

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

This Third Amendment to the Declaration of Covenants, Conditions and Restrictions of the Nyland Subdivision ("Third Amendment") is made this 5<sup>th</sup> day of May, 2019.

**RECITALS**

A. Colorado Cohousing Development Corporation caused that Declaration of Covenants, Conditions and Restrictions of the Nyland Subdivision to be recorded with the Clerk and Recorder's Office for the County of Boulder, Colorado on September 20, 1991 at Reception Number 1131322 / Film 1693, ("Declaration") covering certain real estate in the County of Boulder, State of Colorado, which is incorporated herein by this reference.

B. The Nyland Community Association ("Association") is a Colorado nonprofit corporation existing under the laws of the State of Colorado for the purpose of acting as a homeowners' association and administering the community described in the Declaration.

C. Paragraph 13.2(b) of the Declaration permits amendments to the Declaration concerning material provisions of the Declaration which establish, provide for govern, or regulate assessments, reserves, and insurance, amongst other things, if "[t]he consent of Owners who are entitled to cast at least sixty-seven percent [(67%)] of the votes in the Association" is obtained.

D. C.R.S. § 38-33.3-217(1)(a)(I), which applies to the Association pursuant to C.R.S. § 38-33.3-117(1.5)(d), permits amendments to the Declaration only by the affirmative vote or agreement of unit owners of units to which more than fifty percent (50%) of the votes in the association are allocated or any larger percentage, not to exceed sixty-seven percent (67%), that the Declaration specifies.

E. The Owners, to which at least sixty-seven percent (67%) of the votes in the Association are allocated, have provided the affirmative vote or agreement to this Third Amendment.

F. Paragraph 13.2(b) of the Declaration requires "the approval of at least fifty-one percent [(51%)] of Eligible Holders of mortgages recorded against a Lot within the Properties subject to Eligible Holder mortgages" to the Third Amendment. Paragraphs 1.12, 1.13, and 13.1(d) of the Declaration provide that First Mortgagees shall become "Eligible Holders" and, therefore, entitled to notification of the Third Amendment if First Mortgagees register with the Association. The Association has received no registration from First Mortgagees. The affirmative vote or consent of First Mortgagees to the Third Amendment is unnecessary, as no First Mortgagees have registered with the Association, as contemplated by the Declaration.

**AMENDMENT**

1. Article Five, Paragraph 5.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

5.2 Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of The Properties and the Members of the Association, for the improvement, repair, maintenance and reconstruction of the

Common Areas, providing insurance therefor, paying taxes thereon, and providing for the exterior maintenance and blanket hazard insurance for the Dwelling Units located within The Properties, reserving for any other purpose reasonable, necessary or incidental to such purposes. Such assessments shall include the establishment and maintenance of a reserve fund for the improvement, maintenance, reconstruction, and repair of the Common Areas and of the Dwelling Unit exteriors which the Association has an ongoing duty to replace, repair and/or maintain on a periodic basis and for other purposes as the Association determines upon approval by Owners who are entitled to cast at least eighty percent (80%) of the votes in the Association.

2. Article Five, Paragraphs 5.3(a), (c), and (d) of the Declaration are hereby deleted in their entirety and replaced with the following:

a) Annual Assessment for Common Expenses. The Board of Directors shall assess against each Owner of a Lot within The Properties an Annual Assessment for Common Expenses to pay for the Common Expenses as herein defined of the Association. Said assessment shall include the establishment and maintenance of a reserve fund for the maintenance, replacement, reconstruction and repair of those portions of the Common Areas which the Association has a duty to replace, repair, maintain and/or reconstruct on a periodic basis. Such assessment shall be paid by the Owners in the proportion which the number of Lots owned by an Owner bears to the total number of Lots within The Properties. Said assessment shall commence in accordance with Paragraph 5.9 hereof, subject to the provisions of Paragraph 5.11 hereof.

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

c) Individual Assessments. The Board of Directors shall have the right to individually assess any Owner or Owners amounts as provided for by this Declaration, to include but not be limited to, charges assessed under Paragraphs 6.4, 7.5, 7.15, 7.18, 7.20, 7.21, 7.27, 8.2, 8.7, 10.3, 10.4, 10.8, 10.12, 11.1, and 11.2 hereof. No Individual Assessment based on alleged violations of Rules, Regulations, and Guidelines of the Association or of the Declaration shall be levied until the owner or owners to be charged have been given a Notice and Hearing as provided for in the Bylaws of the Association. No Individual Assessment that is not based on alleged violations of Rules, Regulations, and Guidelines of the Association or of the Declaration shall be levied until the Association has followed the requirements of Article Eleven, Section (d) of the Bylaws.

d) Dwelling Unit Insurance Assessment. The Board of Directors shall assess each Owner of a Dwelling Unit located upon The Properties the cost of obtaining, maintaining, and administering the property insurance for special form covered causes of loss for such Dwelling Units, in accordance with Paragraph 10.2 hereof. A Dwelling Unit Insurance Assessment shall not be levied to cover the cost of obtaining, maintaining, and administering the property insurance for the Common Area, except for Carports.

Such Dwelling Unit Insurance Assessment shall be prorated and paid by the Owners based on the total square footage of each Owner's Dwelling Unit, garage, if any, and one or more Carports an

Owner may have the "right to use," in accordance with Paragraph 7.28 hereof. The Board of Directors shall have the exclusive authority to determine total square footage for purposes of this Paragraph. Said assessment shall commence in accordance with Paragraph 5.9 hereof.

3. Article Ten of the Declaration is hereby deleted in its entirety and replaced with the following:

#### ARTICLE TEN: INSURANCE

10.1 Authority to Purchase/General Requirements. The Association shall obtain and maintain in full force and effect the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado, except as otherwise provided in Paragraph 10.9 hereof, which governs insurance obtained by Owners. The Board of Directors shall have the authority to obtain, maintain, or change insurance coverage in its sole discretion, in order to address changes in the insurance market and the Association's needs. The Board of Directors and the Managing Agent shall not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the following: (a) such coverage is unavailable from reputable insurance companies, as determined in the sole discretion of the Board of Directors; (b) such coverage is available only at a demonstrably unreasonable cost; or (c) the Board of Directors has determined in its reasonable discretion that obtaining or maintaining such coverage is not in the Association's best interest. The Board of Directors shall promptly furnish to each Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverage obtained on behalf of the Association.

The Board of Directors shall not obtain any policy where,

- a) Under the terms of the insurance company's charter, bylaws, or policy, contributions or assessments may be made against the Association, owner, First Mortgagee or such First Mortgagee's successor and assigns, or
- b) By the terms of carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policyholders or members; or
- c) The policy includes any limited clauses (other than insurance conditions) which could prevent owners or First Mortgagees, their successors and assigns from collecting insurance proceeds.

Each such policy shall provide that:

- a) The insurer to the extent possible waives any right to claim by way of subrogation against the Association, the Board of Directors, the Managing Agent or the Owners, and their respective agents, employees, Guests and, in the case of the Owners, the members of their households;
- b) Such policy shall not be canceled, invalidated, or suspended due to the act or omission of any owner or his or her Guests or of any Member, officer or employee of the Board of Directors or the Managing Agent without a prior demand in writing that the Board or the Managing Agent cure the defect and neither shall have so cured such defect within thirty

(30) days after such demand. In any event, as to the interests of all other insured Owners not guilty of any such act or omission, such policy shall not be invalidated or suspended and shall remain in full force and effect;

- c) Such policy, including any fidelity insurance, may not be canceled, or substantially modified by any party (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;
- d) Such policy shall provide that the insurer shall provide at least thirty (30) days' prior written notice of non-renewal, if any, to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;
- e) Such policy shall provide that the insurer shall provide at least thirty (30) days' prior written notice that the Association has not paid the premium, if at all, to the Board of Directors, the Managing Agent and to each First Mortgagee listed as a scheduled holder of a first mortgage in the policy;
- f) Such policy must provide that no assessment may be made against a First Mortgagee, its successors or assigns and that any assessment made against others shall not become a lien on a Lot superior to the lien of a First Mortgagee; and
- g) Such policy shall contain a waiver of defense of invalidity on account of the conduct of any of the Owners.

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

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

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

**10.2 Property Insurance.** The Board of Directors shall obtain and maintain property insurance for special form covered causes of loss or its equivalent, which covers property against all perils except those specifically and normally listed as exclusions in such a policy as follows:

- a) All insurable improvements located on the Common Areas including fixtures, machinery,

equipment, carports, and supplies maintained for the service of the Common Areas as well as common personal property and supplies and other personal property belonging to the Association, including fixtures and building service equipment to the extent that they are part of the Common Areas; and

- b) All the Dwelling Units located upon The Properties,
1. Including structures, fixtures, additions, basements, garages; framing, siding, exterior trim, exterior windows and trim, exterior doors, trim, and hardware, roofing, gutters and down spouts, chimneys, utilities, plumbing rough-in and connection, electrical rough-in and connection, insulation, wallboard, sub-flooring, attached porches, attached decks, exterior stairs, sunrooms, mudrooms, heating and cooling equipment, and other structural equipment affixed to the Dwelling Unit, plus necessary detail to complete the foregoing; but
  2. Excluding (I) all personal property within the Dwelling Unit, (II) Interior Finished Surfaces (meaning all lath, furring, plaster, paneling, wallpaper, paint, carpet, tile, hardwood flooring, door and window trim, and any other finish materials on the walls, floors, and ceilings within the Dwelling Unit), (III) Interior Fixtures (meaning all interior doors, railings, cabinetry, countertops, sinks, toilets, faucets, lighting trim, electrical fixtures, water heaters, water filters, appliances, window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, and any other non-structural fixture within the Dwelling Unit), (IV) Non-Structural Exterior Structures (meaning sheds, patios, perimeter fencing, and any other exterior structures on the Lot of the Dwelling Unit that are not structural to the Dwelling Unit itself), (V) Non-Structural Exterior Fixtures (meaning all solar panels, renewable energy generation devices, mitigation systems, and any other exterior fixtures on the Lot of the Dwelling Unit that are not structural to the Dwelling Unit itself), (VI) landscaping on Lots, and (VII) landscaping on Common Areas that benefits a single Dwelling Unit, in accordance with Paragraph 11.1 hereof. Such property and any insurance thereupon shall be the responsibility of the Dwelling Unit Owner.

Such insurance shall at all times represent one hundred percent of the current replacement cost based on the most recent appraisal of each Dwelling Unit less exclusions, pursuant to Section 10.2(b)(2), and all insurable improvements in the Common Areas. The current replacement cost shall not include values for land, foundation, excavation and other items normally excluded therefrom and shall be without deduction for depreciation and with no provision for coinsurance. The Board of Directors shall review at least annually all of its insurance policies in order to ensure that the coverages contained in the policies are sufficient. The Board of Directors shall, consistent with good business practices, and at reasonable intervals obtain a written appraisal for insurance purposes from a duly qualified real estate or insurance appraiser, which shall be maintained as a permanent record, showing that the Association's insurance represents one hundred percent (100%) of the current replacement cost as defined above for all of the Dwelling Units less exclusions located upon The Properties and all insurable improvements located on the Common Areas, together with any personal property owned by the Association.

Such policies shall also provide:

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

If requested at least sixty (60) days prior to expiration of then current policy, a duplicate original of the policy of hazard insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any Owner and First Mortgagee requesting the same, at least ten (10) days prior to expiration of then current policy.

The insurance shall be carried naming the Association as the owner and beneficiary thereof for the use and benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners, their respective mortgagees, and shall provide a standard noncontributory mortgage clause in favor of each First Mortgagee. The Association shall hold any insurance proceeds received in trust for the Owners and their First Mortgagees as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Areas and Dwelling Units. Owners are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Common Areas and Dwelling Units have been repaired or restored.

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

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

The deductible, if any, on such insurance policy shall be as the Directors determine to be reasonable and consistent with good business practice. The Association shall give Owners notice of the deductible at least annually but shall also give notice any time the amount of the deductible changes.

**10.3 Rebuilding of Damaged Common Areas.** Any portion of the insurable Common Areas as defined in Paragraph 10.2 that are damaged or destroyed shall be repaired or replaced promptly by the Board of Directors unless a "Declaration Not to Rebuild" signed by Owners who are entitled to cast at least sixty-seven percent of the votes in the Association and by fifty-one percent of the Eligible Holders of Mortgages recorded against Lots within The Properties subject to Eligible Holders' mortgages is recorded within one hundred days of the date of damage or destruction indicating their intention not to rebuild, in the office of the County Clerk and Recorder, Boulder County, Colorado.

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

The Board of Directors shall not be relieved of this obligation to repair and/or reconstruct by the fact that proceeds received from the Insurer to repair or rebuild are not sufficient to cover the cost thereof. In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Common Areas, including but not limited to the deductible, such amount by which such proceeds are insufficient shall be assessed as an Individual Assessment against all Owners in accordance with Paragraph 5.3(C) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Owners. Such Individual Assessment shall be assessed in the same proportion as the Annual Assessment for Common Expenses is assessed in Paragraph 5.3(a) hereof. Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and/or reconstruction. In the event amounts collected are in excess of the amounts required for such repair and/or reconstruction, the excess may be returned to the Owners by the Association in the same proportion as the assessment was levied or the Association may elect to place such excess in the Reserve Fund.

If any portion of the damaged Common Areas is not repaired or replaced, the insurance proceeds shall be used to restore the damaged Common Areas to a condition compatible with the remainder of the Common Areas and the remainder of the proceeds shall be distributed to all Owners in the same proportions as the Annual Assessments for Common Expenses are levied. Proceeds hereunder shall be distributed by checks made payable to the Owners.

The rights and obligations set forth in this Paragraph 10.3 are separate and distinct from the Association's rights and obligations set forth in Article Eleven hereof, governing maintenance. Further, the Association's obligation to insure certain improvements does not and shall not create an obligation to maintain certain improvements.

**10.4 Rebuilding of Damaged Dwelling units.** In the event of damage to or destruction of a Dwelling Unit or any other casualty for which the Association is carrying insurance in accordance with the above, the Board of Directors shall promptly repair or reconstruct the same in a workmanlike manner substantially in accordance with the condition at the time immediately prior to the loss to the extent of the Association's insurance obligation.

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 to the condition at the time immediately prior to the loss, to the extent of the Association's insurance obligation, are not sufficient to cover the cost thereof.

In the event of repair and/or reconstruction, the proceeds of any insurance collected shall be available to the Association for the purpose of repair and/or reconstruction. If the insurance proceeds are insufficient to properly repair and/or reconstruct the damaged Dwelling Units, such excess cost may be collected by an Individual Assessment against Owners in accordance with Paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Owners.

Such Individual Assessment shall be paid by the Owners of Dwelling Units benefitting from repairs on a pro-rata basis according to the relative cost to repair the damaged Dwelling Unit(s). Owners of Dwelling Units not benefitting from repairs shall have no obligation to pay such an Individual Assessment. For purpose of this Paragraph, the Board of Directors shall have the sole discretion in determining if a Dwelling Unit benefits from repairs and the cost to repair the damaged Dwelling Unit(s). Further assessments may be made in a like manner if the amounts collected prove insufficient to complete the repair and reconstruction. In the event amounts collected are in excess of the amounts required for such repair and reconstruction, the excess may be returned to the Owners by the Association in the same proportion as the assessment was levied, or the Association may elect to place such excess in the Reserve Fund.

**10.5 Liability Insurance.** The Board of Directors shall obtain and maintain commercial general liability (including but not limited to libel, slander, false arrest, invasion of privacy, non-owned automobile liability) public ways within The Properties, any other areas that are under the Association's responsibility, and commercial spaces owned by the Association, whether or not they are leased to some third party, insuring the Association, each officer, director, the Managing Agent, and each Owner. Such coverage under this policy shall include the legal liability of the insureds for property damage, personal injuries, and death of persons, but only for claims and liabilities arising in connection with the ownership, existence, use, management, or operation of the Common Areas and the legal liability arising out of lawsuits relating to employment contracts in which the Association is a party. Limits of liability shall in no event be less than \$1,000,000 with respect to any single occurrence.

Additional coverages may be required to include protection against such other risks as are customarily covered with respect to The Properties similar in construction, location and use, including, but not limited to, Host Liquor Liability coverage with respect to events sponsored by the Association, Workmen's Compensation and Employer's Liability Insurance, Comprehensive Automobile Liability Insurance and Severability of Interest Endorsement.

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

**10.6 Crime and Fidelity Bonds or Insurance.** The Board of Directors shall obtain and maintain adequate



crime and fidelity bonds or insurance coverage, to protect against dishonest acts on the part of the Directors, Officers, Trustees, Employees or Volunteers of the Association and all others who handle or are responsible for handling funds collected and held for the benefit of the Association and shall also contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definitions of "employee" or similar expression, provided however, the Board of Directors shall not maintain fidelity coverage to cover any Managing Agent.

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

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

**10.7 Additional Insurance.** The Association may obtain insurance against such other risks, as it shall deem appropriate with respect to the Association responsibilities and duties, as follows:

- a) Adequate Directors' and Officers' Liability Insurance, if available, and if deemed consistent with good business practices, for errors and omissions of all Directors, Officers, committee members, and any person acting at discretion of the Board of Directors in relation to their duties and responsibilities in acting on behalf of Association to be written in an amount which the Board of Directors deems adequate;
- b) Workmen's Compensation and Employer's Liability Insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law;
- c) Coverage for those who volunteer their time for Association activities and projects, which coverage may in a policy of Directors' and Officers' Liability Insurance or in a separate policy; and
- d) Such other insurance of a similar or dissimilar nature, as the Board of Directors shall deem appropriate with respect to The Properties.

**10.8 Payment of Insurance Premiums.** The cost of the insurance obtained by the Association in accordance with this Article shall be paid from Association funds and shall be collected from the Owners as part of the Annual Assessment for Common Expenses as provided for in Paragraph 5.3(a) hereof, with the following exceptions:

- a) The insurance referred to in Paragraph 10.2 hereof pertaining to the special form coverage for all of the Dwelling Units; and

- b) Premiums on fidelity insurance maintained by a Managing Agent for its officers, employees, and agents.

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

The cost of procuring and maintaining the special form coverage, as provided in Paragraph 10.2 hereof, insuring the Dwelling Units and Carports, shall be paid for from Association funds and be collected from the Owners of such Dwelling Units in the following manner: the cost of insurance attributable to the Owner's Dwelling Unit for one full year shall be prorated according to the number of days remaining between closing and that Dwelling Unit's insurance policy Renewal Date and shall be paid at closing.

Thereafter, the cost of such insurance shall be paid by the Owners as a Dwelling Unit Insurance Assessment in accordance with Paragraph 5.3(d) hereof commencing with the first assessment after closing.

**10.9 Owners' Insurance.** Each Owner shall be responsible for obtaining and maintaining, at such Owner's expense, as follows:

- a) Property insurance, representing one hundred percent of the current replacement cost based on the most recent appraisal of each Dwelling Unit, that covers the following: (I) all personal property within the Dwelling Unit, (II) Interior Finished Surfaces, (III) Interior Fixtures, (IV) Non-Structural Exterior Structures, (V) Non-Structural Exterior Fixtures, (VI) landscaping on Lots, and (VII) landscaping on Common Areas that benefits a single Dwelling Unit, in accordance with Paragraph 11.1 hereof;
- b) Deductible assessment insurance or equivalent endorsement to cover an Individual Assessment levied by the Association to cover the deductible amounts in the event of loss or damage that is to be covered by the Association's insurance policy, pursuant to Paragraph 10.12;
- c) Loss assessment insurance or equivalent endorsement, for assessments made against all Owners for property or liability claims that exceed the coverage obtained by the Association; and
- d) Liability insurance for injury, death, or damage in the Residence or upon the Lot.

Insurance obtained by Owners in accordance with Paragraphs 10.9(a), (b), and (c) shall name the Association as an additional interest such that the Association will receive notice of renewals, cancellations, or policy changes.

No Owner shall be entitled to exercise his or her right to acquire or maintain such insurance

coverage so as to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by an Owner. All such policies shall contain waivers of subrogation. No Owner shall obtain separate insurance policies except as provided in this paragraph.

The Association does not assume any obligation to ensure that Owners comply with this Paragraph or obtain proper insurance coverage, but failure of an Owner to obtain and maintain coverage required under this Paragraph shall constitute a violation of this Declaration.

**10.10 Managing Agent Insurance.** The Managing Agent, if any, shall be adequately insured for the benefit of the Association and shall maintain and submit evidence of such coverage to the Association, including professional liability or errors and omissions insurance, workers' compensation, unemployment and fidelity coverage. The Association may indemnify its Managing Agent, except for that agent's intentional acts or omissions or negligence outside the scope of their duties and obligations to the Association, or outside of direction from or of the Association.

**10.11 Insurance Claims Procedures.** In the event an occurrence is made known to an Owner which results in damages or injury to an Owner, an Owner's Dwelling Unit, or the Association and which may come within the Association's insurance coverage, the following procedures shall be followed:

- a) The Owner shall promptly notify the Association of the damage by providing written notice to the Association setting forth the Owner's home address (and the Dwelling Unit address if different from the home address) and phone number; the time, place and circumstances of the event; the damage or harm believed to be incurred, the Owner's rough estimate of the damage incurred, if possible; and the names and addresses of the injured (if any) and of available witnesses.
- b) The Board shall then have fifteen (15) days after receipt of the Owner's complete written notice of the potential claim within which to evaluate the claim. If the Association does not receive timely written notice of the potential claim, the Owner shall be responsible for all prejudice, increased costs, and consequential damage caused by the Owner's failure to timely submit notice of the potential claim to the Association. Within this fifteen (15) day time frame, the Board shall, with consultation of advisors as the Board deems appropriate, make a determination as to whether the occurrence or claim consists of damages for which the Owner is responsible for insuring. If the Board determines that the occurrence or claim consists of damages for which the Owner is not responsible for insuring, the Board shall determine whether the occurrence or claim consists of damages for which the Association is responsible for insuring.
- c) If the Board determines the damages are those for which the Association is responsible for insuring, apart from damages due to negligence as discussed herein below, the Board, on behalf of the Association as the insured, shall determine whether the Board should submit a claim under its policy by balancing the benefits conferred to the Association under the policy against the costs to the Association associated with making the claim.
- d) In the event that the Board determines that it is in the best interests of the Association to

submit a claim, the Board shall do so. If the Board believes that it is not in the Association's best interest to submit the claim, it may decline to submit the claim. In either case, the Board shall provide a written response to the Owner (within fifteen (15) days after receipt of the Owner's written notice) of the Association's position with regard to the claim.

- e) At all times, the Owner shall provide the Association and its agents and insurers reasonable access to inspect the subject matter of the potential claim. The fifteen (15) day period for the Association to respond may be extended upon the Owner's failure to provide reasonable and timely access to the subject matter of the potential claim.
- f) If the Association declines to submit a claim to its insurance, and if the subject matter of the potential claim falls within the Association's insurance responsibilities and is valued in excess of the insurance deductible on the Association's policy, and if the Owner has strictly complied with the terms of this Insurance Claims and Deductible Policy, the Owner may then submit a claim to the Association's insurer directly.

**10.12 Payment of Deductibles.** The amount of the deductible shall be paid by the Association in the event of loss or damage that is to be covered by the Association's insurance policy. The Board may elect to cover the deductible amounts by levying one or more Individual Assessments against Owners in accordance with Paragraph 5.3(c) hereof and not as a Special Assessment and such assessment shall be exempt from any special voting requirements of the Owners. If the Board elects to cover the deductible amounts by levying one or more Individual Assessments, the following provisions govern:

- a) In the event of loss or damage that is to be covered by the Association's property insurance policy to insurable improvements located on the Common Areas in accordance with Paragraph 10.2(a), the Board of Directors may levy an Individual Assessment that shall be paid by the Owners in the proportion which the number of Lots owned by an Owner bears to the total number of Lots within The Properties. Said assessment shall commence on the date levied by the Board of Directors. This Paragraph 10.12(a) shall also apply in the event of loss or damage that is to be covered by the Association's property insurance policy to insurable improvements located on the Common Areas in accordance with Paragraph 10.2(a) but said loss or damage is within the deductible under that policy.
- b) In the event of loss or damage that is to be covered by the Association's property insurance policy to one or more Dwelling Units located upon The Properties in accordance with Paragraph 10.2(b)(1), the Board of Directors may levy an Individual Assessment that shall be paid by the Owners of Dwelling Units benefitting from repairs on a pro-rata basis according to the relative cost to repair the damaged Dwelling Unit(s). Owners of Dwelling Units not benefitting from repairs shall have no obligation to pay such an Individual Assessment. For purpose of this Paragraph, the Board of Directors shall have the sole discretion in determining if a Dwelling Unit benefits from repairs and the cost to repair the damaged Dwelling Unit(s). This Paragraph 10.12(b) shall also apply in the event of loss or damage that is to be covered by the Association's property insurance policy to one or more Dwelling Units located upon The Properties in accordance with Paragraph 10.2(b)(1) but that is within the deductible under that policy.

- c) Notwithstanding anything herein to the contrary, in the event of: (I) any insured or uninsured loss is suffered by the Association or any Owner, or (II) any insurance deductible is paid for by the Association, which loss or payment of deductible is caused by the negligent or willful act or omission of any Owner or Owner's Guests, then the expenses, costs, and fees incurred by the Association, including any deductibles paid, shall be the personal obligation of such responsible Owner. These amounts shall become an Individual Assessment levied against such responsible Owner and said Owner's Dwelling Unit.

4. Article Eleven, Paragraph 11.2 of the Declaration is hereby deleted in its entirety and replaced with the following:

11.2 Maintenance of the Lots and Dwelling Units. To provide and maintain exterior harmony for all of the Dwelling Units located within The Properties, the Association shall maintain and repair the exterior of the Dwelling Unit located upon each Lot within The Properties to include the painting, repairing, replacing and maintaining of roofs, gutters, down spouts, exterior building surfaces, and the painting only of deck railings, porch railings, exterior doors and frames, and window frames. Such maintenance shall not include the maintenance, repair or replacement of glass in doors or windows, screened surfaces, entry door or door frames or hardware, window frames or hardware, decks and porches or their structural elements, stairs, perimeter fences, or patios, all of which shall be the sole responsibility of the Dwelling Unit's Owner.

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

In the event such repair, maintenance and/or replacement is resulting from the neglect or destruction by an Owner or such Owner's Guest, as defined herein, the Board of Directors shall have the right and duty, after Notice and Hearing, to charge the costs of such repair, maintenance and/or replacement to such owner by an Individual Assessment in accordance with Paragraph 5.3(c) hereof. Determination of whether such repair or maintenance is the obligation of the Association, or if the Association's obligation is necessary, shall rest solely with the Board of Directors, which will also have the sole responsibility for determining the kind and type of materials used in such repair and maintenance.

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


5. In the event of a conflict between this Third Amendment and the Declaration, this Third Amendment shall control. In the event of a conflict between this Third Amendment and any amendments to the Declaration preceding this Third Amendment, this Third Amendment shall control. Except as modified by this Third Amendment, the Declaration and any amendments to the Declaration preceding this Third Amendment shall remain in full force and effect. To the extent that any provision of this Third Amendment is held to be invalid for whatever reason, such provisions shall be reformed to the least amount necessary to make them valid and the remainder of this Third Amendment shall be unaffected.

**SECRETARIAL CERTIFICATE**

I, the undersigned Secretary of the Association, do hereby certify the following, pursuant to Paragraph 14.2 of the Declaration:

- 1. The Owners, to which at least sixty-seven percent (67%) of the votes in the Association are allocated, have provided the affirmative vote or agreement to this Third Amendment. This is the requisite number of votes in the Association.
- 2. The affirmative vote or consent of First Mortgagees to the Third Amendment is unnecessary, as no First Mortgagees have registered with the Association, as contemplated by the Declaration.
- 3. Originals of written consents of Owners along with the recorded amendment, are in the records of the Association and available for inspection.

The Nyland Community Association  
a Colorado Nonprofit Corporation

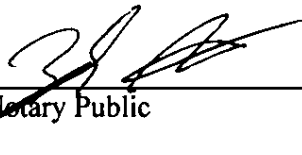
By:   
Secretary

STATE OF COLORADO     )  
COUNTY OF Boulder     ) ss.

The foregoing instrument was acknowledged before me this 15 day of May, 20 19, by Kiki Anderson Charles as Secretary of The Nyland Community Association, a Colorado nonprofit corporation.

Witness my hand and official seal.

My commission expires: 2-23-21

  
Notary Public

