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AMENDMENT AND RESTATEMENT OF THE
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE DURAND MITCHELL SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, as Declarants of The Oakdale Place Homeowners Association, of the Durand Mitchell Subdivision, a subdivision of a part of the City of Boulder, according to the recorded plat thereof on file in the office of the County Clerk and Recorder of Boulder County, Colorado, for the use and benefit of themselves and all persons claiming or to claim any part of the above-described real property, by, through or under them, hereby declare and agree that the Declaration of Covenants, Conditions and Restrictions of The Durand Mitchell Subdivision recorded on Film 1117 as Reception No. 396115 in the office of the County Clerk and Recorder of Boulder County, Colorado, shall be and that said document is hereby amended and restated in the following manner, to wit:

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STATE OF COLORADO
COUNTY OF BOULDER
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IN MY OFFICE

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE DURAND - MITCHELL SUBDIVISION

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
THE DURAND - MITCHELL SUBDIVISION

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, by ALBERT C. DURAND and MILES L. MITCHELL, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the owner of the following property situate in the County of Boulder, State of Colorado, more particularly described as:

DURAND - MITCHELL SUBDIVISION, recorded in Plan File No. 1126 as Reception No. 404909, a subdivision in the City of Boulder, according to the recorded plat thereof on file in the office of the Clerk and Recorder of Boulder County, Colorado.

The real property described above shall hereinafter be referred to as "The Properties".

WHEREAS, Declarant will construct a residential community on The Properties, together with other improvements thereon; and

WHEREAS, Declarant will convey The Properties subject to the protective covenants, conditions, restrictions, reservations, and obligations as hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that The Properties 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 Properties and for the benefit of any person having any right, title or interest in The Properties 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.

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ARTICLE ONE: DEFINITIONS

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

1.1 ASSESSMENTS shall mean 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.

1.2 ASSOCIATION shall mean and refer to The Oakdale Place Homeowners Association, a Colorado corporation not for profit, its successors and assigns.

1.3 ATTACHED DWELLING UNIT shall mean and refer to any Dwelling Unit which comprises a portion of a Building (as herein defined) and which is situate upon its own individual Lot and separated from one or more of the other Attached Dwelling Units which comprise that Building by a party wall or party walls.

1.4 BOARD OF DIRECTORS or BOARD shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the Bylaws of the Association or appointed by Declarant as therein provided.

1.5 BUILDING shall mean and refer to any structure containing two or more Attached Dwelling Units, each such Attached Dwelling Unit to be situate upon its own individual Lot, separated by a Party Wall.

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

1.7 COMMON AREA shall mean that portion of the Properties owned by the Association for the common use and enjoyment of the Owners more specifically described as Outlot A and B and C (Outlot C being a pedestrian easement from Outlot B to Broadway) as described in Exhibit A attached hereto, of the said Durand-Mitchell Subdivision, together with all improvements thereon.

1.8 DECLARANT shall mean Albert C. Durand and Miles L. Mitchell their heirs, personal representatives, successors and assigns if such heirs, personal representatives, successors or assigns should acquire more than three undeveloped lots from the Declarant for the purpose of development.

1.9 DECLARATION shall mean this Declaration of Covenants, Conditions and Restrictions of The Durand - Mitchell Subdivision, as may be amended from time to time.

1.10 DWELLING UNIT shall mean and refer to the residence constructed on each Lot within the Properties and any replacement

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thereof, including the patio, fence, garage and basement, if applicable and which residence shall be either a Detached Dwelling Unit or Attached Dwelling Unit, as defined herein.

1.11 FIRST MORTGAGEE shall mean any person, corporation, partnership, trust, company, association, or other legal entity which takes, owns, or receives a permanent mortgage or permanent deed of trust, which mortgage or deed of trust is of record and is a first and prior lien encumbering any Lot within The Properties, and shall mean the holder of every executory land sales contract wherein the Administrator of Veterans Affairs (Veterans Administration) is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.

1.12 LOT shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties which is subject to this Declaration with the exception of the Common Areas. Lot shall include any Dwelling Unit constructed thereon as the term Dwelling Unit is defined in Paragraph 1.10 hereof.

1.13 MEMBER shall mean and refer to all those who are members of the Association as provided in Paragraph 4.4 hereof.

1.14 OWNER shall mean and refer to 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, excluding those having an interest merely as security for the performance of an obligation.

1.15 PARTY WALL shall mean the entire wall or fence, including the foundations thereof, which is built as a part of the improvements on a Lot and is intended to be placed on the boundary line between adjoining Lots. Such wall or fence including the foundations thereof which constitute a party wall shall be shared or used in common by the Owners of two or more Attached Dwelling Units located in the same Building.

1.16 RULES shall mean the Rules and Regulations adopted by the Association as amended from time to time.

1.17 THE PROPERTIES shall mean and refer to all Common Areas and Lots and all the improvements thereon which constitute or shall constitute the entire project herein created, known as Durand - Mitchell Subdivision.

1.18 DETACHED DWELLING UNIT shall mean and refer to any structure comprising one Dwelling Unit situated upon its own individual Lot and not attached to any other Dwelling Unit by a Party Wall.

1.19 VA AND/OR FHA APPROVAL shall mean 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 within The Properties. At time of recordation of Declarations, VA/FHA approval has not been obtained or applied for.

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ARTICLE TWO: SCOPE OF DECLARATION AND RIGHTS RESERVED BY DECLARANT

2.1 Property Subject to 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 Conveyance Subject to Declaration. All easements, restrictions, conditions, obligations, reservations, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant to and running with the land, and shall at all times inure to the benefit of and be binding on any person having at any time any interest or estate in The Properties, and their respective heirs, successors, representatives or assigns. Reference in any deed of conveyance, lease, mortgage, deed of trust, other evidence of obligation or any other instrument to the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, rights, benefits, and privileges which are granted, created, reserved or declared herein as though fully and completely set forth in their entirety in any such document.

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

2.3 Member's Rights Subject to the Provisions of This Declaration. Each Member shall own his Lot in fee simple for use as a single family residence, and shall have full and complete dominion thereof, subject to the provisions of this Declaration, and the provisions of the Moderate Income Sales Program as applicable to Lots 8, 9 and 10 and lots 14, 15 and 17.

ARTICLE THREE: PROPERTY RIGHTS

3.1 Member's Easements. Every Member and his delegates as described in Paragraph 3.3 below shall have a right and easement in and to the Common Areas, which shall be appurtenant to and shall pass with the title to the Lot of such Member subject to the following rights:

- (a) The right and easement of the Association 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 to any entity providing water, sewer, gas, electricity, telephone, cable television, or other similar service to The Properties. 37-7
- (b) The right of the Board of Directors to make such reasonable Rules regarding the use of the Common Areas and facilities located thereon by Members and other persons entitled to such use.
- (c) The rights reserved in this Declaration to the Declarant, the Members and the Association.
- (d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two thirds (2/3) of each class of Members has been recorded.

3.2 Title to the Common Areas. The Declarant hereby covenants that it will convey fee simple title to the Common Areas to the Association, free and clear of all liens and encumbrances, prior to the conveyance of the first Lot within The Properties, except Lots 12 and 14 of The Properties.

3.3 Delegation of Use. Any Member may delegate, in accordance with the Bylaws and the Association's Rules and Regulations, his right of enjoyment of the Common Areas to the members of his family, to his tenants or to contract purchasers who reside upon his Lot within The Properties and to his guests and invitees. All such persons shall be subject to the Rules concerning such use. A Member is fully responsible for the actions of the members of his family, guests, tenants, or invitees.

3.4 Lease of Dwelling Unit. Any Member shall have the right to lease his Dwelling Unit upon such terms and conditions as the Member may deem advisable, subject to the following:

- (a) Any such leases shall be in writing and shall provide that the lease is subject to the terms of this Declaration, the Bylaws of the Association, and the Rules.
- (b) Only an entire Dwelling Unit may be leased, not any portions thereof, and only for single family residential use.

Such lease shall state that the failure of the lessee to comply with the terms of the Declaration or Bylaws of the Association or Rules shall constitute a default, and such default shall be enforceable by either the Board of Directors or the lessor, or by both of them; provided however, that the provisions of this paragraph shall not apply to a First Mortgagee who comes into possession of a Dwelling Unit through foreclosure or a deed in lieu thereof. *over*

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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. It shall have all the powers 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.

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 and Bylaws of the Association. In the event of any conflict, the Declarations shall control over the provisions of the Articles and Bylaws of the Association.

4.4 Membership. Every person or entity 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; provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a Member. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for such membership. Where more than one person hold any interest in any lot, all such persons shall be Members.

4.5 Voting Rights. The Association shall have two classes of voting membership:

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.

The vote for such Lot, the Ownership of which is held by more than one Owner, may be exercised by any one of them, unless an objection or protest by any other holder of an interest of 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, provided that in no event shall more than one vote be cast with respect to any such Lot.

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Class B. Class B members shall be the Declarant and shall be entitled to three votes for each Lot owned. Class B membership shall cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on December 31, 1985.

4.6 Indemnification. Each director and officer of the Association, shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason of being or having acted as such upon behalf of the Association. The amount of the indemnification shall be limited to the extent covered by Directors and Officers Errors and Omissions Liability Insurance Policies, obtained in advance by the Association, and only to the extent payable from such policy. The indemnification shall not apply if the said person is legally adjudged guilty of willful misfeasance or malfeasance in the performance of his duties. In the event of a settlement, the indemnification shall apply only when the Board approves such settlement. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled.

The words "director" and "officer" shall not include any officer, director, agent, or employee of the Declarant or any managing agent, or any officer, director, employee or agent of any managing agent heretofore or hereafter employed by the Association.

4.7 Professional Management. Any agreement for professional management of The Properties, or any contracts providing for services of the Declarant, may not exceed one(1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days' or less written notice.

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ARTICLE FIVE: ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of the Assessment. The Declarant, subject to the provisions of Paragraph 5.11 below, 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 the Association certain assessments to be fixed, established and collected from time to time as herein provided. All assessments created and defined in this Declaration, together with interest, costs, and reasonable attorney's fees shall be:

(a) a charge on the Lot and shall be a continuing lien upon the property against which each such assessment is made, which lien shall attach as of the date the assessment is made, and shall continue until such assessment, together with any penalties and interest, costs of collection, and attorney fees are paid; and

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

5.2 Purpose of the Assessment. The assessments levied by the Association shall be used exclusively for the purpose of:

(a) protecting the health, safety and welfare of the residents of The Properties and the Members of the Association;

(b) the improvement and maintenance of the Common Areas, except that portion of the Common Areas which are private driveways and parking spaces and providing insurance therefor;

(c) provide blanket casualty insurance for dwelling units if assessments are collected by the Association for those purposes;

(d) providing maintenance for the private driveways within The Properties.

Such assessments shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of those portions of The Properties which the Association has an on going duty to replace, repair, and maintain on a periodic basis.

5.3 Basis of Assessment.

(a) Annual Assessment for Common Expenses. The Board of Directors shall assess against each Owner of a Lot within The

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Properties an Annual Assessment for Common Expenses to pay for the common expenses of the Association. Said Assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement and repair of those portions of the Common Areas, excepting the private driveways and parking spaces, which the Association has a duty to replace, repair, and/or maintain on a periodic basis. Such assessment shall be paid by the Owners in the proportion which the number of Lots owned by an Owner bears to the total number of Lots within The Properties.

The Annual Assessment for Common Expenses shall not include the expense of procuring and maintaining the insurance coverages required by Paragraph 11.3 hereof, but shall be assessed as provided for in Paragraph 5.3(b).

(b). Insurance Assessment: If the Association elects to carry blanket property and casualty insurance for the attached dwelling units, the Association shall assess against each Owner of an Attached Dwelling Unit located upon The Properties, the costs of procuring and maintaining blanket property and casualty insurance on the Attached Dwelling Units purchased in accordance with Paragraph 11.3 hereof.

Said cost of insurance to be paid to the Association by the Owners of such Attached Dwelling Unit and shall be paid by the Owners of Attached Dwelling Units in the proportion which the gross square foot finished area within such Owner's Attached Dwelling Unit bears to the total gross square foot finished area of all of the Attached Dwelling Units located upon the Properties.

(c) Individual Assessments: The Board of Directors of the Association, upon thirty (30) days' written notice to the affected Owner or Owners and after a hearing before the Board of Directors, the Board of Directors upon a two-thirds (2/3) vote shall have the right to individually assess any Owner amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 7.5, 7.11, 11.2(b), 11.3(c), 11.9 and 12.3 hereof.

Individual Assessments are exempt from any other voting requirements required for the assessment of other assessments called for under this Declaration.

(d) Private Driveway Assessment: A portion of Outlot B are private driveways which provide ingress and egress to and from Lots 8 through and including Lot 17 of The Properties. The Board of Directors shall assess each Owner of the above Lots for the cost of providing maintenance and repair, prepayment of taxes and providing insurance therefore on such private driveways and parking spaces including the establishment of necessary reserves.

Such assessment shall be paid by an Owner in proportion which the number of the above Lots owned by an Owner bears to the total number of the above lots which is ten.

(e) Levy of Assessments: At least thirty (30) days prior to the close of the Association's fiscal year, the Board of Directors shall determine the Insurance Assessment; and subject to the provisions of Paragraph 5.4, the Annual Assessment for Common Expenses, and the Private Driveway Assessment, all of which are payable monthly by each Owner. Written notice of such Assessments shall be sent to every Owner subject thereto.

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

5.4 Maximum Assessments.

(a) Until January 1, 1983, the maximum assessments, also referred to as the Base Assessments, which may be assessed by the Board of Directors, excluding the Individual Assessments and the Insurance Assessments, shall be:

(i) 113.69 per lot per year as the Annual Assessment for Common Expenses; and

(ii) 43.70 per lot per year as the Private Driveway Assessment.

(b) Each maximum assessment may be increased effective January 1, of each year thereafter without a vote of the membership in accordance with Paragraph 5.4(c) in accordance with the rise in the Revised Consumer Price Index for the previous year as determined below.

Commencing in December of 1981 and during the same month of each and every year thereafter for the duration of this Declaration, or as soon thereafter as practical, each maximum assessment may be reviewed in accordance with the Revised Consumer Price Index, All items U.S. 1967-100, as published by the Bureau of Labor Statistics of the United States Department of Labor, hereinafter referred to as the "Index." The Index number indicated in the column All Items U.S. for October, 1980, shall be the "Base Index Number" and

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the corresponding Index number for the twelfth month thereafter, and the same month of each and every year thereafter for the duration of this Declaration shall be the "Current Index Number."

The difference between the Current Index and Base Index Number shall be divided by the Base Index Number resulting in the percentage of increase or decrease in the cost of living over the Base Index Number. In the event the cost of living shall increase between the Base Index Number month and the Current Index Number month during the term of this Declaration, each maximum assessment may be increased at the option of the Board of Directors, in accordance with the increase between the then Current Index Number and Base Index Number as divided by the Base Index Number.

If the Board of Directors shall elect not to increase the maximum assessments for any year(s) in whole or in part, the Board shall have waived its rights to increase, and shall not be entitled to the cumulative increase for preceding years as hereinabove provided.

The Board of Directors may increase each maximum assessment to a sum of money equal to the Base Assessment as provided for above multiplied by the percentage of increase in the cost of living which sum may be added to the Base Assessment contained in this Paragraph 5.4.

If said Index should no longer be recognized or published during the term hereof, then another index generally recognized as authoritative shall be substituted by the Board of Directors. The base so used by any Index, or as revised on the existing Index, shall be reconciled to the 1967 Index.

(c) A maximum assessment may be increased above that established by the rise in the Revised Consumer Price Index formula by a vote of the Members at a meeting duly called for such purpose voting in person or by proxy in the following manner:

(i) Annual Assessment for Common Expenses - an affirmative vote of two-thirds of each Class of Members.

(ii) Private Driveway Assessment - an affirmative vote of two-thirds of the Owners of Lots 8 through 17 of The Properties.

(d) After consideration of current requirements and future needs of the Association, the Board of Directors may fix each assessment at an amount not in excess of the maximum without any voting or approval requirements of the Membership.

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5.5 Maximum Insurance Assessment. The maximum Insurance Assessment shall be the insurance premium paid by the Association to insure the Attached Dwelling Units within The Properties in accordance with Paragraph 11.3 hereof prorated to each Owner in accordance with Paragraph 5.3(b).

5.6 Special Assessments. In addition to the assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable for that year only for the purpose of defraying, in whole or in part, any unexpected expense provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.7 Notice and Quorum for any Action Authorized under Paragraphs 5.4(c) and 5.6. Written notice of any meeting called for the purpose of taking any action authorized under Paragraph 5.4(c) and 5.6 shall be sent to all Members not less than thirty (30) days nor more than sixty days in advance of the meeting.

At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership 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 (60) days following the preceding meeting.

Notwithstanding the above, the notice, quorum and voting requirements for any action concerning the Private Driveway Assessment shall be based upon or limited to Members owning Lots 8 through 17 of The Properties.

5.8 Uniform Manner of Assessment. The Annual Assessment for Common Expenses, Insurance Assessments, Private Driveway Assessment and Special Assessments must be assessed in a uniform manner upon all Lots which are subject to such Assessment in accordance with the above.

5.9 Date of Commencement of Assessments. The Annual Assessments for Common Expenses provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Areas to the Association. The Insurance Assessment as to an Attached Dwelling Unit shall commence on the date that the Association shall determine to carry blanket property and casualty insurance for the Attached Dwelling Units.

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The Private Driveway Assessment as to Lots 8 through 17 of The Properties shall commence upon the conveyance of the said Lots to an Owner other than the Declarant.

The first such assessments shall be adjusted respectively according to the number of months remaining in the fiscal year at the time the assessment commences in accordance with the above.

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

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

(b) All other assessments shall be due and payable on the first day of the period fixed by the Board of Directors for payment of the assessment which shall be at least monthly.

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

(d) All assessments shall become delinquent unless paid within thirty (30) days of their due date. If such assessments are not paid within thirty days of the due date, they shall bear interest from the date of delinquency at a rate not to exceed the rate of interest permissible on Veterans Administration insured loans at the time such delinquency occurs. Failure to make payment within thirty (30) days of the due date thereof also shall cause the full amount of such Member's estimated assessment for the remainder of that year to become due and owing at once, at the option of the Board. Late payment charges as authorized by the Board and uniformly applied shall be allowable as are discounts for early payment.

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, late charges and interest as herein provided, all costs of collection including a reasonable attorney's fee and costs incurred by the Association in enforcing payment.

(e) The Association is hereby granted a lien against the Members' Lot for any payment of an assessment which the Owner fails to make as required by this Declaration. The lien of the assessments 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 Affairs (Veterans Administration)

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is seller, whether such contract is owned by the Veterans Administration or its assigns, and whether such contract is recorded or not.

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 also 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.

In the event of a foreclosure, the Owner shall be required to pay reasonable rental to the Association for occupying the same during the period of the foreclosure, and if after the filing of a foreclosure action, the Owner's Dwelling Unit is left vacant, the Board may take possession and rent said Dwelling Unit or apply for the appointment of a receiver for the Dwelling Unit without notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any First Mortgagee as set forth in its deed of trust or mortgage (including any assignment of rents) which creates that First Mortgagee's interest in the Lot.

In addition to the lien herein granted, the Board shall have the right to bring an action at law against any Owner who fails to pay any amounts assessed against his Lot, and obtain judgment for the amount of the assessments due plus costs as herein provided. 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.

(f) In the event an Owner is in default on any obligation secured by an encumbrance on his Lot, the Board, at its option, may pay the amount due on said obligation and file a lien against the Lot in the manner as provided for herein for unpaid assessments.

(g) 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.

(h) The lien of all assessments created and defined by this Declaration shall be superior to any homestead exemption as is now in effect hereafter be provided by Colorado or Federal law. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead exemption as against said assessment lien.

(i) 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 mortgage foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure or cancellation or forfeiture of an executory land sales contract shall extinguish the lien of all unpaid assessments as to assessments which became due prior to such transfer of title or cancellation or forfeiture of executory land sales contract; i.e. the date the First Mortgagee acquires fee simple title to the Lot; provided

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however, the Association shall still have the right to recover such amount from the delinquent Member.

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.

(j) The Association shall, upon demand, and for a reasonable charge, furnish to an Owner, 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 assessments on a Lot is binding upon the Association as of the date of its issuance.

5.11 Declarant's Obligations. The Declarant, for each Lot owned within The Properties, shall pay to the Association twenty-five percent (25%) of the Annual Assessment for Common Expenses paid by the Class A Members until such time as a Certificate of Occupancy is issued for such Lot. Upon the issuance of such Certificate, the Declarant shall be obligated as any other Class A Member to pay the full Annual Assessments for Common Expenses for that particular Lot.

The Declarant agrees to subsidize the Association in cash the sum equal to the difference between the cost of operating and maintaining the Association, exclusive of reserves, and the amount of funds payable by the other Members to the Association. The obligation of the Declarant to subsidize the obligations of the Association shall terminate one year after the termination of the Class B Membership.

ARTICLE SIX: ARCHITECTURAL CONTROL

6.1 Restrictions. Before anyone shall commence any landscaping or the construction, reconstruction, remodeling, addition to, or alteration of any building, wall, fence, or any structure whatsoever located upon The Properties there shall be submitted to the Architectural Control Committee (herein referred to as the "Committee"), two complete sets of plans and specifications for said improvements, the erection or alteration of which is desired. No such structure or improvement of any kind shall be erected, altered, placed or maintained within The Properties unless and until the final plans elevations and specifications therefore have received written approval as herein provided. Such plans shall include plot plans, locations of structures and improvements, floor plans, fence plans, elevations showing all aspects of the Dwelling Unit and the development of the Lot as an architectural unit, together with the proposed color scheme and materials for fences, roofs, and exteriors. In order to avoid unnecessary hardships, it is mandatory that all Owners contemplating such construction or alteration, as mentioned above, should submit

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preliminary drawings in duplicate of such work to the Committee in preparation of detailed or complete drawings, plans or specifications or incurring substantial expense. One set of said plans and specifications and details, with the approval or disapproval endorsed thereon shall be returned to the person submitting same within thirty (30) days and the other copy thereof shall be retained by the Committee.

The Committee shall have the right to disapprove any such plans or specifications or grading or landscaping plans which are not suitable or desirable in the Committee's opinion for aesthetic or other reasons, and in passing upon such plans, specifications, grading or landscaping plans, the Committee shall have the right to take into consideration the suitability of the proposed building or other structure 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 building or other structure or landscaping 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 if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specifications or details or any part thereof to be contrary to the spirit or intent of these conditions and restrictions. The decisions of the Committee shall be final subject to an appeal to the Board of Directors, in which case, the Board's decision shall be final. No member of the Committee by virtue of his membership thereon or in the discharge of his duties required thereby shall be responsible in any way for any defects in any plans or specifications submitted in accordance with the foregoing, nor for any defects in any work done according to such approved plans or specifications. In the event the Committee fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, such approval will be deemed to be given. It shall be the responsibility of the Architectural Control Committee to enforce the intent of commitments made by the Declarant to the City of Boulder regarding design, conservation and landscaping and any other commitments.

6.2 Organization. The Architectural Control Committee shall consist of three persons. Declarant shall have the right to appoint the initial Committee Members whose terms shall expire upon the conversion of Class B Membership to Class A Membership as provided for in Paragraph 4.5. Said members need not be Owners. Thereafter, Committee Members shall be appointed by the Board of Directors and must be Owners. The Board will initially appoint one Committee Member for a term of one Year, one Committee Member for a term of two years, and one Committee Member for a term of three years. Thereafter the Board of Directors shall appoint Committee Members upon the expiration of the above terms. Such appointments shall be for a term of three years. Members of such

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Architectural Control Committee shall not be entitled to any compensation for services performed.

6.3 Landscaping. A landscaping plan shall be submitted to the Committee at the time the house and Lot plans are submitted or within sixty (60) days prior to the date of occupancy. Said landscaping plans shall be approved by the Committee before commencement of landscaping. Approval or disapproval of such landscaping plans shall be in the same manner as set forth in Paragraph 6.1 hereof. Minimum landscaping shall be defined as at least \$1,000.00 worth of landscaping per lot which shall include a minimum of two 2" caliper street trees and complete sod or ground cover at the front or street facing side of the Dwelling Unit. Minimum landscaping to be completed with sixty (60) days from the issuance of the Certificate of Occupancy for such Dwelling Unit.

6.4 Fences. All fences shall be approved by the Committee and be designed and approved as an integral part of the design of the Building.

6.5 Exterior Painting. No exterior painting of the Building located upon The Properties shall be allowed without prior written approval of the Committee.

6.6 Waiver. The Committee may, at its discretion, waive any provision of ARTICLE SIX of these Protective Covenants in the event there is a practical difficulty or unnecessary hardship; subject to the provisions of Paragraph 13.5 hereof.

The architectural requirements as set forth above are waived as to the improvements located on Lots 12 and 14 of The Properties as they exist on the date of the execution of this Declaration. Thereafter before any one shall commence any landscaping or the construction, reconstruction, remodeling, addition to or alteration of any building, wall, fence or any structure located on said Lots 12 and 14, the requirements of this Article Six must be complied with.

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ARTICLE SEVEN: USE AND OTHER RESTRICTIONS

7.1 Land Use and Building Type. No Lot within The Properties shall be used for any purpose other than single family residential purposes as defined herein. No residential structure 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 Architectural Control Committee in accordance with ARTICLE SIX hereof.

7.2 Building Locations and Height Restrictions. No building shall be located on any Lot nearer to the front lotline or nearer to the side street line than the minimum building setback lines shown on the recorded plat.

No building shall be located within six feet of any other building without the requisite firewall construction required by the then local Building and Fire Codes as promulgated by the Building Department of the City of Boulder, Colorado. For the purposes of this covenant, steps and open porches shall not be considered as a part of a building.

The Architectural Control 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.

7.3 Trees and Shrubs. The removal of living trees and shrubs from The Properties shall be prohibited without the express written permission from the Architectural Control Committee.

7.4 Temporary Structures. No temporary house trailer, tent, garage, outbuilding or clotheslines shall be placed or erected upon any part of The Properties and no residence 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 residence when completed be in any manner occupied until there is compliance with all requirements, conditions, covenants, and restrictions herein set forth; provided however, that during the actual construction or alteration of a building with The Properties, reasonable and necessary temporary buildings for storage of materials may be erected and maintained by the person doing such work. Such temporary storage buildings shall be removed upon completion of the construction, alteration or remodeling.

The work of constructing, altering and remodeling any improvement upon The Properties shall be prosecuted diligently from its commencement and completed within one year from commencement.

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7.5 Trash. Each lot shall provide a fully enclosed area for containment of trash, garbage, or other refuse. Each Lot at all times shall be kept in a clean, sightly, and wholesome condition and grass and weeds shall be kept mowed. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so it is visible from any neighboring Lot or from the street, except as reasonably necessary during the period of construction. The Board of Directors shall have the right and duty, through its agent and employees, upon thirty (30) days' written notice to the Owner thereof, and after a hearing before the Board of Directors, 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).

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 detract from its value as an attractive residential community. Habitually barking, howling or yelping dogs shall be deemed a nuisance. Patios and balconies shall not be used for storage other than patio furniture and firewood. No activity shall be conducted on any part of The Properties which is or might be unsafe, unsightly, unhealthy, or hazardous to any person.

Boats, trailers, campers, motor homes, wrecked cars, lawn equipment, tractors, equipment, etc., shall not be kept or stored so they are visible from neighboring Lots or from the street.

No tanks of any kind shall be erected, placed or permitted upon any part of The Properties. Hot tubs shall be permissible.

7.7 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 or its designees 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 office, storage area, nursery, construction yard and structures, signs, model Dwelling Units and sales offices.

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

7.8 Utilities. All electric, television, radio and telephone lines installations and connections from the Owner's property line to the Dwelling Unit shall be placed underground. All antennas must be contained within the structure and not exposed to public view. No aerial masts shall be allowed. All types of refrigerating, cooling or heating apparatus must be concealed.

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7.9 Signs. No sign or advertising of any character except for those of the Declarant and its sales' agents shall be erected, placed, permitted or maintained on any Lot except for "For Sale" or "For Rent" signs not exceeding the size permitted in residential areas in the City of Boulder, Colorado.

7.10 Fences and Mailboxes. Fences and mailboxes and property identification shall be approved by the Architectural Control Committee.

7.11 Animals Within The Properties. No animals, livestock, or poultry of any kind shall be raised, bred or kept on The Properties, except that dogs, cats or household animals may be kept thereof if they are not raised, bred, or maintained for any commercial purpose, and do not make objectionable noises or otherwise constitute a nuisance or inconvenience to a resident of The Properties, then the Board of Directors shall have the right to direct that the animal be permanently removed from The Properties.

Dogs, cats and other household animals shall not litter the Common Areas. It shall be the duty of the Association to keep the Common Areas free from litter caused by and left by pets. The Owners of pets known to be at large, upon thirty (30) days' written notice to the Owner, and after a hearing before the Board of Directors shall be properly assessed by the Board of Directors for cleanup expenses incurred, as an Individual Assessment against the owner of such pets causing such litter in accordance with Paragraph 5.3(c) hereof. Pets must be attended when out of the Owner's Lot.

7.12 Mineral Exploration. No portion of The Properties shall be used to explore or to remove any water, soil, hydrocarbons or other minerals of any sort.

7.13 Parking. The use of the four parking spaces available in the Common Area Outlot B is intended only for those Owners of Lots 8 through 17 in accordance with the applicable regulations and restrictions promulgated by the Board of Directors. All automobile parking will be subject to rules and regulations by the Board of Directors.

7.14 Rules. Every Member, his guests, members of his family, servants, employees, invitees, lessees and licensees shall adhere strictly to the Rules as promulgated by the Board of Directors, as amended from time to time.

ARTICLE EIGHT: EASEMENTS

8.1 Utility Easement. Easements for public 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 hereinafter be granted over and across the Common Areas by the Board of Directors of the Association.

8.2 Declarant's Easements. Anything to the contrary herein notwithstanding, the Declarant and/or its agents hereby reserve reasonable easements and right-of-ways over all Common Areas and all Lots not conveyed, for the sole use of constructing improvements, utilities and other matters 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 the Common Areas by the Owners. This reservation shall terminate upon conveyance of the last Lot platted in The Properties. Declarant and/or its agents further reserve the right to use any completed structure for the purpose of sales office, construction office or model home for demonstration purposes. This reservation shall cease on December 31, 1985.

8.3 Special Easements. Due to the anticipated style of the Dwelling Units to be placed on certain Lots, a Dwelling Unit may be located on or so near its property line, or a Dwelling Unit's roof overhang may actually encroach upon an adjoining Lot or Lots, so as to make entry upon an adjoining Lot or Lots a necessity incident to the construction and maintenance of such Dwelling Unit. In the event the above situation shall exist, then at the time of the commencement of the construction of such improvement, provided such construction shall commence within twenty (20) years after the date of recording of this Declaration, there shall thereby be created an easement or easements for the existence of such overhang if one shall encroach upon the construction, maintenance, repair, replacement and/or reconstruction of such Dwelling Unit which encroaches or is so located on or near its property line. Said easement or easements (a) shall be over and across the Lot or Lots immediately adjoining the Lot upon which such Dwelling Unit is so located, and (b) shall extend the full depth of the adjoining Lot or Lots, and (c) shall extend into so much of the adjoining Lot or Lots as is necessary to provide the Owner of such Dwelling Unit so located with an easement of such width that, when added to the space lying between the Dwelling Unit and its property line, such easement shall be six feet in width; provided that such Owner shall immediately repair, and be liable for any damages caused by any failure immediately to repair any damage to such Lot or the Dwelling Unit or other property thereon resulting from the exercise of this easement. Construction of any structure shall be prohibited within these easements except as such structure shall be approved in writing

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by the Architectural Control Committee of the Association. For title and other purposes, such easements shall not be considered or deemed to be encumbrances upon such adjoining Lot.

8.4 Easement for Maintenance. Each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for providing maintenance, repair and replacement to the Lot and the exterior of a Unit as provided in ARTICLE TWELVE hereof.

8.5 Easements for Encroachments. If any part of a Unit unintentionally encroaches or shall hereafter (whether because of reconstruction, settling, shifting or otherwise) encroach upon an adjoining Lot or Common Area, the Owner of that encroaching Unit shall and does have a perpetual easement for such encroachment and for the maintenance of same.

8.6 Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be appurtenant to the Lots owned by him. All conveyances and instruments affecting title to a Lot shall be deemed to grant and reserve the easements and rights as provided herein, as though set forth in said document in full, even though no specific reference to such easements or restrictions appear.

ARTICLE NINE: CONDEMNATION

9.1 Condemnation of Common Area. In the event of a proceeding in condemnation or partial condemnation of the Common Area by any governmental authority authorized so to do, then the proceeds from such condemnation attributable to the Common Area shall be distributed to the Association for repair of the Common Area 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 Units. If a Dwelling Unit or Dwelling Units are 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 a condemnation occurs, either to the Common Areas or to a Lot within The Properties and such Lot is subject to an encumbrance, the proceeds payable thereunder 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 first distribution.

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ARTICLE TEN: PARTY WALLS

10.1 Existence. The Owner shall possess, in fee simple, that portion of the Party Wall, as defined in Paragraph 1.15 hereof lying within his Lot. Each Owner having a Party Wall is hereby granted a mutual reciprocal easement for repair or replacement of said Party Wall. No Owner shall commit or omit any act, the result of which is infringement of the adjoining Owner's rights in the Party Wall absent written agreement between such Owners. In the event that any portion of any structure originally constructed by Declarant, including any Party Wall, shall protrude over an adjoining Lot, such structure shall not be deemed to be an encroachment upon the adjoining Lot nor shall any action be maintained for the removal of or for damage because of such protrusion. The foregoing shall also apply to any replacements of any Party Wall if the same are constructed substantially in conformity with the original Party Wall constructed by Declarant.

10.2 Repair and Maintenance. If a Party Wall is destroyed or damaged by any casualty, the Owners abutting such Party Wall jointly shall restore it substantially to its original form, and they shall contribute in proportion to such Owner's use of such Party Wall to the cost of restoration thereof without the prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any Rules of law regarding liability for negligent or willful acts or omissions. Destruction or damage to the Party Wall shall not cause the termination of any rights of any of the adjoining Owners thereto, and such Owners will retain those rights herein set forth concerning any reconstruction or replacement of a Party Wall. If one of the Owners who uses the wall refuses to pay his proportionate share of the cost of such repair or maintenance, then the Owner of any other Lot abutting such Party Wall may cause the Party Wall to be repaired and shall be entitled to assess the costs attributable against the nonpaying Owner's Lot and the same shall become and remain a lien against such Lot until fully paid. Said lien may be foreclosed in the manner provided by law for the judicial foreclosure of a mortgage on real property. Any

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lien hereby created shall have the same priority as the lien provided for in Paragraph 5.10 hereof. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title; provided however, the right of such Owner to any contribution shall in any event be subordinate to the First Mortgage of any attached Dwelling Unit.

10.3 Arbitration. In the event of any dispute arises concerning a party wall, or under the provisions of this Article, the dispute will be settled by arbitration. Arbitration will be commenced by one Owner notifying the adjoining Owner that a dispute exists and submitting the name of one arbitrator. The adjoining Owner must respond within thirty days by submitting the name of a second arbitrator. The two arbitrators so chosen within thirty days shall choose a third arbitrator and a decision of a majority of the arbitrators shall be final and binding on all parties. The cost of arbitration and the manner of payment therefore will be decided by the arbitrators.

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ARTICLE ELEVEN: INSURANCE

11.1 Insurance Requirements Generally. The Board of Directors shall obtain and maintain in full force and effect at all times certain property, casualty, liability and other insurance as hereinafter provided. All such insurance shall be obtained, to the extent possible, from responsible companies duly authorized and licensed to do business in the State of Colorado and having a BEST'S Insurance Report rating of Class X-B or higher.

To the extent possible, the casualty, property and liability insurance shall: (a) provide for a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees, agents, and members; (b) provide that the insurance cannot be cancelled, invalidated or suspended on account of the conduct of the Association, its officers, directors, employees and agents; and (c) provide that the policy of insurance shall not be terminated, cancelled or substantially modified by either the insured or the insurance company without at least thirty (30) days prior written notice being given to the Association and to each affected Attached Dwelling Unit Owner and each affected First Mortgagee. 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 mortgagor or mortgagee's designee, or (b) by the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the Association's Board of Directors, policyholders or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent mortgagees or the mortgagor from collecting insurance proceeds.

Any insurance policy may contain such deductible provisions as the Association deems consistent with good business practice and which shall be consistent with the requirements of the Federal Home Loan Mortgage Corporation. Any loss falling within the deductible portion of a policy shall be borne by the party suffering the loss.

The insurance purchased in accordance with Paragraphs 11.2 and 11.3 hereof shall be Inflation Coverage Insurance and shall contain an "Agreed Amount Endorsement" if such insurance is available, which insurance at all times represents 100 percent of the replacement value based on the most recent appraisal of (a) each Attached Dwelling Unit, if the Association is providing such insurance and (b) all insurable improvements in the Common Areas. The replacement value shall not include values for land, foundation, excavation and other items normally excluded thereof and shall be without deduction for depreciation and shall contain 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 also at least every two years obtain an appraisal for insurance purposes, which shall be maintained as a permanent record, showing that the insurance represents 100 percent of the replacement value as defined above and for each Attached Dwelling Unit, if such insurance is being provided, and all insurable improvements in the Common Areas.

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11.2 Property and Casualty Insurance, Common Areas.

(a) Coverage: If there are insurable improvements located in the Common Areas, the Board of Directors shall obtain and maintain at all times insurance coverage providing all risk coverage or the nearest equivalent available for the full replacement cost of such insurable improvements and any personal property owned by the Association used in conjunction therewith.

(b) Rebuilding of Damaged Common Areas: Any portion of the Common Areas damaged or destroyed shall be repaired or replaced promptly by the Board of Directors unless a "Declaration Not to Rebuild," signed by Members holding seventy-five percent (75%) or more of the total votes hereunder and by one hundred percent (100%) of the First Mortgagees is recorded within one hundred days of the date of damage or destruction indicating their intention not to rebuild, in the office of the County Clerk and Recorder, Boulder, Colorado.

The cost of repair or replacement of the Common Areas in excess of insurance proceeds received and reserves shall be assessed as an Individual Assessment 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 Membership.

If the entire damaged Common Area is not repaired or replaced (a) the insurance proceeds shall be used to restore the damaged Common Area to a condition compatible with the remainder of the Common Areas, and (b) the remainder of the proceeds shall be distributed to all Owners in the same proportion as Annual Assessments for Common Expenses are assessed. Proceeds hereunder shall be paid to the Owners and their respective First Mortgagees by checks made jointly payable to 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.

11.3 Property and Casualty Insurance, Attached Dwelling Units.

(a) Coverage: The Board of Directors may elect but are not required to obtain and continue in effect on behalf of all Owners of Attached Dwelling Units, a Blanket Property and Casualty Insurance Policy for each Attached Dwelling Unit within The Properties. Such insurance shall be in the amount of the full replacement value, as defined in Paragraph 11.1 above, without deduction for depreciation and with no provision for co-insurance, to include all fixtures, installations or additions comprising a part of an individual Attached Dwelling Unit within the unfinished interior surfaces of the perimeter walls, floors and ceilings of the Attached Dwelling Unit initially installed or replacements thereof, in accordance with the original plans and specifications, or installed by or at the expense of the Attached Dwelling Unit Owner.

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b) Requirements: The insurance shall be carried in blanket policy form naming the Association as the owner and beneficiary thereof as trustees for the Attached Dwelling Unit Owners, shall identify each Attached Dwelling Unit Owner and the address of his Attached Dwelling Unit and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. The Association shall furnish a certified copy of such blanket policy and a certificate identifying each party's interest, to any party in interest at its request. 37-29

Title to each Attached Dwelling Unit's Lot is declared and expressly made subject to the terms and conditions hereto, and acceptance by the grantee of a deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the attorney in fact herein provided. All of the Owners of Attached Dwelling Units located upon The Properties appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their Attached Dwelling Unit's Lot upon their damage and destruction as is herein provided. As attorney in fact, the Board of Directors of this Association shall have full and complete authorization, power and right to make, execute and deliver any contract, or any other instrument with respect to the interest of an Attached Dwelling Unit's Owner's Lot which are necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the Attached Dwelling Unit shall be done in accordance with Paragraph 11.3(c) below.

Such appointment of the Association as the attorney in fact for all Owners may be revoked and a new attorney in fact appointed by an amendment to this Declaration signed by ninety percent of the Attached Dwelling Unit Owners and seventy-five percent of their respective First Mortgages based on one vote for each mortgage owned.

c) Rebuilding of Damaged Attached Dwelling Units: In the event of damage to or destruction of any Attached Dwelling Unit by fire or any other casualty for which the Association is required to carry insurance, the Board of Directors shall within a reasonable time repair or rebuild the same in a workmanlike manner with materials comparable to those used in the original structure and conformity in all respects with the laws or ordinances regulating the construction of buildings in force at the time of such repair or reconstruction. The Attached Dwelling Unit, when rebuilt or repaired, shall be substantially similar to the architectural design of the original Attached Dwelling Unit and the surrounding Attached Dwelling Units which are not so damaged or destroyed. Neither the Owner nor the Board of Directors shall be relieved of this obligation to repair or rebuild by the fact that proceeds received from the insurer to repair or rebuild are not sufficient to cover the cost thereof. If the proceeds provided from the insurer by the Association are insufficient, it shall be the duty of the Owner to pay to the Association any deficiency required to accomplish the rebuilding or repair. Upon the failure of such Owner to provide such funds within thirty (30) days after demand by the Association therefor, the Board of Directors shall cause the repair or rebuilding as provided, and the amount of the deficiency shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c) hereof. Such lien to have the same priority as that provided for in Paragraph 5.10 hereof.

In the event one hundred percent of the Attached Dwelling Unit Owners and First Mortgagees based on one vote for each mortgage owned decide not to rebuild, then the insurance proceeds shall be distributed by checks made jointly payable to the Owners and their respective First Mortgagees. hnc PBT

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11.4 Public Liability and Property Damage Insurance. The Board of Directors shall obtain and maintain comprehensive general liability insurance and personal injury liability coverage covering liabilities of the Association, its officers, directors, employees, agents and members arising in connection with ownership, operation, maintenance, occupancy or use of the Common Areas and any other area the Association is required to restore, repair or maintain pursuant to this Declaration with limits of not less than one million dollars (\$1,000,000) for each occurrence, bodily injury and/or property damage. Each policy shall include a "severability of interest" endorsement.

11.5 Fidelity Insurance. The Board of Directors shall also maintain adequate fidelity coverage, if available, to protect against dishonest acts on the part of directors, officers, and employees of the Association and all others who handle or are responsible for handling funds of the Association, provided however the Board of Directors shall not maintain fidelity coverage to cover any paid professional management but such coverage shall be the responsibility of such professional management. Such fidelity bonds shall (a) name the Association as an obligee, (b) be written in an amount which shall be consistent with the requirements of the Federal Home Loan Mortgage Corporation, (c) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression and (d) provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without at least thirty (30) days' written notice to the First Mortgagees and the Association.

11.6 Workmen's Compensation and Employer's Liability Insurance. The Board of Directors shall obtain and maintain workmen's compensation and employer's liability insurance as may be necessary to comply with applicable laws.

11.7 Other Insurance. The Board of Directors may obtain such additional insurance coverage against such additional risks as it shall determine to be appropriate, which may include officer's and director's liability insurance.

11.8 Insurance by Owners. Each Attached Dwelling Unit Owner shall at such Owner's option, be responsible for obtaining property and casualty insurance for all personal property and furnishings belonging to such Owner and obtaining his personal liability insurance.

11.9 Payment of Insurance Premiums. The cost of the insurance obtained by the Association in accordance with this Article shall be paid from Association funds and other than the insurance referred to in Paragraph 11.3 hereof, shall be collected from the Owners as part of the Annual Assessment for Common Expenses as provided for in Paragraph 5.3(a) hereof.

In the event there are not sufficient funds generated for the Annual Assessment for Common Expenses to cover the cost of the insurance provided for above, then the deficiency shall be chargeable to each Owner by Individual Assessment 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 Membership.

In the event the Association is maintaining Blanket Property and Casualty Insurance as provided for in paragraph 11.3 hereof, the cost of such insurance shall be paid for from Association funds and be collected from the Attached Dwelling Unit Owners in the following manner: an amount equal to the cost of such insurance attributable to an Owner's Attached Dwelling Unit for one full year shall be paid by such Owner at closing, and thereafter, the cost of such insurance shall be paid by the Owners as an Insurance Assessment in accordance with Paragraph 5.3(b) hereof commencing with the first assessment after closing. The Board of Directors shall have the right to create an insurance escrow account for each Attached Dwelling Unit.

11.10 Detached Dwelling Unit Owners' Participation in the Blanket Insurance Coverage by the Association. In the event an Owner of a detached Dwelling Unit desires to insure his detached Dwelling Unit as provided for herein, such Owner shall make a request for such coverage in writing to the Association and pay the first annual premium in advance. When such Owner is included in the Association coverage then all of the provisions of this Article pertaining to an Attached Dwelling Unit shall apply to such detached Unit Owner as well as the provision concerning the Insurance Assessment contained in Paragraph 5.3(b) hereof.

ARTICLE TWELVE: MAINTENANCE

12.1 Maintenance of the Common Areas. The Board of Directors shall provide for the repair, maintenance and replacement of the Common Areas and to include the private driveways. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Areas in a safe, attractive, clean, functional and in good repair; and may make necessary or desirable alterations or improvements therein.

12.2 Failure to Maintain/Damage Attributable to Owners. In the event any Owner shall fail to maintain his premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, or in the event the maintenance, replacement, repair and restoration to the Common Areas, Lot, or Dwelling Unit is resulting from the act or negligence of an Owner or such Owner's delegees, as defined by Paragraph 3.3 hereof, the Board of Directors shall have the right and duty, upon approval by a 2/3 vote by the Board of Directors, to enter upon said Lot and repair, maintain, replace or restore the Lot, the exterior of the Dwelling Unit and other improvements erected thereon. The cost of such maintenance, replacement, repair and restoration shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 5.3(c).

12.3 Maintenance Easement. Each Lot shall be subject to an easement in favor of the Association (including its agents, employees and contractors) for providing the maintenance, repair and replacement to the Lot and the exterior of a Dwelling Unit as applicable, as provided for above.

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ARTICLE THIRTEEN: FIRST MORTGAGEE'S RIGHTS

13.1 Notice to First Mortgagee. Each First Mortgagee, upon written request by such First Mortgagee to the Board of Directors, shall receive any of the following:

- (a) Copies of budgets, notices of assessments or any other notices or statements provided for under this Declaration, by the Association to the owner of a Dwelling Unit in which a First Mortgagee has a security interest.
- (b) Financial statements of the Association which are prepared for the Association and distributed to the Members.
- (c) Copies of notices of meetings of the Membership and the right to be represented at any meetings by a designated representative.
- (d) Notice of the decision of the Members to make any material amendment to this Declaration, the Bylaws, or the Articles of Incorporation of the Association.
- (e) Notice of commencement of any condemnation proceedings with respect to any part of the Common Area or with respect to a Lot or any portion thereof in which a First Mortgagee has a security interest.
- (f) Notice of any default which is not cured by an Owner of a Dwelling Unit in which a First Mortgagee has a security interest within sixty (60) days after giving notice by the Association.

13.2 Form of Request. The request of a First Mortgagee shall specify which of the above it desires to receive and shall indicate the address to which any notices or documents shall be sent by the Association. Failure of the Association to provide any of the foregoing to a First Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing. The Association need not inquire into the validity of any request made by a First Mortgagee hereunder and in the event of multiple requests from purported First Mortgagees on the same Dwelling Unit, the Association shall honor the most recent request received.

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133 Payment of Charges. First Mortgagees, jointly or singularly, may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on a lapse of a policy and may also pay taxes and other charges which are in default or which may or have become a charge against the Common Areas. A First Mortgagee making such payments shall be owed immediate reimbursement therefor 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.

134 Books and Records. A First Mortgagee shall have the right to examine the books and records of the Association at any reasonable time at the office of the Association upon reasonable notice.

135 Restrictions.

(a) If there are insurable improvements located in the Common Areas, the prior written approval of all First Mortgagees will be required for the failure to maintain fire and extended coverage on insurable Common Area property on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value (based on current replacement cost as defined by Paragraph 11.1 hereof); and the use of hazard insurance proceeds for losses to any part of the Common Area property for other than repair, replacement or reconstruction of such improvements.

(b) The prior written approval of all First Mortgagees will be required for:

(i) Any change in the manner in which assessments are assessed against Members or amends this paragraph or any other provision which specifically grants rights to First Mortgagees hereunder;

(ii) The abandonment, partition, subdivision, sale or transfer or the encumbrance of the Common Areas; except that the consent of the First Mortgagees shall not be required for action by the Board of Directors to grant easements for utilities and similar or related purposes;

(iii) The abandonment of the planned unit development or the removal of any part or all of The Properties from the provisions of this Declaration; and

(iv) The waiver or abandonment of the scheme of Architectural Control or the enforcement thereof.

(v) The waiver or abandonment of any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Dwelling Units, the exterior maintenance of the Dwelling Units, the maintenance of common property party walks or common fences and driveways, or the upkeep of lawns and plantings.

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ARTICLE FOURTEEN: DURATION AND AMENDMENTS

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

14.2 Amendments. This Declaration may be amended during the first twenty (20) year period from the date the Declaration is recorded by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Except as restricted by Paragraph 13.5 hereof, any amendment must have the written approval of seventy-five percent (75%) of the First Mortgagees based on one vote for each mortgage owned. All amendments must be recorded with the Clerk and Recorder of Boulder County, Colorado.

As long as there is a Class B membership, the Declarant reserves the right to amend this Declaration in order to obtain Veterans Administration and/or Federal Housing Administration approval of these Declarations and the Oakdale Place Homeowner's Association for the purpose of FHA and/or VA loans being made on the Properties, so long as said amendment(s) are approved by the Federal Home Loan Mortgage Corporation. As long as there is a Class B membership, the Declarant reserves the right to make other amendments to this Declaration so long as they are approved by the Federal Home Loan Mortgage Corporation.

So long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions, if VA/FHA approval has been obtained.

14.3 Annexation. Additional residential property and Common Areas may be annexed to The Properties with the consent of two-thirds (2/3) of each class of members.

ARTICLE FIFTEEN: GENERAL PROVISIONS

15.1 Enforcement. The failure of any Member to comply with the provisions of the Declaration, Bylaws, and any Articles of Incorporation of the Association will give rise to a cause of action in the Association by its Board of Directors and in any aggrieved Member for the recovery available in any proceedings at law or in equity.

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

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

15.4 Notices. Each Member shall register his mailing address with the Association. Any notice required to be sent to any Member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as a Member on the records of the Association at the time of such mailing.

15.5 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, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action. Attorneys' fees and costs may be paid by mutual stipulation of the parties in the event that any such action is resolved by stipulation and agreement of the parties.

15.6 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

15.7 Gender. The use of the masculine gender in this Declaration shall be deemed to refer to the feminine gender, and the use of the singular shall be deemed to refer to the plural, and vice versa, when the context so requires.

IN WITNESS WHEREOF, THE UNDERSIGNED, being the Declarant herein, have set their hands and seals this 20 day of November, 1981.

Miles L. Mitchell
Miles L. Mitchell

Richard E. Tasker
Albert C. Durand by
Richard E. Tasker, Court Receiver

W. L. ...
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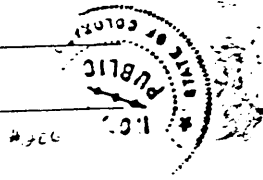
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STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was subscribed, sworn to and
acknowledged before me this 11th day of November, 1981 by

My commission expires May 3, 1982

[Signature]
Notary Public
Address: 337 Chickadee Way
Boulder CO 80501



STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

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