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F1691 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

OF

THE NOBLE PARK 2 SUBDIVISION

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THE  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
THE NOBLE PARK 2 SUBDIVISION

---

PREAMBLE

THIS DECLARATION is made on the date hereinafter set forth, by Richard L. McCabe, hereinafter referred to as "Declarant".

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

WHEREAS, Declarant intends to construct a residential community on 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 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 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 or in any Supplemental 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 NOBLE PARK 2 SUBDIVISION, 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 BYLAWS means the Bylaws adopted by the Association as amended from time to time.

1.6 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.

1.7 COMMON EXPENSES means expenditures made by, or financial liabilities incurred by the Association, together with an allocation to a reserve fund for the maintenance, repair and reconstruction of those portions of the Common Areas which the Association has a duty to repair, maintain or reconstruct on a periodic basis, 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.

1.8 DECLARANT means Richard L. McCabe, his heirs, personal representatives, successors and assigns. A Person shall be deemed a "successor and assign" of the Declarant only if specifically designated in a duly recorded instrument as a successor or assign of Declarant under this Declaration, and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant under this Declaration which are specifically designated in the written instrument.

1.9 DECLARATION means this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE NOBLE PARK 2 SUBDIVISION.

1.10 DESIGN REVIEW COMMITTEE means the Committee formed pursuant to ARTICLE SIX hereof to review and approve each Improvement to Property as defined in the Paragraph 6.2 hereof, other than those constructed by Declarant, to insure and maintain the quality and architectural harmony of all of the improvements constructed on any portion of The Properties.

1.11 ELIGIBLE HOLDER means a First Mortgage as defined in Paragraph 1.13 hereof who has delivered a written request to receive information from the Association as provided for in Paragraph 12.1 hereof. Such request shall contain the First Mortgagee's name, address, the legal description and the address of the Lot encumbered by its mortgage.

1.12 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.

1.13 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 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 MODIFICATION REVIEW COMMITTEE means the Committee formed pursuant to ARTICLE SIX hereof to review and approve any modification, addition or alteration made on or to existing improvements constructed on any portion of The Properties, to insure and maintain the quality and architectural harmony of all of the improvements constructed on any portion of The Properties.

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

1.20 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.

1.21 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 and Regulations 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.

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.

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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 persons 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, more fully described on Exhibit B attached hereto.

The designated Common Areas are not dedicated for use by the general public, 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 a 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 such Persons and 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 is signed by Owners of at least sixty seven percent of the Lots located within The Properties is recorded and such dedication, sale, transfer or assignment has the prior written recorded approval by the City of Boulder.

(c) The right of the Board of Directors to make such reasonable Rules 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 (i) for any period during which any assessment against such Member's Lot remains unpaid, and (ii) for a period not to exceed sixty days for any infraction of the Association's Rules and Regulations.

(f) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas.

3.6 Delegation of Use/Compliance with the Provisions of the Declaration, Articles, Bylaws, and Rules and Regulations of the Association. Any Owner may delegate, in accordance with the Bylaws and Rules and Regulations 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 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.

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 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. 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.

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. The Association shall have two classes of voting memberships:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned; provided, however, the Declarant shall be a Class A Member after the conversion of the Class B Membership to Class A Membership in accordance with this Paragraph 4.5 and shall thereafter be entitled to one vote for each Lot owned.

The vote for a 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 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.

Class B. The Class B Member shall be the Declarant, its successors and assigns who shall be entitled to three votes for each Lot owned. Class B Membership may be converted to Class A Membership at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall be converted to Class A Membership without further act or deed not later than:

(a) when the right to build seventy-five percent of the total number of Dwelling Units allowed to be built under the zoning then in force on the property described on Exhibit A of the Declaration has been allocated and conveyed to purchasers other than Declarant; or

(b) five years following the recording of this Declaration in the Boulder County, Colorado records, whichever shall first occur.

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.

No officer, director, agent or employee of the Declarant, its successors or assigns, shall be protected by these indemnification provisions nor by any insurance policies obtained by the Association in relation thereto.

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.



how they will vote 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.

Class B. The Class B Member shall be the Declarant, its successors and assigns who shall be entitled to three votes for each Lot owned. Class B Membership may be converted to Class A Membership at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall be converted to Class A Membership without further act or deed not later than:

(a) when the right to build seventy-five percent of the total number of Dwelling Units allowed to be built under the zoning then in force on the property described on Exhibits A and C of the Declaration has been allocated and conveyed to purchasers other than Declarant; or

(b) five years following the recording of this Declaration in the Boulder County, Colorado records, whichever shall first occur.

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.

No officer, director, agent or employee of the Declarant, its successors or assigns, shall be protected by these indemnification provisions nor by any insurance policies obtained by the Association in relation thereto.

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; provided; however, the Association shall not be bound either directly or indirectly to contracts or leases (including management contracts) entered into prior to the conversion of the Class B Membership to the Class A Membership in accordance with Paragraph 4.5 hereof unless the Association is provided with a right of termination of any such contract or lease without cause, which is exercisable without penalty at any time after such conversion upon not more than thirty days' notice to the other party thereto.

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, cancel 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.

(c) Implied Rights: The Board of Directors shall have and may exercise any right or privilege given to it expressly by this Declaration, or reasonably to be implied from the provisions of this Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges.

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, levied 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 and such Owner's personal obligation shall survive the sale or foreclosure of such Owner's Lot.

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. Such purposes shall include but not be limited to the improvement, repair, maintenance and reconstruction of the Common Areas, provide insurance therefor, pay taxes thereon, as required, establish reserves as are necessary and provide for any other purpose reasonable, necessary or incidental to such purposes.

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. 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 5.8 hereof.

(b) 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 and Regulations of the Association. No such 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.

(c) Individual Assessments. The Board of Directors shall have the right to individually levy any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges levied under Paragraphs 6.18, 7.5, 7.15, 7.16, 7.17, 7.19, 10.3, 10.7, 11.1 and 11.2 thereof. 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) Levy of Assessments. At least sixty days prior to the close of the Association's fiscal year, the Board of Directors shall determine subject to the provisions of Paragraph 5.4, the Budget for the Association and the Annual Assessment for Common Expenses which is payable by each Owner. 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 Assessment 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.

(e) 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 the 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 for Common Expenses which may be levied by the Board of Directors, excluding the Individual Assessments and Fines shall be Fifty and No/100 Dollars per Lot per year.

(b) The Maximum Annual Assessment for Common Expenses may be increased effective with the commencement of the Association's second and each subsequent fiscal year thereafter by the Board without the vote of the membership as required by Paragraph 5.4(d)

by an amount not to exceed ten percent of the previous fiscal year's Maximum Assessment. This annual increase in the Maximum Annual Assessment for Common Expenses shall occur automatically upon the commencement of each fiscal year after the second fiscal year without the necessity of any action being taken with respect thereto by the Board of Directors of the Association.

(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 at an amount not in excess of the Maximum Assessment without any voting or approval requirements of the Membership.

(d) The Maximum Annual Assessment for Common Expenses may be increased above that established the ten percent formula by a vote of Members who are entitled to cast at least sixty-seven percent of the votes in the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

5.5 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 provided that any such assessment shall have the approval of Members who are entitled to cast at least sixty-seven percent of the votes in the Association who are voting in person or by proxy at a meeting duly called for this purpose.

If The Properties have been or are to be approved by the Federal Housing Administration and/or Veterans Administration, then as long as there are Class B Memberships, any Special Assessment for capital improvements in addition to the sixty-seven percent of the votes in the Association as required above, will require the prior written consent of such agencies.

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.

5.6 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 5.5 shall be sent to all Owners not less than fifteen days nor more than thirty days in advance of the meeting. At the first such meeting called, the presence of Owners or of proxies entitled to cast at least sixty percent of the votes in 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.

5.7 Uniform Manner of Assessment. The Annual Assessment for Common Expenses and Special Assessments must be levied at a uniform rate for all Lots.

5.8 Date of Commencement of Assessments, Prorations. The Annual Assessment for Common Expenses provided for herein, shall commence as to all Lots within The Properties the first day of the month following the conveyance of the Common Areas to the Association and be prorated according to the number of months remaining in the Association's fiscal year.

5.9 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) The Annual Assessment for Common Expenses shall be levied on an annual basis and shall be due and payable on an installment basis as determined by the Board of Directors. 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 total amount of such Owner's Annual Assessment for Common Expenses 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 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 in Small Claims Court or in any other Court of competent jurisdiction against any Owner who fails to pay any amounts assessed against his or her Lot and obtain a 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, cancellation or forfeiture of an executory 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 because of his or her personal obligation. 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.

5.10 Declarant's Obligations. The Declarant, for each Lot owned within The Properties, shall pay to the Association one hundred percent of the Annual Assessment for Common Expenses or Special Assessment.

5.11 Working Capital Fund. At the closing of the initial sale of a Lot to an Owner other than the Declarant, contribution shall be made by Purchaser to the Working Capital of the Association in the amount of Fifty Dollars. This amount will be distributed to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws. Contributions to the Working Capital of the Association are not considered as advanced payments of the assessments and each owner must pay all of such assessments as they become due.

5.12 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. The Declarant is exempt from the requirements of this Paragraph 5.12.



ARTICLE SIX: ARCHITECTURAL APPROVAL/DESIGN REVIEW

6.1 Approval of Improvements Required. The approval by the Design Review Committee hereinafter referred to as the Committee shall be required prior to the commencement of the construction of any Improvement to Property as defined below on any portion of The Properties, except original first built Improvements to Property constructed by Declarant and except as prior approval may be waived or certain Improvements to Property may be exempted under written guidelines or rules promulgated by the Committee.

The jurisdiction for the approval over modifications, additions, or alterations to an Improvement to Property may be delegated to a Modification Review Committee by the Declarant in accordance with Paragraph 6.25 hereof.

A purchase of any Lot within The Properties does not grant any implied guarantee of approval of the improvement to be located thereon by the Committee.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Design Review Committee established hereunder.

6.2 Improvement to Property Defined. "Improvement to Property" shall mean and include, without limitation: (a) the construction, installation, erection or expansion of any building, structure or other improvements, including utility facilities; (b) the demolition or destruction, by voluntary action, of any building, structure or other Improvements; (c) the grading, excavation, filling or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern; (d) landscaping, planting, clearing or removing of trees, shrubs, grass or perennial plants; and (e) any change, alteration, modification, expansion, or addition to any previously approved Improvement to Property, including any change of exterior appearance, finish material, color or texture.

6.3 Membership of the Committee. The Committee shall consist of seven members, all of whom shall be appointed by Declarant. Declarant shall have the continuing right to appoint and reappoint the members of the Committee, which right shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event shall terminate without further act or deed upon the completion of all of the improvements to The Properties. Thereafter the Committee shall consist of three members and the Board of Directors shall have the right to appoint the members of the Committee. Members of the Committee may, but shall not necessarily, be Members of the Association.

Members of the Committee appointed by Declarant may be removed at any time by Declarant and shall serve until resignation

or removal by Declarant. Members of the Committee appointed by the Board of Directors may be removed at any time by the Board, and shall serve for such term as may be designated by the Board or until resignation or removal by the Board.

6.4 Address of the Committee. The address of the Committee shall be that of the principal office of the Association.

6.5 Submission of Plans. Prior to commencement of work to accomplish any proposed Improvement to Property, the Person proposing to make such Improvement to Property ("Applicant") shall submit to the Committee, at its offices, such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, specifications and samples of materials and colors as the Committee shall reasonably request, showing the nature, kind, shape, height, width, color, materials, and location of the proposed Improvement to Property. The Committee may require submission of additional plans, specifications or other information prior to approving or disapproving the proposed Improvement to Property. Until receipt by the Committee of all required materials in connection with the proposed Improvement to Property, the Committee may postpone review of any materials submitted for approval by a particular Applicant.

No Improvement to Property of any kind shall be erected, altered, placed, or maintained within The Properties unless and until the final plans, elevations, and specifications therefor have received written approval by the Committee as herein provided.

6.6 Delegation/Waiver. The Committee may at its discretion delegate to the Board of Directors any of its powers granted to it by this Article by written notice to the Board of Directors indicating what powers and authority are granted to the Board subject to the provisions of Paragraph 12.4 hereof. Such delegation shall be effective from the date such notice is recorded.

The Committee may waive any provision of this ARTICLE SIX in the event there is a practical difficulty or unnecessary hardship, subject to the provisions of Paragraph 12.4 hereof.

6.7 Criteria for Approval. The Committee shall have the right to disapprove any proposed Improvement to Property which is not in accordance with the Design Guidelines of The Noble Park 2 Subdivision or is not suitable or desirable in the Committee's opinion for aesthetic or other reasons. In passing upon the Improvement to Property the Committee shall have the right to take into consideration the suitability of the proposed Improvement to Property and of the materials of which it is to be built, the color scheme, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the Improvement to Property as planned on the outlook from the adjacent or neighboring property, and if it is in accordance with all of the provisions of this Declaration. The

Committee may disapprove the proposed Improvement to Property if the plans and specifications submitted are incomplete, or in the event the Committee deems the materials submitted be contrary to the spirit or intent of the Declaration. The Committee may condition its approval of any proposed Improvement to Property upon the making of such changes thereon as the Committee may deem appropriate.

6.8 Design Review Fee. The Committee may, in its guidelines or rules, provide for the payment of a reasonable fee to accompany each request for approval of any proposed Improvement to Property. The Committee may provide that the amount of such fee shall be uniform for similar types of any proposed Improvement to Property or that the fee shall be determined in any other reasonable manner, such as the estimated cost of the proposed Improvement to Property.

6.9 Decision of the Committee. The decision of the Committee shall be made within thirty days after receipt by the Committee of all materials required by the Committee unless such time period is extended by mutual agreement. The decision shall be in writing and, if the decision is not to approve a proposed Improvement to Property, the reasons therefor shall be stated. The decision of the Committee shall be promptly transmitted to the Applicant at the address furnished by the Applicant to the Committee.

Each committee member shall be entitled to one vote except the Declarant who shall be entitled to two votes. A majority vote of the Committee shall constitute the action of the Committee.

6.10 Appeal to the Board of Directors. If the Committee disapproves or imposes conditions on the approval of a proposed Improvement to Property, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board of Directors and the Committee within ten days after notice of such disapproval or conditional approval is given to the Applicant. The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant and the Committee and shall decide, with reasonable promptness, whether or not the proposed Improvement to Property or the conditions imposed by the Committee shall be approved, disapproved or modified.

If the Committee approves a proposed Improvement to Property, any Owner may appeal the approval to the Board of Directors by giving written notice of such appeal to the Board of Directors and the Committee within ten days after such approval. The Board of Directors shall hear the appeal with reasonable promptness after reasonable notice of such hearing to the Applicant, the appealing Owner and the Committee and shall decide with reasonable promptness, whether or not the proposed Improvement to Property's approval shall be upheld.

6.11 Failure of Committee to Act on Plans. Any request for approval of a proposed Improvement to Property shall be deemed approved, unless disapproval or a request for additional information or materials is transmitted to the Applicant by the Committee within thirty days after the date of receipt by the Committee of all necessary materials as determined by the Committee.

6.12 Prosecution of Work After Approval. After approval of any proposed Improvement to Property, the proposed Improvement to Property shall be accomplished as promptly and diligently as possible and in complete conformity with the description of the proposed Improvement to Property, any materials submitted to the Committee in connection with the proposed Improvement to Property and any conditions imposed by the Committee. Failure to complete any proposed Improvement to Property within one year after the date work is commenced or to complete the Improvement to Property in accordance with the description and materials furnished to, and the conditions imposed by, the Committee, shall constitute a violation of this Article.

6.13 Notice of Completion. Upon completion of the Improvement to Property, the Applicant shall give written Notice of Completion to the Committee. Until the date of receipt of a Notice of Completion, the Committee shall not be deemed to have notice of completion of any Improvement to Property.

6.14 Inspection of Work. The Committee or its duly authorized representative shall have the right to inspect any Improvement to Property prior to or after completion; provided that the right of inspection shall terminate thirty days after the Committee receives a Notice of Completion from the Applicant.

6.15 Notice of Noncompliance. If, as a result of inspections or otherwise, the Committee finds that any Improvement to Property has been done without obtaining the approval of the Committee, or was not done in substantial compliance with the description and materials furnished to, and any conditions imposed by, the Committee, or was not completed within one year after the date of the issuance of the Building Permit for such Improvement, the Committee shall notify the Applicant in writing of the noncompliance; which notice shall be given, in any event within thirty days after the Committee has inspected the Improvement, but in no event no later than thirty days after the Committee's receipt of such Applicant's Notice of Completion. The Notice shall specify the particulars of the noncompliance and shall require the Applicant to take such action as may be necessary to remedy the noncompliance.

6.16 Failure of Committee to Act After Completion. If, for any reason other than the Applicant's act or neglect, the Committee fails to notify the Applicant of any noncompliance within thirty days after receipt by the Committee of written Notice of Completion

from the Applicant, the Improvement to Property shall be deemed to be in compliance if the Improvement to Property was, in fact, completed as of the date of Notice of Completion.

6.17 Appeal to the Board of Directors of Finding of Noncompliance. If the Committee gives any Notice of Noncompliance, the Applicant may appeal to the Board of Directors by giving written notice of such appeal to the Board and the Committee within ten days after receipt by the Applicant of the Notice of Noncompliance. If, after a Notice of Noncompliance, the Applicant fails to commence diligently to remedy such noncompliance, the Committee shall request a finding of noncompliance by the Board of Directors by giving written notice of such request to the Board of Directors and the Applicant within thirty days after delivery to the Applicant of a Notice of Noncompliance. In either event, the Board of Directors after Notice and Hearing shall decide, with reasonable promptness, whether or not there has been such noncompliance and, if so, the nature thereof.

6.18 Correction of Noncompliance. If the Board of Directors determines that a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than thirty days from the date of receipt by the Applicant of the ruling of the Board of Directors. If the Applicant does not comply with the Board's ruling within such period, the Board may, at its option, record a "Notice of Noncompliance" against the Lot on which the noncompliance exists, or may remove the noncomplying Improvement to Property or may otherwise remedy the noncompliance. The Board may levy an Individual Assessment in accordance with Paragraph 5.3(c) hereof against the Owner of such Lot for such costs and expenses incurred. The right of the Board of Directors to remedy or remove any noncompliance shall be in addition to all other rights and remedies which the Board of Directors may have at law, in equity, or under this Declaration.

6.19 No Implied Waiver or Estoppel. No action or failure to act by the Committee or by the Board of Directors shall constitute a waiver or estoppel with respect to future action by the Committee or the Board of Directors. Specifically, the approval by the Committee of any Improvement to Property shall not be deemed a waiver of any right or an estoppel to withhold approval or consent for any similar Improvement to Property or similar proposals, plans, specifications or other materials submitted with respect to any other Improvement to Property.

6.20 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder.

6.21 Record of Actions. The Committee shall report in writing to the Board of Directors all final actions of the Committee and the Board shall keep a permanent record of such actions.

6.22 Estoppel Certificates. The Board of Directors shall, upon the reasonable request of any interested party and after confirming any necessary facts with the Committee, furnish a certificate with respect to the approval or disapproval of any Improvement to Property or with respect to whether any Improvement to Property was made in compliance herewith. Any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

6.23 No Liability for Committee Action. There shall be no liability imposed on the Committee, any member of the Committee, any authorized Committee representative, the Association, any member of the Board of Directors or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the 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 conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement to Property be deemed approval of such matters.

6.24 Architectural Standards/Design Guidelines. The Committee may promulgate rules and regulations to interpret and implement the provisions of this Article. These rules and regulations shall be known as the "Design Review Guidelines for the Noble Park 2 Homeowners Association" and shall contain, among other things, guidelines which will clarify the types of designs and materials that will be considered in design approval.

6.25 Modification Review Committee. The Modification Review Committee shall consist of three members, all of whom shall be appointed in accordance with Paragraph 6.3 hereof. The Modification Review Committee shall have jurisdiction over modifications, additions, or alterations made on or to existing Improvements to Property if such jurisdiction shall be delegated to it in writing by the Design Review Committee.

The Modification Review Committee shall promulgate detailed Standards and Procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations shall be submitted to the Modification Review Committee for approval as to 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, or to paint the interior of his or her Dwelling Unit any color desired.

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In the event the Modification Review Committee fails to approve or to disapprove such plans or to request additional information reasonably required within thirty days after submission, the plans shall be deemed approved.

There shall be no liability imposed on the Modification Review Committee, any member of the Modification Review Committee, any authorized Modification Review Committee representative, the Association, any member of the Board of Directors or Declarant for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Modification Review Committee, if such party acted in good faith and without malice. In reviewing any matter, the Modification Review Committee shall not be responsible for passing on safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations, nor shall its approval of an Improvement to Property be deemed approval of such matters.

ARTICLE SEVEN: LAND USE AND OTHER RESTRICTIONS

7.1 Limitations and Restrictions. All Lots and Common Areas shall be held, used and enjoyed subject to the following limitations and restrictions, and subject to the exemptions for Declarant set forth in this Declaration. The strict application of the following limitations and restrictions in any specific case may be modified or waived in whole or in part by the Design Review Committee if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in written guidelines or rules promulgated by the Design Review Committee.

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 to Property as herein defined, shall be erected 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 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 7.25 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 the Design Review Committee obtained in each instance.

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 and Trash. Each Owner shall keep all of his or her trash, garbage, or other refuse in a container in his or her garage. Garbage, trash or waste shall be disposed of in such manner as may be established by the Association, and the burning of garbage, trash or waste in outside incinerators, barbecue pits or the like is prohibited.

Each Owner shall keep his or her Lot, at all times in a neat and clean condition and grass shall be kept mowed to a height of no greater than six inches. No trash, litter, garbage, grass, shrub or tree trimmings, plant waste, lumber, compost, metal, bulk



materials, scrap refuse or debris of any kind shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot or from the street except that containers containing such material may be placed outside at proper times for garbage or trash pickup.

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 Nuisances. No noxious or offensive activity shall be carried on 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 is or may cause an unreasonable embarrassment, disturbance or annoyance to others, or detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance.

7.7 No Annoying Lights, Sounds or Odors. No light shall be emitted from any portion of The Properties which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of The Properties which would reasonably be found by others to be noxious or offensive. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devises shall be located or used on any portion of The Properties except with the prior written approval of the Design Review Committee.

7.8 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.

7.9 No Unsightliness. All unsightly conditions, structures, facilities, equipment, objects and conditions shall be enclosed within an approved structure, including all tractors, snow removal equipment and garden or maintenance equipment, except when actually in use. Also all service areas for hanging, drying or airing of clothing shall be kept within approved structures.

7.10 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 Design Review Committee.

7.11 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 except such signs as may be approved in writing by the Design Review Committee which may include signs indicating protection by Security Systems and Neighborhood Watch Programs. One sign advertising a Lot for sale or for lease may be placed on such Lot or Dwelling Unit; provided however, that standards relating to dimensions, color, style and location of such sign shall be determined from time to time by the Design Review Committee and shall comply with the local sign codes and with all other applicable statutes, ordinances and regulations.

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 the Design Review Committee, either: (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 Design Review 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. No animals, livestock, birds, poultry, reptiles or insects of any kind, shall be raised, bred, kept or boarded in or on any portion of The Properties; provided however, that Owners may keep a reasonable number of dogs, cats, or other domestic animals which are bona fide household pets, so long as such pets are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance or inconvenience to any residents of The Properties.

The Board of Directors shall have the right and authority to determine in its sole discretion that dogs, cats or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a

nuisance, or that an Owner is otherwise in violation of the provisions of this Paragraph. The Directors shall take such action or actions as it deems reasonably necessary to correct the violation to include after Notice and Hearing, directing permanent removal of the pet or pets from The Properties.

Household pets shall not be allowed to run at large within The Properties, but shall at all times be under the control of such pet's Owner and such pets shall not be allowed to litter the Common Areas.

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.

7.16 Vehicular Parking, Storage and Maintenance. No house trailer, camping trailer, horse trailer, camper, camper shells, boat trailer, hauling trailer, boat or boat accessories, truck larger than 3/4 ton, recreational vehicle or equipment, mobile home, or commercial vehicle may be parked or stored anywhere within The Properties so they are visible from neighboring Dwelling Units or from the street except in emergencies or as a temporary expedience. This applies to vehicles referred to above even if they are licensed by the State of Colorado or any other jurisdiction as "passenger vehicles". No emergency or temporary parking or storage shall continue for more than twenty-four hours. Parking is not allowed on landscaped or lawn areas.

No abandoned, unlicensed, wrecked or inoperable vehicles of any kind shall be stored or parked within The Properties except in garages or except in emergencies. Any "abandoned or inoperable vehicle" shall be defined as any of the vehicles listed above or any other kind of passenger vehicle which has not been driven under its own propulsion for a period of one week or longer, or which does not have installed within it an operable propulsion system; provided however, that any vehicle belonging to any Owner which is otherwise permitted will not be deemed to be abandoned while the Owner is ill or out of town. 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.

Preventative vehicle maintenance only is allowed within The Properties and only in the garage.

Garage doors must remain closed except when the garage is in use.

7.17 Landscaping. At the time of or as soon as reasonably possible following construction of a Dwelling Unit within The Properties, but in no event later than one year following the issuance of a Certificate of Occupancy therefor, the Lot shall be suitably landscaped with grass, rocks, shrubs and trees. Thereafter, an attractive, healthy, live and growing condition shall be maintained, and all dead or diseased grass areas, shrubs and trees shall be promptly removed and replaced with suitable replacement landscaping. Each Owner shall maintain the landscaping upon his or her Lot in good condition. An Owner shall remove weeds promptly and water and trim lawns and shrubs as often as the same shall become necessary. No grass shall be allowed to exceed a height of six inches.

Landscaping plans shall be prepared in accordance with guidelines adopted by the Design Review Committee and shall be submitted in advance to the Design Review Committee for review and approval. A Notice of Completion from the landscape architect, contractor, or other person installing the landscaping shall be filed with the Design Review Committee upon completion of the landscaping.

If any Owner fails to comply with this Paragraph and with the guidelines of the Design Review 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.

7.18 Fences and Mailboxes. Mailboxes, fences, porch and area lighting and property identification must be approved by the Design Review Committee.

7.19 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 7.19 shall be made by the Board of Directors and shall be final.

7.20 Antennas. No exterior television or radio antennae or any other antennae of any type shall be erected or maintained upon The Properties. Satellite dishes may be installed within The Properties so long as such installation is approved by the Design Committee.

7.21 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 less than his or her entire Dwelling Unit or for transient or hotel purposes or for a term of less than ninety days;

(b) Any such lease must be to a family of blood relatives or no more than two unrelated people;

(c) 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;

(d) 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;

(e) 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.

7.22 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.

7.23 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.

7.24 Temporary Use by the Declarant. Notwithstanding any provision herein contained to the contrary, during the period of construction and sale, it shall be expressly permissible for the Declarant and/or its agents to maintain upon The Properties,

without charge, such facilities as may be reasonably required, convenient or incidental for construction or sales purposes, including but not limited to, a business/construction office, storage areas, nursery, construction yard, signs, model Dwelling Units for demonstration purposes, and sales offices.

It shall also be permissible during the actual construction or alteration of a Dwelling Unit within The Properties, reasonable and necessary temporary structures for storage of materials to be erected and maintained by the Declarant or its designees. Such temporary storage structures shall be removed upon completion of the construction, alteration or remodeling.

No maintenance of such facilities or use or activity by Declarant or its designees shall unreasonably interfere with the access, enjoyment or use of the Common Areas; nor shall any activity be conducted which might be unsafe, unhealthy or hazardous to any person.

This right of use shall terminate at the option of the Declarant by its written notice to the Secretary of the Association, but in any event such reservations shall terminate without further act or deed not later than the completion of all the improvements to The Properties; provided, however, the Declarant may maintain upon The Properties, without charge, proper and adequate signage, adequate and convenient parking, model Dwelling Units and sales office until the last Dwelling Unit has been sold.

Until the termination of this right of use as provided for above, any amendment to this Paragraph 7.24 must have prior written assent of the Declarant.

7.25 Exemptions for the Declarant. The Declarant shall be exempt from the provisions of Paragraphs 7.2, 7.4, 7.5, 7.11, 7.16 and 7.17 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.

7.26 Delegation of Authority. The design review authority may be delegated to the Modification Review Committee at any time and from time to time in the Design Review Committee's sole discretion.

ARTICLE EIGHT: EASEMENTS

8.1 Utility Easements. Easements for 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.

8.2 Easements for the Board of Directors. Each Lot and Outlot 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.

8.3 Easements for the City of Boulder. The Common Areas shall be subject to an easement in favor of the City of Boulder (including its agents, employees and contractors) to perform its obligations pursuant to Paragraph 11.5 hereof.

8.4 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant hereby reserves for itself, its agents, employees, business invitees, successors or assigns reasonable easements and rights-of-ways over the Common Areas and all Lots not conveyed for the sole purpose of constructing improvements to The Properties and/or making repairs pursuant to contracts of sale made with Purchasers, but only if access thereto is otherwise not reasonably available, including the right to erect temporary buildings to store any and all materials. Such easements and rights-of-way, however, shall not inhibit the use of Lots and Common Areas by an Owner and his or her Guests. The Declarant shall be fully responsible for any damage to Lots and Common Areas within The Properties caused by its use of such easements and rights-of-way.

Such reservations shall terminate at the option of the Declarant by its written notice to the Secretary of the Board of Directors, but in any event such reservations shall terminate without further act or deed not later than the completion and sale of all of the improvements to The Properties.

Until termination of these reservations as provided for above, any amendment to this Paragraph 8.4 must have the prior written assent of the Declarant.

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 Solar Easements.

(a) Solar Collectors Installed by the Declarant. Certain original structures located on Lots within The Properties are locations for Solar Collector panels installed by the Declarant. Direct unobstructed access to sunlight is necessary for these solar energy systems.

No building or structure of any nature, landscaping, vegetation nor other object of any type except original first built structures and deciduous trees may be erected, maintained, planted or cultivated on any Lot within The Properties in such a manner as to cause shade on a Solar Collector located on a Lot between the hours of 9:30 A.M. and 2:30 P.M. Mountain Standard Time on any day of the year. In addition, no original first built structures shall be altered so as to cause shade on a Solar Collector in accordance with the above.

The Declarant hereby reserves unto himself, his heirs, personal representatives, successors and assigns, the right, without the consent of the Owners of Lots to be subjected to these Solar Easements, upon the substantial completion of an original structure on a Lot to grant a more definitely described Solar Easement for the benefit of such Lot and burdening the Lots as are necessary. Such easement shall be recorded and that description shall be deemed definitive.

(b) Solar Collectors Installed by Owners Other Than the Declarant. It is possible that certain Lots within The Properties will be locations for Solar Collector panels installed not by the Declarant, but by the Owner of the Lot to enable the improvements constructed thereon to utilize solar energy. To encourage the use of such solar energy, the Board of Directors of the Association is hereby irrevocably appointed attorney-in-fact for the Owners and each of them to grant Solar Easements over any portion of The Properties. The acceptance by any person of any interest in any Lot shall constitute an appointment of the Board of Directors as attorney-in-fact as provided above. The Board of Directors shall be granted all of the powers necessary to grant such easements.

Any Owner of a Lot within The Properties who wishes to install a Solar Collector shall submit his or her plans and specifications describing the new construction to the Board of Directors in accordance with ARTICLE SIX hereof, together with a request that he or she be granted a Solar Easement for his or her Solar Collector. The Board of Directors, after due notice to the Owners of all the Lots within The Properties which shall be burdened by such Solar Easement, and after giving them an opportunity to be heard, may grant the Solar Easement requested, so long as such request is found by the Board of Directors to be reasonable and is not an undue burden on adjoining Lots.



The Owner requesting such Solar Easement shall be entitled to have his or her Solar Collector protected from shade in the same manner as the shade existed on the date the Board of Directors granted the easement; i.e., if no shade existed on his or her proposed Solar Collector at the time the easement was granted, his or her easement would entitle such Owner to no shade, but if shade existed from existing structures or existing landscaping, then the easement would be granted subject to such shade. Landscaping planted at the time the easement was granted would be allowed to grow into the easement without being an encroachment. Original structures, deciduous trees, other structures and landscaping existing at the time the Solar Easement is granted shall not be considered or deemed to be encroachments for title and other purposes.

Upon approval of the easements, the Board of Directors shall promptly prepare, execute and record the Solar Easement reflecting the Lots benefitted and burdened. The Easement will be similar in dimensions to the easements granted in Paragraph 8.6(a) hereof, except that said dimensions shall be such as are necessary for the operation of that particular solar equipment involved. Such easement must be granted within twenty years of the recording of this Declaration.

(c) Compliance/Enforcement. Each Solar Easement shall at all times comply with the provisions of Colo. Rev. Stat. Ann. (38-32.5-100.3. Each Solar Easement is an interest in land and shall run with the land benefitted and burdened. Each Solar Easement shall be recorded, and that description shall be definitive. Each Solar Easement may be enforced by the Owner of any affected Lot, the Board of Directors, any affected First Mortgagee and/or the Declarant by proceeding at law or in equity against any person or persons violating any of the restrictions and limitations of this Article, either to restrain such violation or attempted violations or to recover such damages as may ensue because of such violation or any combination thereof, including costs of suit and reasonable attorneys' fees.

Failure to enforce any covenant or restriction contained within this paragraph shall in no event be deemed a waiver of the right to do so thereafter.

8.7 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be deemed appurtenant to the Lots owned by such Owner. 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.

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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 or Dwelling Units is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by each Owner of such Dwelling Unit or Dwelling Units 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.

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ARTICLE TEN: INSURANCE

10.1 Authority to Purchase/General Requirements. All insurance policies relating to the Association and Common Areas 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

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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 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, its successors and assigns, as beneficiary.

10.2 Hazard Insurance. The Board of Directors shall obtain and maintain an "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 of the 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.

Such insurance shall at all times represent one hundred percent of the current replacement cost based on the most recent appraisal of all insurable improvements on the Common Areas, as defined above. The current replacement cost shall not include values for land, foundations, excavations 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 insure 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

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percent of the current replacement cost as defined above for all insurable improvements located on the Common Areas, together with any personal property owned by the Association.

Such policies shall also provide 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.

A duplicate original of the policy of hazard insurance, all renewals thereof, and any sub-policies 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 the 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. Repair and reconstruction of the damaged Common Areas shall be done in accordance with Paragraph 10.3 below.

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 Ten Thousand Dollars. 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 improvements to the 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 of at least sixty-seven percent of the Lots within The Properties and by sixty-seven percent of the Eligible Holders of mortgages recorded against Lots within The Properties subject to Eligible Holders mortgages is recorded in the office of the County Clerk and Recorder, Boulder County, Colorado within one hundred days of the date of damage or destruction indicating their intention not to rebuild.

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 of at least sixty-seven percent of the Lots within The Properties and by sixty-seven percent of the Eligible Holders of mortgages recorded against Lots within The Properties subject to Eligible Holder 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 portions of the damaged Common Areas are 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 Mortgagees. No Owner or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

10.4 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 insured 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 deaths 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.

10.5 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.

10.6 Additional Insurance.

(a) If the area where the Common Areas is located has been identified by the Secretary of Housing and Urban Development (HUD) or the Director of the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area, flood insurance for the Common Areas shall be maintained providing coverage equivalent to that provided under the National Flood Insurance Program in an amount of one hundred percent of the current replacement cost of all the insurable improvements located upon the Common Areas.

Deductibles may not exceed Five Thousand Dollars. Funds for such deductibles must be included in the Association's Reserve and be so designated.

If the Common Areas at the time of the recording of this Declaration are not identified as a Special Flood Hazard Area but become reclassified at a later date as such, the Board of Directors shall obtain flood insurance for the Common Areas in accordance with the above. Conversely flood insurance may be discontinued under certain conditions.

(b) 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;

(c) 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;

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

(e) If it is determined by a First Mortgagee that the existing coverages do not adequately protect The Properties, the Board of Directors shall obtain such additional coverages.

10.7 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article, 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



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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.

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ARTICLE ELEVEN: MAINTENANCE

11.1 Maintenance of the Common Areas. The Association shall provide for the repair, maintenance and/or reconstruction of the Common Areas. 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 reconstruction is resulting from the willful neglect or destruction by an Owner or such Owner's Guest, the Board of Directors shall have the right, after Notice and Hearing to charge the costs of such repair, maintenance and/or reconstruction, 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 or occurrence shall constitute a violation of this Paragraph 11.1 shall be made by the Board of Directors and shall be final.

11.2 Maintenance of Lots and Dwelling Units. Each Owner shall be responsible for the maintenance, repair and reconstruction of the exterior of such Owner's Dwelling Unit and the maintenance and repair of his or her Lot.

In the event any Owner shall fail to maintain his or her Lot or the exterior of his or her Dwelling Unit in a manner satisfactory to the Board of Directors, the Board of Directors shall have the right and duty, after Notice and Hearing, to enter upon said Lot and repair, maintain, and/or reconstruct the Lot and/or Dwelling Unit. The cost of such maintenance, repair and/or reconstruction shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c) hereof.

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 Committee. Approval shall not be granted unless provision is made for adequate alternate drainage. The "established drainage pattern" shall mean the drainage pattern shown and depicted on the Site Drainage Plan prepared by Core Corporation and filed with the City of Boulder. The established drainage pattern may include the drainage pattern from the Common Areas over any Lots within the Properties and from any Lot within The Properties over the Common Areas, or from any Lot over another Lot.

11.4 Board of Director'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 Board of Directors.

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Each Lot and Outlot 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.

11.5 Special Maintenance Requirements. The Board of Directors shall establish a reasonable regular maintenance and repair program for the Common Areas within The Properties. Should such maintenance and repair be deemed to be inadequate by the City of Boulder (City), the City shall request the Board of Directors to take reasonable corrective action and the Board of Directors shall promptly comply with such request. In the event the Board of Directors shall fail to maintain the said Common Areas in a reasonable condition, the City may serve written notice upon the Board of Directors setting forth the manner, in the City's opinion, in which the Board of Directors has failed to maintain such Common Areas in a reasonable condition, and demand that such deficiencies in maintenance be cured within thirty days of the receipt of the notice.

If the deficiencies are not cured within said thirty days or any extension thereof, the City, in order to prevent the said Common Areas from becoming a public nuisance and public liability, may undertake to maintain the same for a period of one year. Before the expiration of said year, the City shall determine if the Board of Directors is ready and able to maintain said Common Areas in a reasonable condition. If such determination is made, the City shall cease to maintain said Common Areas at the end of the year.

If the City shall determine that the Board of Directors is not able to maintain said Common Areas in a reasonable condition, the City may, in its discretion, continue to maintain said Common Areas, during the succeeding year subject to a similar determination in each year thereafter.

The cost of such maintenance by the City shall be paid by the Association and any unpaid costs shall become a tax lien proportionately upon all of the Lots within The Properties. The City shall file a notice of such lien in the office of the Boulder County Clerk and Recorder and shall certify such unpaid assessments to the Boulder County Treasurer for collection, enforcement and remittance in the manner provided by law for the collection, enforcement and remittance of real property taxes.

The Association may not be dissolved without the prior written permission of the City of Boulder.

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ARTICLE TWELVE: 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 TWELVE apply to both this Declaration and to the Articles and Bylaws of the Association.

12.1 Notices of Action. A holder, insurer or guarantor of a first mortgage who has delivered a written request to the Association containing its name, address, the legal description and the address of the Lot encumbered by its mortgage, shall be considered an "Eligible Holder" hereunder and 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.

12.2 Other Provisions for the Benefit of Eligible Holders. To the extent permitted under Colorado law, the approval of fifty-one percent of the Eligible Holders of mortgages recorded against Lots within The Properties subject to Eligible Holder mortgages shall be obtained before taking the following actions:

(a) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Holder;

(b) restoration or repair of The Properties (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

(c) action to terminate the legal status of The Properties after substantial destruction or condemnation occurs.

12.3 Amendment to Documents/Special Approvals.

(a) The consent of Owners who own at least sixty-seven percent of the Lots within The Properties and the approval of at least sixty-seven 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 own at least sixty-seven percent of the Lots within The Properties 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 add to or 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) 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.

(c) If The Properties have been or are to be approved by the Federal Housing Administration and/or Veterans Administration, then so long as there are Class B Memberships, the following actions will require the prior approval of the Federal Housing Administration and/or the Veterans Administration: (a) amendment of this Declaration, (b) amendment of the Articles of Incorporation or the Bylaws of the Association, (c) annexation of additional properties to this Declaration, (d) merger, consolidation, or dissolution of the Association, and (e) mortgaging of the Common Areas.

12.4 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.

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Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Paragraph or make any such requirements less stringent, the Board of Directors, without approval of the Owners or First Mortgagees, may cause an amendment to this Paragraph to be recorded to reflect such changes.

12.5 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.

12.6 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.

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ARTICLE THIRTEEN: DURATION AND AMENDMENTS

13.1 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.

13.2 Amendments By Owners. Except as permitted in Paragraph 14.5 and except in cases of amendments that may be executed by the Declarant pursuant to Paragraph 13.3 and except as restricted by Paragraphs 7.24, 8.4, 12.3, 12.4 and 13.4, 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 own at least sixty-seven percent of the Lots within The Properties.

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 the requisite number of Owners and 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.

13.3 Amendments by Declarant. Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary to comply with any local, state or federal laws or in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration, the Colorado Housing Finance Authority or any other public, quasi-public or private agency or entity which performs (or may in the future perform) functions similar to those currently performed by the entities listed above, Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners or



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First Mortgagees. Each such amendment of this Declaration or of the Articles of Incorporation or Bylaws shall be made, if at all, by Declarant prior to the conveyance of the last Lot owned by Declarant to an Owner other than Declarant, and each such amendment must contain thereon the written approval of the Veterans Administration or Federal Housing Administration.

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.

13.4 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 FOURTEEN: GENERAL PROVISIONS

14.1 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 and Regulations 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.

The City of Boulder shall have an appropriate right of action against the Association for the Association's failure to comply with the terms and conditions of this Declaration.

14.2 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.

14.3 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.

14.4 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.

14.5 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 Richard L. McCabe, 3360 Mitchell Lane, Suite 100, Boulder, Colorado 80301, 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).

14.6 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'

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fees as well as all costs incurred in the prosecution or defense of such action.

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

14.8 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 6<sup>th</sup> day of SEPT 1991, 1991.

*Richard L. McCabe*  
Richard L. McCabe

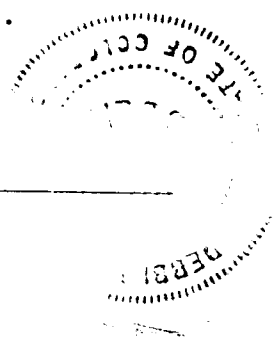
STATE OF COLORADO)  
                                                      ) ss.  
COUNTY OF BOULDER)

6<sup>th</sup> The foregoing instrument was acknowledged before me this day of SEPT 6, 1991, by Richard L. McCabe.

My commission expires: 3-7-91.

WITNESS my hand and official seal.

*Debi Haring*  
Notary Public



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EXHIBIT A  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE NOBLE PARK 2 SUBDIVISION

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LEGAL DESCRIPTION OF THE REAL PROPERTY  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE NOBLE PARK 2 SUBDIVISION

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Lots 1 through 42, Block 2, and Lots 1 through 12,  
Block 3, Noble Park 2, a subdivision of County of  
Boulder, State of Colorado.

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EXHIBIT B  
TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE NOBLE PARK 2 SUBDIVISION

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LEGAL DESCRIPTION OF THE COMMON AREAS  
SUBMITTED TO THE DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE NOBLE PARK 2 SUBDIVISION

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Outlots A and B, Block 3, Noble Park 2, a subdivision of a part of  
the County of Boulder, State of Colorado.