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DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS
AND RESTRICTIONS OF
WONDERLAND LAKE POINT SUBDIVISION

THIS DECLARATION, made on the date hereinafter set forth by John W. Roper, Karen T. Roper and Robert C. Naumann, of Boulder, Colorado, hereinafter referred to as "Declarants";

WHEREAS, Declarants are now the owners of the following property in Boulder County, State of Colorado, more particularly described as follows:

Lots 1 through 14, together with Outlot A, Wonderland Lake Point Subdivision, 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 be referred to herein as "The Properties".

Lots 1 through 4 are owned by John W. Roper and Karen T. Roper as Declarants. Lots 5 through 7 and 13 and 14 are owned by Robert C. Naumann as Declarant. Lots 8 through 12 are owned by John W. Roper and Karen T. Roper as Declarants. Declarants will construct a residential community on The Properties, together with other improvements thereon, and/or will sell lots for construction of residences by others. Declarants will convey the lots in The Properties subject to this declaration.

NOW, THEREFORE, Declarants hereby declare that all of the real property described above shall be held, sold and conveyed subject to the following easements, servitudes, restrictions, liens, covenants, conditions, uses and obligations, all of which are established, declared and agreed to be the protection of the value and desirability of the property and for the benefit of any person having any right, title and interest in the said real property and which shall be deemed to run with the land, and shall be a burden and benefit to any persons acquiring such interests, their grantees, heirs, personal representatives, successors and assigns.

ARTICLE I: DEFINITIONS:

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

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- 1.1 ASSOCIATION shall mean and refer to Wonderland Lake Point Homeowners Association, Inc., a Colorado non-profit corporation, and its successors and assigns.
- 1.2 BOARD OF DIRECTORS or BOARD shall mean and refer to the Board of Directors of the Association, duly elected pursuant to the By-Laws of the Association.
- 1.3 BY-LAWS shall mean the Bylaws adopted by the Association as amended from time to time.
- 1.4 DECLARANTS shall mean (insert names of owners), their heirs, personal representatives, successors or assigns, if such heirs, personal representatives, successors or assigns should acquire more than one undeveloped Lot from a Declarant for the purpose of development.
- 1.5 DECLARATION shall mean this Declaration of Easements, Covenants, Conditions and Restrictions of Wonderland Lake Point Subdivision, as it may be amended from time to time.
- 1.6 DWELLING UNIT shall mean and refer to the residence constructed on each lot within The Properties and any replacement thereof, including the garage and basement if applicable.
- 1.7 LOT shall mean and refer to any of lots 1 through 14 as shown on the recorded subdivision plat of The Properties.
- 1.8 OWNER shall mean and refer to the Owner including the Declarants of the fee simple title to any Lot which is a part of The Properties, including contract sellers, whether one or more persons or entities, excluding those having an interest merely as security for the performance of an obligation.
- 1.9 COMMON FACILITIES shall mean and refer to Outlot A, as shown on the recorded subdivision plat of Wonderland Lake Point Subdivision, as recorded in the records of Boulder County, Colorado, incorporated herein by reference; together with the drainage easements shown on Lots 12 and 9 of the recorded plat, and any drainage facilities, including drainage collection devices and drainage systems and ponds constructed or required to be constructed by the City of Boulder within Outlot A, or within the drainage easements; together with any and all real and personal property hereafter owned or controlled by the Association for the common use and benefit of the Owners, and for public and private access, public utilities, drainage, and incidental or related purposes, together with all improvements thereon, if any, and any easements, fixtures or appurtenances used therewith or attached hereto, subject to rights of way, easements, liens, encumbrances, reservations and restrictions of record, if any. Every Owner, and the successors and assigns thereof, shall be deemed to have consented to the use and control of said Common Facilities by the

Association for the benefit and enjoyment of all Owners in accordance with the provisions of this Declaration and the By-Laws and rules and regulations of the Association.

1.10 MEMBER shall mean and refer to all those who are Members of the Association as provided in Paragraph 3.4 hereof.

1.11 ASSESSMENTS shall mean all sums of money due the Association from Members as duly assessed against the membership by the Board of Directors of the Association in accordance with ARTICLE IV of this Declaration.

1.12 FIRST MORTGAGEE shall mean any person, corporation, partnership, trust, company, association or other legal entity which takes, owns, holds or receives a mortgage or deed of trust, which mortgage or deed of trust 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 Administrator) is seller, whether such contract is owned by the Veterans Administration or its assigns and whether such contract is recorded or not.

1.13 RULES shall mean the Rules and Regulations adopted by the Board of Directors as amended from time to time.

ARTICLE II: SCOPE OF THE DECLARATION.

2.1 PROPERTY SUBJECT TO DECLARATION. Declarants, as the Owners of fee simple title to The Properties, expressly intend to and, by recording this Declaration, do hereby subject The Properties to the provisions of this Declaration.

2.2 CONVEYANCES SUBJECT TO DECLARATION. All easements, restrictions, conditions, obligations, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, 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, personal representatives, successors 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, liens, charges, rights, benefits, obligations 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 and effect any interest in The Properties shall be subject to the provisions of this Declaration despite any failure to make reference hereto.

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2.3 OWNER'S RIGHTS SUBJECT TO THE PROVISIONS OF THIS DECLARATION. Each Owner shall own his Lot in fee simple for use as a single family residence, as permitted by the municipal ordinances of the City of Boulder, Colorado, and shall have full and complete dominion thereof, subject to the provisions of this Declaration.

2.4 OUTLOT A DEDICATION. Declarants in recording the plat of The Properties in the records of the County of Boulder, Colorado have designated Outlot A as an area for a private street for public and private access to The Properties, for sidewalks, visitor parking, drainage, and public access and utility easements to the City of Boulder, and other purposes. The plat is incorporated herein by reference as if fully and completely set forth. Each Owner, members of his household, tenants, contract purchasers residing upon his Lot, and guests, shall have the right and easement of use and enjoyment of Outlot A, which shall pass with the title to the Lot of each Owner, subject to this Declaration, the corresponding rights of other Owners, and the Association. An Owner shall be fully responsible for the actions of members of his household, tenants, contract purchasers or guests. The Association may make such use of Outlot A as may be necessary or appropriate to perform its duties and functions. The Association may grant easements and rights of way on Outlot A to any entity providing utility, communications or similar service to The Properties. Upon consent of the City of Boulder, the Association may transfer all or any part of Outlot A to the City of Boulder if the City of Boulder shall accept the private drive within Outlot A as a public street, without further consent of the Owners, as attorney in fact for the Owners, and each Owner, by accepting a deed to his lot, consents and agrees to this designation of the Association as his attorney in fact for this limited purpose, which shall be deemed coupled with an interest and irrevocable. Upon consent of the City of Boulder, the Association may convey all or any part of Outlot A to any other public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; no such transfer shall be effective unless an instrument signed by two thirds (2/3) of the Owners shall be recorded. Declarants covenant to convey an undivided interest as a tenant in common in the fee simple title to Outlot A to each Owner of a Lot, upon first conveyance of all Lots within the The Properties. Thereafter, no Lot may be conveyed without also conveying an undivided interest in Outlot A as a tenant in common thereof, and any conveyance of any Lot shall be deemed to include a conveyance of an undivided interest in Outlot A as a tenant in common, as an appurtenance to such Lot, unless and until the fee title to Outlot A shall be conveyed to the City of Boulder hereunder. Unless and until such conveyance to the City of Boulder, each Owner shall pay, as part of the taxes and assessments applicable to his Lot, his proportionate share of any taxes and assessments assessed against Outlot A.

2.5 LEASE OF A DWELLING UNIT. Any Owner shall have the right to lease his Dwelling Unit upon such terms and conditions as the

Owner may deem advisable, provided that any such lease 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; and provided that the Owner shall notify the Association of the existence of any lease and the names of the lessees upon entering into any lease. Any failure of a lessee to comply with the terms of this Declaration or By-laws of the Association, or the Rules shall be a default under the lease enforceable by the Association; provided however that the provisions of this paragraph shall not apply to a First Mortgagee who comes into possession of a Lot through foreclosure or a deed in lieu thereof.

ARTICLE III: THE ASSOCIATION.

3.1 GENERAL PURPOSES AND POWERS. The Association through its Board of Directors shall be responsible for maintenance, repair and management of the Common Facilities 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 powers necessary or desirable to effectuate such purposes.

3.2 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 in the By-Laws.

3.3 ARTICLES AND BY-LAWS. 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 the provisions of the Articles and By-Laws of the Association.

3.4 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 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 a Lot shall be the sole qualification for such membership, and every Owner shall be a Member.

3.5 VOTING RIGHTS. There shall be two classes of voting membership:

(a) Class A Members shall be all Members other than those described in 3.5(b) hereof. Class A Members will be entitled to one vote for each Lot in which they hold the interest required for membership by paragraph 3.4 hereof. If more than one person holds such interest or interests, all such persons shall be Members. The vote for such Lot which is held by more than one

Member may be exercised by any one of them, unless an objection or protest by any other holder of an interest in such 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 interests shall determine between themselves, provided that in no event shall more than one vote be cast with respect to any such Lot. When Class B Membership has been converted to Class A Membership, all directors of the Association shall be elected by the Class A Members as more fully provided for in Paragraph 3.5(b) below.

(b) Class B Members shall be Declarant, and any grantee from Declarant who acquired two or more lots for sale. Class B Members shall be entitled to three votes for each lot owned on all matters submitted to a vote of the Membership. Class B Membership shall automatically be converted to Class A Membership when 75% of the lots have been conveyed to Purchasers other than Declarant or other Class B Member, or on written notice by all Class B members to the Association, or five (5) years after the date of recording this Declaration, whichever is earlier.

3.6 INDEMNIFICATION. The Manager, employees of the Association and 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 on behalf of the Association to the full extent required or permitted by applicable Colorado law; provided that this indemnification shall not apply if the said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided further that in the event of a settlement, the indemnification herein 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.

3.7 LIMITATION OF LIABILITY OF DIRECTORS TO THE ASSOCIATION OR ITS MEMBERS. A Director of the Association shall have no liability to the Association or to its Members, except for actions for which elimination of such liability is not premitted by Colorado Revised Statutes, as amended, Section 7-22-101, as it exists when this Declaration is recorded, or the corresponding future provision of any Colorado law.

3.8 PROFESSIONAL MANAGEMENT. Any agreement for professional management of The Properties, or any other contracts providing for services of the Declarant, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and payment of a termination fee on thirty (30) days' or less written notice.

3.8 INSURANCE FOR THE ASSOCIATION. The Association may obtain and maintain the following insurance:

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- (a) Insurance coverage upon the Common Facilities;
- (b) comprehensive public liability insurance and other liability insurance insuring the Association, Board of Directors, Managers and agents in connection with The Properties;
- (c) such other insurance as the Board may deem desirable.

3.10 REBUILDING OF DAMAGED PROPERTY BY THE ASSOCIATION. Any portion of the Common Facilities or improvements thereon damaged or destroyed shall be repaired or replaced promptly by the Board of Directors unless a "Declaration not to Rebuild" signed and assented to by Owners representing one hundred percent (100%) of the votes of each class of members and by seventy-five per cent (75%) of the First Mortgagees is recorded in the office of the County Clerk and Recorder of Boulder County indicating their intention not to rebuild; except that the private street, sidewalks, and visitor parking within Outlot A and the drainage facilities within Outlot A and within the drainage easements must be repaired or replaced unless the City of Boulder shall consent in writing to the Declaration not to Rebuild.

The cost of repair or replacement of the property in excess of any insurance proceeds received and reserves shall be assessed as a Common Expense in accordance with paragraph 4.3(a) 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 property is not repaired or replaced; (a) the insurance proceeds, if any, shall be used to restore the damaged property to a condition compatible with the remainder of The Properties and (b) the remainder of the proceeds shall be distributed to all Owners in the same proportion as Common Expenses are assessed. Proceeds hereunder shall be paid to the Owners and their respective First Mortgagees as their interests may appear and no Owner or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

ARTICLE IV: ASSESSMENTS.

4.1 ASSESSMENTS. Declarants, subject to Paragraph 4.6 below, hereby covenant for each Lot owned within The Properties, and each Owner other than Declarants by acceptance of a deed for any Lot, whether or not expressed in such deed, is deemed to covenant and agree to pay to the Association the assessments provided herein. All assessments defined herein, together with interest, costs and reasonable attorneys fees shall be a charge and continuing lien upon each Lot with respect to which an assessment is made, attaching as a lien as of the date the assessment is made, continuing until fully paid. Each assessment shall also be a

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personal obligation of the Owner, or jointly and severally of the Owners, of a Lot assessed, at the time an assessment is made. The personal obligation of Owner(s) shall not pass to successors in title unless expressly assumed by them.

4.2 **PURPOSE OF 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, which include, but are not limited to, the repair and maintenance of the Common Facilities and for any other purpose reasonable, necessary or incident to such purposes. Such assessment may include the establishment and maintenance of cash reserves and sinking funds for all of the foregoing purposes, including but not limited to an adequate reserve fund for the maintenance, replacement or repair of those elements which must be repaired on a periodic basis.

In the event repairs are required resulting from negligent acts of a Member, the Member's family, guests, employees, invitees or tenants, such Member shall promptly reimburse the Association for such expenses. Upon due notice to the responsible Member and failure of such Member to make such reimbursement to the Association within thirty (30) days, then the cost of the repairs shall be chargeable to such Member by Individual Assessment in accordance with Paragraph 4.3(b) hereof against such Member.

4.3 **BASIS OF ASSESSMENTS.**

(a) **Common Expenses:** The Common Expenses of the Association include but are not limited to the expenses of the maintenance and repair of the Common Facilities, all of which expense shall take in to account any sinking fund established for future expected expenditures, and the payment of premiums for insurance obtained by the Association pursuant to paragraph 3.8 hereof. Common expenses shall be paid by the Members in the proportion which the number of Lots owned by a Member bears to the total number of Lots within The Properties.

(b) **Individual Assessments:** The Board of Directors of the Association shall have the right to assess any Member individually amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 4.2, 4.3, 5.5, 5.6 and 8.2 hereof.

(c) **Levy of Assessments:** At least thirty days before the end of each calendar year, the Association, by its Board, shall determine the Common Assessment payable by each Member during the succeeding calendar year; the Association shall determine whether this assessment shall be payable monthly or quarterly. Provided however, that said assessments may be adjusted upon a finding of necessity by the Board of Directors, but no more than twice in any one year.

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Individual Assessments may be assessed at any time as required, and are exempt from any voting requirements otherwise called for under this Declaration.

As soon as practicable after the end of a year, the Association shall total actual expenses and charge or credit any deficiency or excess to each Member.

The omission, or failure, of the Association to fix assessments for any year shall not be deemed a waiver, modification or release of the Members from their obligation to pay.

(d) Non-Exemption: No Member shall be relieved from payment of any assessment by non-use of the Common Facilities or by the abandonment of his Lot.

(e) Fines. The Board of the Association shall have the right to assess fines against Owners for each violation of this Declaration, the Articles, Bylaws and Rules of the Association. No fine may be assessed until the Owner involved has received notice of the reason for the fine, has had an opportunity to appear before the Board to discuss the fine, and the Board has levied the fine by a two thirds (2/3) vote. No fine may exceed two percent (2%) of the total of the Owner's yearly assessments for all purposes, but each day a violation continues after the fine has been assessed shall be a separate violation.

4.4 SPECIAL ASSESSMENTS. In addition to the assessments authorized above, the Board may levy special assessments for the purpose of defraying the cost of any construction or reconstruction, unexpected repairs or replacement or capital improvements, including necessary fixtures and personal property related thereto. If any such total assessment exceeds \$50 per Lot per year, the same must have assent of a two-thirds vote of the Members at which a quorum is in attendance, (as more fully defined by the Association's By-Laws), at a meeting duly called for such purpose or at the annual meeting. Written notice of such a meeting shall be given as required by the By-Laws.

The limitation set forth above shall not apply to any expenditures made by the Board of Directors for repair in the event of damage and destruction as set forth in paragraph 3.9 hereof.

4.5 DUE DATES; NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.

(a) Fines, Individual and Special 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 for payment of the assessment,

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which shall be at least quarterly.

(c) Written notice of assessments shall be sent to each Member specifying the type, amount and due date of each assessment.

(d) All assessments shall become delinquent unless paid within thirty (30) days from their respective due dates. All unpaid assessments shall be subject to a late charge for nonpayment as may be determined from time to time by the Board. If such assessments are not paid within thirty (30) days of their due date, they shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum or such other reasonable rate as may be fixed by the Board and uniformly applied.

Failure to make payment within sixty (60) days of the due date thereof shall cause the full amount of all of such Member's assessments of all types for the remainder of that year to become due and owing at once, 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 or otherwise, the delinquent Member shall pay and the assessment, late charge and interest herein provided, and all costs of collection, including reasonable attorneys fees and costs incurred by the Association in enforcing payment. If a "Notice of Lien" is utilized in collection the costs associated with it shall be a cost of collection.

(d) The Association is hereby granted a lien against a Member's Lot for any payment of an assessment required by this Declaration. The lien for assessments provided for herein shall be subordinate to the lien of any First Mortgagee as defined herein. The lien attaches when an assessment is levied by the Association and continues until full payment is made.

The lien hereby given shall also be a lien upon all rents and profits of the encumbered Lot, subject to and subordinate to the rights of any First Mortgagee under any assignment of rents given to such First Mortgagee.

If a foreclosure action is commenced to foreclose any assessment lien and the Dwelling Unit on such encumbered Lot is abandoned or left vacant, the Association may take possession and rent the Dwelling Unit or apply for the appointment of a receiver, without prior notice to the Owner, subject to the rights of a First Mortgagee.

The Association shall also have the right to commence a civil action against a Member failing to pay any amounts due under assessments, and to obtain judgement for the amounts due, including late fees, interest, costs and reasonable attorneys fees.

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(f) The lien granted hereby shall be foreclosed as provided by the laws of Colorado applying to foreclosure of mortgages on real property. The Association shall have the power to bid at any sale, and if title is obtained to hold, lease, mortgage and encumber or convey the same.

(g) The lien granted hereby shall be superior to any homestead exemption now or hereafter provided by Colorado or Federal law. The acceptance of a deed to a Lot shall constitute waiver of any homestead exemption as against the assessment lien, whether or not expressed in the deed.

(h) Sale or transfer of an interest in a Lot shall not affect the lien granted hereby, except that sale or transfer of a Lot pursuant to foreclosure by a First Mortgagee or proceedings in lieu thereof, including a deed in lieu of foreclosure, or cancellation or forfeiture of an executory land sales contract, shall extinguish the lien for assessments due prior to the date a First Mortgagee acquires title to the Lot as a result of such proceedings. The Association's right to recover assessments due from a delinquent Owner shall continue. The lien and obligation to pay assessments coming due after such proceedings shall continue.

(i) The Association shall furnish any Owner or First Mortgagee with a written certificate, binding upon the Association, setting forth the assessments due or paid upon any Lot, upon demand upon payment of a reasonable fee to the Association.

4.6 DECLARANTS' OBLIGATIONS. Declarants shall pay to the Association for each Lot owned by a Declarant twenty-five per cent (25%) of the annual assessment for common expenses paid by Class A Members, until a certificate of occupancy is issued for a dwelling unit on such lot, and thereafter the Declarant shall pay the full amount of assessments for such Lot. Declarants also covenant to pay to the association any operating deficit incurred in operating the Association and maintaining the Common Facilities, exclusive of the cost of funding any sinking funds or reserve funds, until the Class B Memberships shall be converted to Class A Memberships pursuant to paragraph 3.5(b) hereof. Any payments by Declarants of any operating deficits shall be credited against sums due from Declarants as annual assessments for common expenses described herein.

ARTICLE V: USE AND OTHER RESTRICTIONS.

5.1 LAND USE AND BUILDING TYPE. No Lot within The Properties shall be used for any purpose other than permitted by the municipal ordinances of Boulder, Colorado. No Dwelling Unit shall be erected on any part of The Properties which is not compatible with the standards, character, quality and amenities associated

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with the neighborhood and approved in writing by the Architectural Control Committee in accordance with ARTICLE VI hereof.

5.2 BUILDING SIZE, LOCATIONS, HEIGHT RESTRICTIONS, COMPLIANCE WITH ORDINANCES. No principal building may be constructed on any of the Lots except within the minimum setbacks, including a front yard setback from a street or Outlot A of 20 feet (except Lot 1, garage, 4 feet, provided two additional off street parking spaces are provided); minimum side yard setback adjacent to Outlot A or a utility easement of 10 feet; minimum combined two Lot sideyard setback of 15 feet, except garages may have one interior sideyard setback of zero (0) feet; rear yard setback for principal buildings shall be 20 feet. Total building coverage for each Lot shall not exceed the maximum coverage permitted by the City of Boulder pursuant to applicable zoning regulations and the planned unit development approved for The Properties. No building shall exceed the height of 35 feet. Further, all buildings shall comply with the solar access ordinance of the City of Boulder. The Properties are within solar access area II. No building may be constructed or enlarged on Lots 1 through 14 which casts a winter solstice 10 a.m. to 2 p.m. shadow over the 25' "solar fence" at the boundary of any other lot on which another building or solar energy device may be constructed, excluding the common drive, and similar outlots or driveways on surrounding properties, on which solar energy devices or buildings may not be constructed.

All buildings shall comply with the then applicable building, fire and other codes of the City of Boulder, Colorado.

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 VI hereof.

5.3 TREES AND SHRUBS. The removal of trees and shrubs from The Properties shall be prohibited without express written permission from the Architectural Control Committee.

5.4 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.

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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.

5.5 TRASH. Each Lot shall provide a fully enclosed area for containment of trash, garbage, or other refuse. Each Owner must provide for regular removal of garbage, and 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, on the first occasion upon thirty (30) days' written notice to the Owner thereof, and on subsequent occasions involving the same Owner upon ten (10) days written notice, 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 4.3(b).

5.6 POLLUTION.

(a) Voluntary Compliance: The drainage facilities and drainage easements carry runoff or flood waters onto City of Boulder Open Space lands to the West and North of The Properties. It is imperative to the general health and welfare of the residents of The Properties and the City of Boulder that no harmful pollutants, such as gas, oil, used engine oil, other petroleum products or other hazardous substances or materials be spilled on any Lot or on any part of the Common Facilities. Such pollution is a danger to the residents of The Properties and could be carried into the soil, polluting underground water flows, or could be carried with surface runoff, eventually reaching the Open Space lands and causing damage to them. To prevent such damage, it shall be the duty of the Association, through its Board, officers or managing agent, to meet with each Owner of a Lot and each lessee of any Dwelling Unit to explain the importance of refraining from spilling any petroleum products or hazardous materials onto The Properties, as well as to explain the civil liability of Owners and the Association for any damage caused by pollution.

(b) Civil liability for pollution damage: Any Owner shall be liable to the other Owners, to the Association and to the City of Boulder for any damage suffered by such parties, from pollution shown by standards of civil proof to have originated from the Lot owned by such Owner, or shown to have been caused, by standards of civil proof, by the actions of such Owner or his lessees or invitees as to pollution occurring on or originating

from any of the Common Facilities; provided that if pollution is shown to have originated on an Owner's Lot and the Owner of that lot can sustain the burden of proof that the pollution was caused by the actions of another Owner, or such Owner's lessees or invitees, then such other Owner shall be liable to such parties for such damages. If it shall be shown that pollution damage occurred, but it shall not be shown that such damage occurred on an individual Owner's Lot, or was caused by another Owner on such Lot, or was caused by an individual Owner or his lessees or invitees, then liability for such damage shall be jointly shared by all Owners, and by the Association. After appropriate determination of liability, through arbitration or by an appropriate court of law, then damages for pollution may be collected from individual Owners by individual assessments pursuant to 4.3(b) hereof, and any joint liability of all Owners for pollution damage may be collected as common expenses by assessments pursuant to 4.3(a) hereof.

5.7 DAMAGE OR DESTRUCTION. In the event any structure is destroyed either wholly or partially by fire or other casualty, said structure shall be promptly rebuilt or remodeled to conform to this Declaration or all debris and remaining portions of the structure, including the foundation, shall be promptly removed from The Properties.

5.8 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 or hazardous to any person.

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

5.9 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 any Class B members to maintain upon The Properties, without charge, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental for construction or sales purposes, including, but not limited to, a business office, storage area, construction yard and structures, signs, model Dwelling Units and sales offices.

5.10 UTILITIES. All electric service lines, television and radio cables and telephone line installations and connections from the Owner's property line to the Dwelling Unit shall be placed

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underground and all antennas must be concealed from public view with no aerial masts, unless otherwise approved by the Architectural Control Committee, except for existing service to Lots 1 and 11.

5.11 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.

5.12 FENCES AND MAILBOXES. Fences and mailboxes and property identification shall be approved by the Architectural Control Committee.

5.13 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 thereon 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 any of the residents of The Properties. In the event a dog, cat or other household animal shall constitute a nuisance or inconvenience to a resident of The Properties, then the Board of Directors shall have the right to impose a fine for each day such animal continues to be present within The Properties.

Dogs, cats and other household animals shall not be allowed to run at large within The Properties, but shall be at all times on a leash while such animal is off his Owner's Lot. It shall be the duty of the Association, or its representative, to notify the City of Boulder of pets found at large within The Properties in violation of City Ordinances.

5.14 MINERAL EXPLORATION. No portion of The Properties shall be used to explore for or to remove any hydrocarbons or other minerals of any sort.

5.15 PARKING. Vehicle parking may be subject to regulation and restriction by the Board of Directors.

5.16 RULES. Every Member, his guests, members of family, tenants, servants, employees, invitees, lessees and licensees shall adhere to the Rules adopted by the Board of Directors, as amended from time to time.

ARTICLE VI: 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 (hereinafter "improvement") located upon The

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Properties there shall be submitted to the Association, acting through its Architectural Control Committee, if such a committee shall be in existence at the applicable time, and otherwise acting through its Board (herein referred to as the "Committee"), two complete sets of plans and specifications for said proposed improvements. No such improvement of any kind shall be erected, altered, placed or maintained with 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, landscaping 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 exterior. In order to avoid unnecessary hardships, it is mandatory that all Owners contemplating such improvements should submit preliminary drawings in duplicate of such work to the Committee in order to obtain tentative action thereon before causing the 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 for improvements which are not suitable or desirable in the Committee's opinion for aesthetic, energy conservation, or other reasons, and in passing upon such improvement plans, the Committee shall take into consideration the suitability of the proposed improvement in terms of overall design compatibility, materials, color, site, location, harmony with other improvements in The Properties; and the use of solar energy or energy conservation design and construction techniques, with reference to standards contained in the Land Use Regulations, City of Boulder, as of the date of this Declaration or later amended, to the extent they may assist the discretion of the Committee. The Committee may disapprove if the plans and specifications submitted are incomplete, or in the event the Committee deems the plans, specification or details or any part thereof to be contrary to the spirit or intent of this Declaration. The decisions of the Committee shall be final, subject to any 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 shall be deemed to have been given.

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6.2 ORGANIZATION. The Architectural Control Committee shall consist of three persons. Declarants 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 3.5(b). Said members need not be Owners. Thereafter, committee members shall be appointed by the Board of Directors and should be Owners if there are Owners who will serve as Committee members; one such committee member shall serve for one year; one such committee member shall serve for two years; and one such committee member shall serve for three years; and the Board of Directors shall appoint committee members to replace those whose terms expire for three-year terms. Members of such Architectural Control Committee should serve without compensation for services performed, but if no persons are available to serve without compensation the Association may authorize reasonable compensation.

6.3 EXTERIOR PAINTING, LANDSCAPING AND FENCES. No exterior painting of a building located in The Properties shall occur without prior Committee approval; fences and landscaping plans shall also require Committee approval before construction.

6.4 WAIVER. The Committee may, at its discretion, waive any provision of ARTICLE VI of this Declaration in the event there is a practical difficulty or unnecessary hardship; subject to the provisions of Paragraph 10.5.

ARTICLE VII: EASEMENTS.

7.1 UTILITY AND DRAINAGE EASEMENTS. Easements for public utilities and for drainage over and across The Properties shall be those shown upon the recorded plat of The Properties and such other utility easements as may be granted by Declarant prior to any lot sales or established pursuant to the provisions of this Declaration or as may hereinafter be granted over and across The Properties by the Board of Directors of the Association.

7.2 DECLARANT'S EASEMENTS. Anything to the contrary herein notwithstanding, the Declarant and/or its agents or other Class B members hereby reserve an easement and right of way over all Lots not conveyed for the sole use of constructing improvements, utilities and other matters including the right to erect temporary buildings. This reservation shall terminate upon conveyance by Declarant 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 or model home for demonstration purposes.

7.3 ZERO LOT LINE EASEMENTS. If any garage or other building may pursuant to this Declaration be located on or so near its property line or such garage or other building's roof overhang shall encroach upon an adjoining Lot, so as to make entry onto an adjoining Lot a necessary incident to the construction or maintenance of such garage or building, then at the time of

construction of such improvement, provided such construction shall commence within twenty (20) years from the date this Declaration is recorded, there shall be created an easement for the existence of such roof overhang and for the construction, maintenance, repair or reconstruction of such garage or other building which has an encroaching roof overhang or is so near to or on its property line. The easement for construction, maintenance, repair or reconstruction shall be six feet in width on the adjoining Lot, but the Owner benefitting from such easement shall promptly repair and be liable for damages for failure to repair damage resulting from use of the easement. Construction of any structure within such easement shall be prohibited, unless approved by the Architectural Control Committee. Such easements shall not be deemed to be encumbrances upon the Lot burdened thereby for title and other purposes.

7.4 COMMON DRIVEWAY. The Declarants reserve unto themselves, their heirs, personal representatives, successors and assigns, a non-exclusive easement for a common drive and visitor parking in designated locations over and across Outlot A as shown on the recorded Plat of The Properties. Such reservation is made for the purpose of ingress and egress to and from, and for the use and benefit of all of the Lots within The Properties, subject however, to the duty of the benefited parties to in no way obstruct or hinder the utilization of said common drive for its stated purpose of ingress and egress to the lots which it serves.

7.4 EASEMENTS DEEMED APPURTENANT. The easements and rights created herein shall be deemed appurtenant to the Lots benefited. All conveyances and instruments affecting title to a Lot shall be deemed to grant, reserve or burden such Lot with the easements provided herein, as if set forth in such instrument in full, even if no reference to such easements appears in such instrument.

ARTICLE VIII: MAINTENANCE.

8.1 MAINTENANCE OF THE PROPERTY OWNED BY THE ASSOCIATION. The Board of Directors shall provide for the care, operation, management and repair of the Common Facilities. Without limiting the generality of the foregoing and by way of illustration, the Association shall keep the Common Facilities safe, attractive, functional and in good repair; and may make necessary or desirable alterations or improvements therein. Nothing herein shall be construed as a waiver of any right by the Board of Directors to recover for any damage or expense incurred as the result of the willful or negligent action or omission of any person.

8.2 EXTERIOR MAINTENANCE. In the event an Owner of any Lot within The Properties fails to maintain his Lot and/or the Dwelling Unit located thereon in a manner satisfactory to the Board of Directors, including exterior paint or finish of any Dwelling Unit, the mowing of grass and the pruning or trimming of plants, and other aspects, the Board of Directors shall have the

right and duty, through its agents and employees, upon thirty (30) days' written notice to the Owner thereof, to enter upon said Lot and Dwelling Unit and to repair, maintain, and restore the Lot and the exterior of the Dwelling Unit. The cost of such restoring, repair or maintenance shall be chargeable to such Owner by Individual Assessment in accordance with Paragraph 4.3(b) hereof.

Each Lot shall be subject to an easement in favor of the Association (including its agents, employees, and contractors) for providing maintenance as described herein.

ARTICLE IX: CONDEMNATION.

9.1 CONDEMNATION OF ASSOCIATION'S PROPERTY. In the event of a proceeding in condemnation or partial condemnation of any real property owned by the Association by any governmental authority authorized so to do, then the proceeds from such condemnation attributable to such property shall be distributed to all Members in the same proportion as Common Expenses are assessed in accordance with Paragraph 4.3(a) hereof.

9.2 CONDEMNATION OF DWELLING UNITS. If all or a portion of a Lot is condemned, then the proceeds of any such condemnation shall be distributed as agreed to by the Owner of such Lot and the entity performing the condemnation.

9.3 LIEN HOLDERS. When a condemnation occurs and an Owner's Lot is subject to an encumbrance, the proceeds due such Owner by reason of such condemnation shall be paid to the Owner and his First Mortgagee as their interests may appear and no Owner or other party shall be entitled to priority over a First Mortgagee with respect to any such distribution.

ARTICLE X: FIRST MORTGAGEE'S RIGHTS.

10.1 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 Lot in which The First Mortgagee has as security interest;
- (b) Financial statements of the Association, prepared for the Association and distributed to its 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 By-Laws, or the Articles of Incorporation of the Association;

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(e) Notice of commencement of any condemnation proceedings with respect to any real property owned by the Association or with respect to a Lot in which the First Mortgagee has a security interest;

(f) Notice of any failure to pay an assessment which is not cured by the Owner of a Lot in which a First Mortgagee has a security interest within sixty (60) days of notice to the Owner by the Association.

10.2 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 of the same Lot, the Association shall honor the most recent request received.

10.3 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 for the property owned by the Association and may also pay taxes and other charges which are in default or which may or have become a charge against the property owned by the Association. 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.

10.4 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.

10.5 RESTRICTIONS. The prior written approval of all First Mortgagees will be required for any of the following:

(a) If there are insurable improvements located in the Common Facilities, then for the failure to maintain fire and extended coverage insurance on insurable real and personal property owned by the Association on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and for the use of hazard insurance proceeds for losses to any part of the property owned by the Association for other than repair, replacement or reconstruction of such property;

(b) Amendment of the Declaration which (i) changes the manner in which assessments are assessed against Owners or (ii)

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amends this paragraph or any other provision which specifically grants rights to First Mortgagees hereunder;

(c) By act or omission, seeking to abandon, partition, subdivide, encumber, sell or transfer any of the property owned by the Association after such property has been conveyed to the Association subject to Declarant's rights herein; 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;

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

(e) The waiver or abandonment of the scheme of Architectural Control or the enforcement thereof, or of the provisions of Article VIII, Maintenance.

10.6 PROTECTION. No violation or breach of or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any mortgage taken in good faith and for value and perfected by recording in the appropriate office, prior to the time of recording in said office of an instrument describing the Lot and listing the name or names of the Owner or Owners thereof and giving notice of such violation, breach or failure to comply. However, any purchaser on foreclosure or person accepting a Deed in lieu thereof shall take subject to this Declaration.

ARTICLE XI: DURATION AND AMENDMENTS.

11.1 DURATION. The covenants, restrictions and obligations of this Declaration shall run with and bind the land for term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

11.2 AMENDMENTS. Except in cases of amendments that may be amended by the Declarant pursuant to paragraph 11.3 hereof, and except as restricted by paragraph 10.5(c) hereof, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety per cent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded. Any amendment must have the unanimous consent of each First Mortgagee. No amendment shall affect the rights of the Declarant unless approved and consented to by the Declarant in writing. No amendment shall modify the duty of the Association and the Members to maintain and reconstruct the private drive, traffic control curbing, visitor parking and drainage facilities within Outlot A or the drainage facilities within the drainage easements on Lot 9 and Lot 12 unless consented to in writing by the City of Boulder.

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11.3 SPECIAL AMENDMENTS. So long as the Declarants have Class B Membership, the Declarants reserve and are granted the right and power to record a Special Amendment to this Declaration (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may perform in the future) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages or deeds of trust covering Lots within The Properties. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarants to make or consent to a Special Amendment on behalf of each Owner. Each deed, or lease, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of this power of Declarants to make, execute and record Special Amendments. No Special Amendment made by Declarants shall affect or impair the lien of the first mortgage or deed of trust upon a Lot or any warranties made by an Owner or First Mortgagee in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage or deed of trust on such Owner's Lot. Any such amendment must have the unanimous approval of each First Mortgagee.

ARTICLE XII: GENERAL PROVISIONS.

12.1 ENFORCEMENT. The Association, or any Owner, shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, servitudes, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. The Association and each Owner is hereby encouraged to consider the resolution of any disputes through binding arbitration pursuant to the Colorado Arbitration Act, to reduce the delays and expenses of litigation, and the Association shall make available information concerning arbitration to the parties to any dispute involving the enforcement hereof; arbitration is not required hereby but shall require the future written agreement of parties to a dispute to submit it to arbitration. Failure by the Association or by any Owner to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.2 SEVERABILITY. Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

12.3 CLAIMS. No claim or cause of action shall accrue in favor of any person for the failure of the Association or Declarant to enforce any provision hereof. This section may be pleaded as a full bar to the maintenance of any suit, action, or arbitration brought in violation of this provision.


12.4 NOTICES. Each Owner shall register his mailing address with the Association. Any notice required to be sent to any Owner 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 an Owner on the records of the Association at the time of such mailing.

12.5 ATTORNEY'S 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 attorney's fees as well as all costs incurred in the prosecution or defense of such action.


12.6 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.

12.7 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 Declarants, have signed and sealed this Declaration this 17th day of February, 1988.



John W. Roper

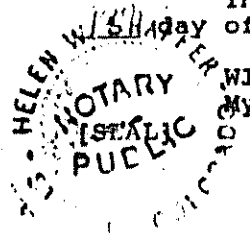


Karen T. Roper



Robert C. Naumann

STATE OF COLORADO)
) SS.
COUNTY OF BOULDER)

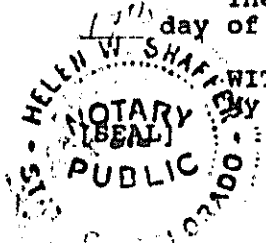


The foregoing instrument was acknowledged before me this 13th day of February, 1988 by John W. Roper and Karen T. Roper.

WITNESS my official hand and seal.
My commission expires: 6/14/89

Helen W. Shaffer
Notary Public
1507 Pine Street
Boulder, Colorado 80302

STATE OF COLORADO)
) SS.
COUNTY OF BOULDER)



The foregoing instrument was acknowledged before me this 13th day of February, 1988 by Robert C. Naumann.

WITNESS my official hand and seal.
My commission expires: 6/14/89

Helen W. Shaffer
Notary Public
1507 Pine Street (address)
Boulder, Colorado 80302