

WILD VIEW COVENANTS

Boulder County, Colorado

Recorded March 22, 1994 with Boulder County Recorder
Record #: 01407781

1. **DECLARANT.** The "Declarant" is Lesley J. Murakami
2. **RECITALS:** Declarant owns the "Property" in the Northwest ¼ of Section 28, Township 2 North, Range 69 West of the 6th P.M., Boulder County, Colorado described as follows:

Lots 1 through 48 (the "Lots"). Hillcrest Heights, Replat B, according to the Plat recorded September 28, 1993, on Film No. 1877, Reception No. 1339913, in the office of the County Clerk and Recorder of Boulder County, Colorado.

Declarant intends to transfer Lots subject to covenants, conditions and restrictions and a general plan of improvement and development to enhance their value, desirability, attractiveness and salability.

The Declarant declares that Lots 1 through 48, Hillcrest Heights, Replat B, shall be held, sold, conveyed, used, improved, occupied and resided upon in conformity with and subject to the following covenants, conditions and restrictions which shall run with the Property and be binding on and inure to the benefit of all parties having any rights, title or interest in any Lot, their heirs, successors and assigns.

3. DEFINITIONS

- 3.1. "Association" shall mean and refer to the Wildview Homeowners Association, a Colorado Nonprofit Corporation.
- 3.2. "Board" shall mean and refer to the Board of Directors of the Association.
- 3.3. "Declarant" shall mean and refer to Lesley J. Murakami.
- 3.4. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a simple title to any Lot which is part of the Property, including contract sellers, but excluding those having merely as security for the performance of an obligation.
- 3.5. "Property" and "Properties" and "Wildview" means all of Hillcrest Heights, Replat B, according to the recorded plat thereof.
- 3.6. "Outlot" means to any plot of land identified as an "outlot" on the recorded plat.
- 3.7. "DRC" means the Design Review Committee, described in paragraph 5.
- 3.8. "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Hillcrest Heights, Replat B.

4. **HOMEOWNER'S ASSOCIATION.** The property shall be governed and this Declaration implemented by The Association.

4.1 **Membership.** Each Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

4.2 **Classes of Voting Membership and Voting Rights.** The association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, except the Declarant, and shall be entitled to one vote for each Lot owned.

Class B. The Class B Member shall be the Declarant. The Class B member shall be entitled to four votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership, at such time as the Class B member voluntarily converts its Class B membership to Class A membership in the Association or ceases to own any Lots.

5. **ARCHITECTURAL CONTROLS**

5.1 **Design Review Committee.** Declarant hereby established a Design Review Committee (the "DRC") initially composed of the developer or developer's designees(s). Upon termination of the Declarant's Class B membership, three members of the DRC shall be appointed by the Board of Directors of the Association. The decision of a majority of the DRC shall be the decision of the DRC. The DRC may designate a representative to act on its behalf and may employ consultants to assist in the performance of its functions. DRC members shall be entitled to compensation for services performed pursuant to this Declaration. The DRC shall have the right to a reasonable fee for its review of plans and specifications submitted to it for approval in accordance with the provisions of this Declaration.

5.2 **Design Guidelines.** The DRC shall establish Design Guidelines for Wildview. The Design Guidelines are intended to establish standards relating to the size, shape, mass and placement on a Lot of improvements; materials which can be used in Wildview; landscaping requirements; grading and drainage requirements and other matters determined, by the DRC, to enhance the value, desirability, attractiveness and salability of Lots, within Wildview. No improvements shall be constructed, erected, placed, maintained or permitted unless and until plans and specifications have been submitted to and approved in writing by the DRC in accordance with Design Guidelines. The Design Guidelines shall govern the review and review process. The Design Guidelines may be amended by approval of an affirmative vote of 33 households pursuant to the bylaws rules on voting.

5.3 **Liability and Enforcement**

- a. Neither the Committee nor the Declarant, nor their respective successors or assigns, shall be liable in damages to anyone submitting plans to the Committee for approval, or to any Owner affected by this Declaration, by reason of a mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any plans and/or specifications.
- b. Every Owner or other person who submits plans to the Committee agrees, by submission of such plans and specifications, that he will not

bring any action or suit against the Committee, its members, representatives or consultants, or the Declarant to recover any such damages. Approval by the Committee shall not be deemed to constitute compliance with the requirements of any building codes and it shall be the responsibility of the Owner or the person submitting plans to the Committee to insure compliance therewith.

6. **ASSESSMENTS.**

6.1 **Covenant for Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, covenants and agrees to pay the assessments imposed by the Board in accordance with the terms of this Declaration. The annual assessment shall be determined by the Board of Directors but shall not exceed \$300.00 per year.

6.2 **Purpose and Use of Annual Assessment.** The assessments and charges levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents of Wildview and for the conduct of the Association's business. Assessments may be for, among other things: expenses of management; insurance premiums; landscaping and ground care expenses; common lighting; repairs and renovations; wages; utility charges; legal and accounting fees; expenses and liabilities incurred by the Board of Directors under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund; improvements authorized by the Board of Directors; and other costs and expenses relating to Wildview. The omission or failure of the Board to fix the assessments for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay the assessments when they are made. The annual assessment shall be fixed at a uniform rate for all Lots except those Lots owned by the Association, which shall be exempt from assessment, and except those Lots leased by the Association, the assessment of which shall be governed by the terms of the Lease. The Board shall prepare and deliver or mail to each member an itemized statement showing the receipts and disbursements of the Association for the previous calendar year and an itemized budget of the estimated cash requirements and projected disbursement of the Association for the following calendar year. The Board shall notify each member of the amount and due date of the annual assessment. The annual assessment shall be prorated if the ownership of a Lot commences on a day other than the first day of an assessment period.

6.3 **Special Assessments.** The Board may levy special assessments for the purpose of defraying the cost of construction, repair or replacement of improvements, or to provide for unforeseen costs incurred by the Association. Special assessments may also be assessed against specific lots to recover costs incurred by the Association in curing an Owner's violation of these Covenants.

6.4 **Lien for non-payment of Assessments.** All sums assessed but unpaid for the expenses chargeable to any Lot, including interest thereon as fixed by the Board (not to exceed 18 percent per annum) shall constitute a lien on such Lot superior to all other liens and encumbrances pursuant to Colorado law. The Board may, but shall not be required to, prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot which may be recorded in the office of the Clerk and Recorder of Boulder County, Colorado. A lien for unpaid assessments shall attach on the date of default in payment of the assessment, and may be enforced by suit for breach of these

Covenants or by foreclosure on the defaulting Owner's Lot by the Association in a like manner as a mortgage or a Deed of Trust on real property upon the recording of a notice or claim thereof. In any such action to collect or foreclose, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice or claim of lien and all reasonable attorneys' fees. The Association shall have the power to bid on the Lot at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

6.5 Personal Liability of Member. The amount of any annual or special assessment assessed against each Lot, together with the costs and expenses of collection, including attorneys' fees, shall be a personal debt of the Owner or Member arising at the time the assessment is made. No Owner or Member may exempt himself from liability for an assessment by abandonment of his Lot, non-use of any Common Area or by any other act other than by lease of his Lot to the Association, in which case the terms of the lease relating to assessment shall govern liability for payment. The Association may sue to recover a money judgment for unpaid assessments without foreclosing or waiving the lien securing the assessment obligation. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by the successor.

6.6 Payment by Lienholder. Any person or entity holding a lien on a Lot may pay any unpaid assessment payable with respect to such lot, and upon payment such person or entity shall have a lien on Lot of the same rank as the lien of his encumbrance for the amount paid.

7. Date of Commencement of Assessments. The assessments shall commence when imposed by the Board. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

8. CONSERVATION EASEMENTS. Oulots A, B, C, and D of Hillcrest Heights, Replat B, are subject to conservation easements and cooperative management agreements dated September 21, 1999, and recorded on Film 1877 under Reception Numbers 01339913 and 01339914 of the records in the Boulder County, Clerk and Records Office. Every owner, by acceptance of a title to a Lot, acknowledges awareness of the existence of such easements and agreements and areas to abide by them. Any owner who violates the terms and conditions of the conservation easements and/or cooperative management agreements shall be liable to the Declarant, and to the other owners, for any damages sustained or costs incurred, including reasonable attorneys' fees, as a result of such breach or in order to remedy or prevent such breach or continued breach.

9. DURATION OF RESTRICTIONS. The covenants, conditions and restrictions contained in this Declaration are covenants running with the land and shall remain in full force and effect for twenty (20) years from the date hereof, at which time they shall automatically extend for successive periods of ten years each, unless, prior to the expiration of the then current term, a written instrument is executed by the then Owners of seventy-five per cent (75%) of the Lots stating that this Declaration shall expire at the end of the then current term.

10. BINDING EFFECT. Each Owner of any Lot, by acceptance of a title to a lot, accepts title thereto subject to the foregoing restrictions, conditions, covenants and agreements for himself, his heirs, personal representative, successors and assigns,

covenants, and agrees and consents to these Covenants and agrees to keep, observe, comply with and perform these restrictions, conditions, covenants and agreements. These Covenants are intended and imposed for the mutual and reciprocal benefit of each and all of said Lots and the Owners thereof.

11. **WAIVER.** A variance, waiver or release of these conditions and/or restrictions granted by the DRC or any acquiescence or failure of the DRC to enforce any violation shall not be deemed to be a waiver of any of the conditions and restrictions in any other instance. The DRC may, by its signed written instrument, waive, release or vary any provision of these Covenants as they pertain to any Lot, which waiver, release or variance shall be effective as to all parties otherwise entitled to enforce these Covenants. No member of the Committee shall have any liability whatsoever to any Owner or other party aggrieved or injured on account of the grant of such release, waiver or variance. In return for such waiver, release or variance, the Committee may impose upon the Owner and the Lot involved such additional or altered covenants as the Committee deems proper and appropriate in the circumstances. Each Owner agrees, by accepting title or any interest in any Lot, that Declarant, its employees or agents, and each member of the Committee, shall be immune from suit or liability in accordance with the foregoing.

12. **SEVERABILITY.** In the event that any one or more of the provisions, conditions, restrictions, limitations and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions, limitations and covenants as herein set forth shall continue unimpaired and in full force and effect.

13. **ENFORCEMENT, COMPLIANCE WITH PROVISIONS OF DECLARATION AND RULES OF ASSOCIATION—ENFORCEMENT.** Each Owner shall comply strictly with the provisions of this Declaration and the provisions of the Articles of Incorporation and Bylaws of the Association and the decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply shall be grounds for an action against the noncomplying Owner to recover sums due and for damages or injunctive relief or both. The action shall be maintainable by the Board in the name of the Association on behalf of the Owners or, in a proper case, by an aggrieved Owner. The noncomplying Owner shall pay the reasonable attorneys fees and costs of the Association or of the aggrieved Owner. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

14. **AMENDMENT.** The Association may amend this Declaration and any Amendments thereto, in writing after approval by the Association. Such approval shall be governed by Article II of the Bylaws of Wild View at Little Gaynor Lake Homeowners Association, Inc., but in any event approval shall require an affirmative vote by more than 25 households. Any amendment shall be recorded with the Boulder County Clerk and Recorder's office.

DATED: March 15, 1994

DECLARANT: Lesley J. Murakami

By:

STATE OF COLORADO Ss. COUNTY OF BOULDER

The foregoing instrument was acknowledged before me this 15th day of 1994, by
_____ as _____ of _____.

Witness my hand and official seal.

Kim Bonham
Notary Public

My commission expires: 9/30/97

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Sections 5 and 14 Amended 2002.

