, interpretation, or construction of any of the within covenants, conditions and restrictions of this Declaration, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

15.7 Captions. The captions and headings in this Declaration are for Convenience only, and shall not be considered in construing any provision of this Declaration.

15.8 Numbers and Genders. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, plural the singular, and the use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 20<sup>th</sup> day of September, 1991.

COLORADO COHOUSING DEVELOPMENT CORPORATION  
a Colorado Corporation



Ronald E. Rinken  
Secretary

By: Ruth E. Barnard  
President

STATE OF COLORADO       )  
                                      ) ss.  
COUNTY OF BOULDER     )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of September, 1991, by Ruth E. Barnard as President, and Ronald E. Rinken as Secretary, of the Colorado Cohousing Development Corporation, a Colorado Corporation.



Commission expires: 9-6-92.

WITNESS my hand and official seal.

Tammy B. Hickey  
Notary Public



EXHIBIT A  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE NYLAND SUBDIVISION

---

LEGAL DESCRIPTION OF THE REAL PROPERTY  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE NYLAND SUBDIVISION

---

Lots 1 through 42, Nyland Subdivision, a subdivision in the  
County of Boulder, State of Colorado, according to the recorded  
plat thereof

EXHIBIT B  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE NYLAND SUBDIVISION

---

LEGAL DESCRIPTION OF THE COMMON AREAS  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE NYLAND SUBDIVISION

---

Lots 43 through 72 and Outlots B, C, D, G and L, Nyland Subdivision, a subdivision in the County of Boulder, State of Colorado, according to the recorded plat thereof

3-1

**FIRST AMENDMENT  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE NYLAND SUBDIVISION**

KNOW ALL MEN BY THESE PRESENTS, in accordance with Paragraph 14.2, of THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, the undersigned constituting Owners of Lots within the said Nyland Subdivision who are entitled to cast at least sixty-seven percent of the votes in the Nyland Homeowners Association for the use and benefit of themselves and all persons claiming or to claim any part of the real property above described, by, through or under it, hereby declare and agree that THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION recorded on Film 1693 as Reception No. 1131322 in the office of the County Clerk and Recorder of Boulder County, Colorado, shall be and that said document is hereby amended in the following particulars, to wit:

1. Paragraph 5.3 c) is amended in its entirety to read as follows:

5.3 c) The Board of Directors shall have the right to individually assess any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 6.4, 7.5, 7.15, 7.18, 7.20, 7.21, 7.27, 8.2, 8.7, 10.3, 10.4, 10.8, 11.1 and 11.2 hereof. No Individual Assessment shall be levied until the Owner or Owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association.

2. ARTICLE EIGHT is hereby amended in that Paragraph 8.7 is added and reads as follows:

8.7 If any part of a sewer line encroaches upon another Owner's Lot or the Common Area, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easement shall extend for whatever period of time the encroachment shall exist.

The Owner of said sewer line and such Owner's agents, employees and contractors shall have an easement upon the Lot or Common Area upon which the encroachment exists to maintain, repair or reconstruct said sewer line.

15  
/

$3^{-2}$ 

In all other respects the said DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, as amended, shall remain in full force and effect.

**RECEIVED**  
FEB 10 1968  
**SECRET**

Secretary

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

NO-PRES  
the  
PUBLIC

WITNESS my hand and official seal.

John G. Barkon  
Notary Public

CERTIFICATE

The undersigned being Secretary of the COLORADO COHOUSING DEVELOPMENT CORPORATION, a Colorado corporation, hereby certifies that Owners of Lots within The Nyland Subdivision who are entitled to cast at least sixty-seven percent of the votes in the Nyland Homeowners Association have given their written approval of the FIRST AMENDMENT OF THE DECLARATION OF THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, a copy of which is attached hereto as Exhibit A.

I further certify that the originals of such written approvals by said Owners, along with the recorded First Amendment are in the records of the Corporation and are available for inspection.

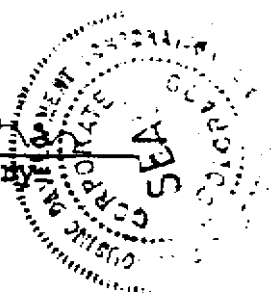
IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the Corporation this 11<sup>th</sup> day of February, 1992.

COLORADO COHOUSING  
DEVELOPMENT CORPORATION

By: [Signature]

Asst

Secretary

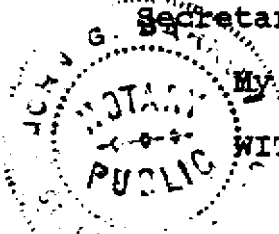


STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before this 11<sup>th</sup> day of February, 1992 by Bruce L. Richardson, as Secretary of the Colorado Cohousing Development Corporation.

My commission expires: 11-27-94

WITNESS my hand and official seal.



[Signature: John G. Carlson]  
Notary Public

SECOND AMENDMENT  
TO THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE NYLAND SUBDIVISION

---

KNOW ALL MEN BY THESE PRESENTS, in accordance with Paragraph 14.2, of THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, the undersigned constituting Owners of Lots within the said Nyland Subdivision who are entitled to cast at least sixty-seven percent of the votes in the Nyland Homeowners Association for the use and benefit of themselves and all persons claiming or to claim any part of the real property above described, by, through or under it, hereby declare and agree that THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION recorded on Film 1693 as Reception No. 1131322 in the office of the County Clerk and Recorder of Boulder County, Colorado, as amended by the First Amendment thereto, shall be and that said documents are hereby amended in the following particulars, to wit:

1. Paragraph 3.5 is amended in its entirety to read as follows:

3.5 Owner's Easements. Every Owner and such Owner's Guests shall have the right of use and enjoyment to the Common Areas, and shall have the right of ingress and egress over, upon and across the Common Areas as is necessary to have access to his or her Lot to and from a public street. Such rights shall be appurtenant to and shall pass with the title to the Lot of such Owner subject to the following rights:

a) The right of the Board of Directors to make such use of the Common Areas as may be necessary or appropriate for the performance of the duties and functions which it is obligated or permitted to perform under this Declaration. The Board of Directors, in its sole discretion, may from time to time grant easements and rights of way on, across, under and over the Common Areas.

b) The right of the Board of Directors to dedicate, sell, assign or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may

be agreed to by the Owners. No such dedication, sale, assignment or transfer shall be effective unless an instrument agreeing to such dedication, sale, transfer or assignment signed by Owners who are entitled to cast at least eighty percent of the votes in the Association.

c) The right of the Board of Directors to make such reasonable Rules, Regulations and Guidelines regarding the use of the Common Areas and facilities located thereon by Owners and other persons entitled to such use.

d) The rights reserved in this Declaration to the Declarant, the Owners and the Association.

e) The right of the Board of Directors to suspend the voting rights of a Member for any period during which any assessment against such Member's Lot remains unpaid; and for a period not to exceed sixty days for any infraction of its published Rules, Regulations and Guidelines.

2. Paragraph 7.16 is amended in its entirety to read as follows:

7.16 Vehicular Parking, Storage and Repairs. No vehicle, house trailer, camping trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than 3/4 ton, recreational vehicle or equipment, or commercial vehicle may be parked or stored anywhere within The Properties except in the Owner's designated Parking Spaces, designated Carports or in areas designated by the Board of Directors.

No household shall park more than two vehicles per household on The Properties without prior written permission by the Board of Directors.

3. Paragraph 7.17 is deleted in its entirety.

4. Paragraph 7.28 is amended in its entirety to read as follows:

7.28 Carports/Parking Spaces. The Declarant may construct Carports on the Common Areas, and sell a "Right of Use" of same to Owners. In the event Carports are constructed, an easement for the encroachment and existence of said Carports upon the Common Areas shall, together with an access easement to the Carports over the Common Areas as determined by the Board of Directors, shall exist for whatever period of time the Carports shall exist.

The Right of Use of a Carport shall be limited to and reserved for the exclusive use of the Owners of a particular Lot as designated by the Declarant and, upon such designation, the Right of Use of such Carport will be appurtenant to that Lot. Any contract, deed, lease, assignment, mortgage, deed of trust or other instrument used to convey, lease, assign, encumber or otherwise affect the right to use a particular Carport shall describe the Carport affected by adding to the appropriate legal description of the Lot the additional language "together with the Right of Use of Carport No. \_\_\_\_."

Each Owner shall maintain the interior of his or her Carport in a clean, safe and attractive condition and shall keep the same free from litter and debris. The Association shall have the authority to establish reasonable rules and regulations regarding the sightliness and cleanliness of the Carport and the use thereof by its owner. Any use of a Carport that does not allow an automobile or truck to be parked within such Carport is expressly prohibited. The Board of Directors is granted the authority to enforce the provisions of this Paragraph by the levy of Fines against the Owner in accordance with Paragraph 5.3(f) hereof.

The Declarant may construct Parking Spaces on the Common Areas and assign the "Right of Use" of some of the Parking Spaces to Owners. In the event Parking Spaces are constructed, an easement for the encroachment and existence of these Parking Spaces upon the Common Areas, together with an access easement to the Parking Spaces over the Common Areas as determined by the Board of Directors, shall exist and extend for whatever period of time the Parking Spaces shall exist. A Parking Space shall be limited to and reserved for the exclusive use of Owners as designated by the Association; provided, however, that the Association shall maintain control thereof and shall have the continuing right to assign and reassign Parking Spaces to Owners within The Properties. A Parking Space is not appurtenant to a Lot.

5. Paragraph 14.2 is amended in its entirety to read as follows:

14.2 Amendments By Owners and/or Board of Directors. Except as permitted in Paragraph 15.5 and except in cases of amendments that may be executed by the Declarant pursuant to Paragraph 14.3 and except as restricted by Paragraphs 13.2, 13.3 and 14.4, any provision, covenant, condition or restriction contained in this Declaration may be amended at any time and from time to time upon



written approval of the amendment by Owners who are entitled to cast at least sixty-seven percent of the votes in the Association.

Notwithstanding any other provision in this Declaration to the contrary, if at any time during the duration of this Declaration the Parking Plan for The Properties and/or the Parking Rules and Regulations are deemed inadequate or in need of change, said Plan and the Rules and Regulations may be amended by a majority vote of the total vote of all of the Board of Directors without the necessity of the consent thereto or joinder therein by the Owners, First Mortgagees, Design Review Committee or Land Use Committee.

Any such amendment shall be effective upon the recording of the amendment together with a duly authenticated Certificate of the Secretary of the Association certifying that Owners/Directors representing the requisite number of votes and that the requisite percentage of First Mortgagees, if required, have given their written consent to the amendment. The Secretary must further certify that originals of such written consents, as applicable, along with the recorded amendment, are in the records of the Association and available for inspection.

6. Exhibit A to the Declaration is amended in its entirety to read as follows:

Lots 1 through 42, Nyland Subdivision Replat "A", a subdivision in the County of Boulder, State of Colorado, according to the recorded plat thereof.

7. Exhibit B to the Declaration is amended in its entirety to read as follows:

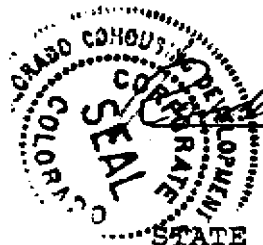
Lots 43 through 76 and Outlots B, C, D, G, L, M, N, O and P, Nyland Subdivision Replat "A", a subdivision in the County of Boulder, State of Colorado, according to the recorded plat thereof.

In all other respects the said DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, as amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this SECOND AMENDMENT to the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION to be executed this 25<sup>th</sup> day of August, 1992.

ATTEST:

COLORADO COHOUSING  
DEVELOPMENT CORPORATION



Ronald E. Rinker  
Secretary

By: Ruth E. Barnard  
President

STATE OF COLORADO )  
COUNTY OF BOULDER ) ss.

The foregoing instrument was acknowledged before this 25<sup>th</sup> day of August, 1992 by Ruth E. Barnard, as President, and Ronald E. Rinker, as Secretary of the Colorado Cohousing Development Corporation.

My commission expires: February 14, 1996

WITNESS my hand and official seal.

Liam M. Quinlan  
Notary Public



CERTIFICATE

The undersigned being Secretary of the COLORADO COHOUSING DEVELOPMENT CORPORATION, a Colorado corporation, hereby certifies that Owners of Lots within The Nyland Subdivision who are entitled to cast at least sixty-seven percent of the votes in the Nyland Homeowners Association have given their written approval of the SECOND AMENDMENT OF THE DECLARATION OF THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NYLAND SUBDIVISION, a copy of which is attached hereto as Exhibit A.

I further certify that the originals of such written approvals by said Owners, along with the recorded Second Amendment are in the records of the Corporation and are available for inspection.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of the Corporation this 25 day of August, 1992.

COLORADO COHOUSING DEVELOPMENT CORPORATION

By: Ronald E. Rinker  
Secretary

STATE OF COLORADO )  
COUNTY OF BOULDER ) ss.

The foregoing instrument was acknowledged before this 25th day of August, 1992 by Ronald E. Rinker as Secretary of the Colorado Cohousing Development Corporation.

My commission expires: February 14, 1996

WITNESS my hand and official seal.

Jim M. Quisenberry  
Notary Public

