

**AMENDED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR EAGLE HEIGHTS SUBDIVISION**

THIS AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAGLE HEIGHTS SUBDIVISION (the "Declaration") ENTIRELY AMENDS AND REPLACES THE DECLARATION RECORDED AT RECEPTION NO 781545 AND THE AMENDMENT THERETO RECORDED AT RECEPTION NO 785110 IN THE OFFICE OF THE CLERK AND RECORDER, MONTROSE COUNTY, COLORADO AND is made as of 2/29, 2008, by EAGLEVIEW, INC., a Colorado corporation authorized to do business in Colorado (the "Declarant").

**RECITALS**

A. Declarant is the owner of that certain real property located in the County of Montrose, Colorado, more particularly described as follows: (the "Property"):

**N1/2 SW1/4 AND SE1/4 NW1/4, SECTION 22, TOWNSHIP 49 NORTH, RANGE 10 WEST, NEW MEXICO PRINCIPAL MERIDIAN,**

**EXCEPT: A TRACT OF LAND SITUATED IN THE SE1/4 NW1/4 SECTION 22, TOWNSHIP 49 NORTH, RANGE 10 WEST, NEW MEXICO PRINCIPAL MERIDIAN, MONTROSE COUNTY, COLORADO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID SE1/4 NW1/4 FROM WHENCE THE NORTHEAST CORNER OF SAID SE1/4 NW1/4 BEARS SOUTH 89°29'02" EAST, 30.00 FEET; THENCE NORTH 89°29'02" WEST ALONG SAID NORTH LINE, 458.73 FEET; THENCE SOUTH 00°14'36" EAST, 408.14 FEET; THENCE SOUTH 89°28'58" EAST, 458.73 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF 5950 ROAD; THENCE NORTH 00°14'36" WEST ALONG SAID WESTERLY RIGHT OF WAY LINE 408.15 FEET TO THE POINT OF BEGINNING, ALSO KNOWN AS TRACT NO. 1, PULVER LARGE TRACT EXEMPTION, RECORDED JUNE 2, 2003 AT RECEPTION NO. 704077, COUNTY OF MONTROSE, STATE OF COLORADO.**

ANY AND ALL WATER, WATER RIGHTS, DITCHES AND DITCH RIGHTS INCLUDING BUT NOT LIMITED TO 39.7 SHARES OF UNCOMPAHGRE VALLEY WATER USERS ASSOCIATION, APPURTENANT HERETO OR USED IN CONNECTION HERewith THE N1/2 SW1/4 AND SE1/4 NW1/4, SECTION 22, TOWNSHIP 49 NORTH, RANGE 10 WEST, NEW MEXICO PRINCIPAL MERIDIAN,

B. Declarant desires to create a common interest community pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes § 38-33.3-101 et seq. (the "Act") on the Property, the name of which is Eagle Heights Subdivision.

C. Declarant seeks to develop a high value, exceptional quality single family

residential neighborhood and adopts these covenants in order to enhance the value and quality of the property subject to these covenants.

## ARTICLE I

### DECLARATION AND SUBMISSION

*Declaration.* Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the land and be binding on all parties and heirs, successors and assigns of parties having any right, title or interest in all or any part of the Property and are for the purpose of establishing a general plan and of protecting and maintaining the value and desirability of the project as a high quality residential development. Additionally, Declarant hereby submits the Property to the provisions of the Act.

## ARTICLE 2

### DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration, the Articles of Incorporation or any Amendments thereto, and the Bylaws or any Amendments thereto, shall have the following meanings:

Section 2.1 "*Agency*" means any agency or corporation that purchases or insures residential mortgages.

Section 2.2 "*Articles*" mean the Articles of Incorporation for Eagle Heights Homeowner Association, Inc. a Colorado non-profit corporation, currently on file with the Colorado Secretary of State, and any amendments that may be made to those Articles from time to time.

Section 2.3 "*Annual Assessment*" means the Assessment levied pursuant to an annual budget.

Section 2.4 "*Architectural Review Board*" or "*ARB*" means the board which shall be appointed by the Association's Executive Board to approve construction of any buildings, additions, improvements, and changes in building design and construction on the Lots as herein provided other than those constructed by Declarant.

Section 2.5 "*Assessments*" means the Annual, Special and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.

Section 2.6 "*Association* " means Eagle Heights Homeowner Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

Section 2.7 "*Association Documents*" means this Declaration, the Articles of Incorporation, the Bylaws, the Map and any procedures, rules, regulations or policies adopted under such documents by the Association.

Section 2.8 "*Bylaws* " means the Bylaws adopted by the Association, as amended from time to time.

Section 2.9 "*Clerk and Recorder*" means the office of the Clerk and Recorder in the County of Montrose, Colorado.

Section 2.10 "*Common Element*" means all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners. The Common Elements, if any, are owned by the Association and consist of General Common Elements, if any, and Limited Common Elements, if any.

2.10.1 "*General Common Elements*" means all real and tangible personal properties of this Project except Limited Common Elements and the Residential Units.

2.10.2 "*Limited Common Elements*" means those parts of the Common Elements which are either limited to or reserved in this Declaration, on a Map or by action of the Association, for the exclusive use of an Owner of a Residential Unit or are limited to and reserved for the common use of more than one but fewer than all Owners.

Section 2.11 "*Common Expenses*" means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association; (ii) all other expenses of administering, servicing, conserving, managing, maintaining, repairing or replacing the Common Elements; (iii) insurance premiums for the insurance carried under Article 9; and (iv) all expenses lawfully determined to be common expenses by the Executive Board.

Section 2.12 "*County*" means the County of Montrose, Colorado.

Section 2.13 "*Declaration*" means this Declaration and the Map, and amendments and supplements to the foregoing.

Section 2.14 "*Executive Board*" means the governing body of the Association.

Section 2.15 "*First Mortgage*" means any Mortgage that is not subject to any monetary lien or encumbrance except liens for taxes or other liens that are given priority by statute.

Section 2.16 "*First Mortgagee*" means any person named as a mortgagee or beneficiary in any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

Section 2.17 "*Lot*" is synonymous with "Unit" or "Residential Unit".

Section 2.18 "*Manager*" means a person or entity engaged by the Association to perform certain duties, powers or functions of the Association, as the Executive Board may authorize from time to time.

Section 2.19 "*Map*" means all final Plats of the subdivided Parcels recorded on a phase by phase basis with the Clerk and Recorder, depicting a plan of the Property subject to this Declaration and any supplements and amendments thereto.

Section 2.20 "*Member*" means every person or entity that holds membership in the Association.

Section 2.21 "*Mortgage*" means any mortgage, deed of trust or other document pledging any Residential Unit or interest therein as security for payment of a debt or obligation.

Section 2.22 "*Mortgagee*" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

Section 2.23 "*Owner*" means the owner of record, whether one or more persons or entities, of fee simple title to any Residential Unit, and "Owner" also includes the purchaser

under a contract for deed covering a Residential Unit with a current right of possession and interest in the Residential Unit.

Section 2.24 "*Parcel*" means each platted, numbered and recorded division of land as depicted on the Map.

Section 2.25 "*Project*" means the common interest community created by this Declaration and as shown on the Map, consisting of the Property. The Project may also be referred to as the "Development" or the "Subdivision" or the "Common Interest Community".

Section 2.26 "*Property*" means the real property described herein, together with such additional property as is subjected to this Declaration.

Section 2.27 "*Residential Unit*" means one Parcel, together with the appurtenant interest in the Common Elements. This term is synonymous with "Lot".

Section 2.28 "*Successor Declarant*" means any person or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and recorded with the Clerk and Recorder.

Section 2.29 "*Supplemental Declaration*" means an instrument which annexes property to this Declaration.

Section 2.30 "*Supplemental Map*" means a supplemental Map of the Project which depicts any change in the Project through a Supplemental Declaration. The initial phase recordings are not supplemental and do not require amendment to this document.

Section 2.31 "*Entity Documents*" means this Declaration, the Map, the Bylaws, and the Articles of the Association.

Each capitalized term not otherwise defined in this Declaration or in the Map shall have the same meanings specified or used in the Act.

### ARTICLE 3

#### NAME, DIVISION INTO RESIDENTIAL UNITS, RESTRICTIONS ON USE

Section 3.1 *Name*. The name of the subdivision is Eagle Heights Subdivision. The subdivision is a common interest community pursuant to the Act.

Section 3.2 *Association*. The name of the Association is Eagle Heights Homeowner Association, Inc. Declarant has caused the Association to be incorporated as a non-profit corporation under the laws of the State of Colorado.

Section 3.3 *Number of Residential Units*. The maximum number of Residential Units in the Project is 46, exclusive of parcels annexed to the Project.

Section 3.4 *Identification of Residential Units*. The identification number of each Residential Unit is shown on the Map as a lot.

Section 3.5 *Description of Residential Units*. Each Residential Unit shall consist of surveyed and platted land.

Section 3.6 *Restrictions on Use*. Use and enjoyment of each Residential Unit shall be subject to the following restrictions and such additional restrictions as the Executive Board may propose and are accepted by the Owners by a vote of two-thirds of the majority of all Owners:

3.6.1 *Single Family Dwellings*. Each Lot on the Property shall be used only for single family residential purposes including garages and guest facilities which may be attached or detached. All improvements shall be constructed of suitable material and designed so as to be aesthetically compatible with the design and construction of the primary residence and aesthetically compatible with the entire Subdivision.

3.6.2 No Owner shall cause, permit or allow any of the following uses or acts on such Owner's Lot or Property:

(a) anything which will result in injury or damage to any trees or other planted materials in the Development;

(b) anything which will increase the rate charged for or cause the cancellation of any insurance maintained by the Association or which would violate any law;

(c) agricultural or livestock activity undertaken for commercial purpose, and no animals, pets, livestock, or poultry of any kind shall be raised, bred, or kept upon any Lot in the subdivision for business or commercial purposes. Dogs, cats, and similar pets of gentle disposition may be kept provided they do not disturb other residents by noise, smell, trespass or destruction of property. Pets must be appropriately fenced. Horses, cattle, sheep, goats, pigs or similar large animals are not permitted to be kept on any Lot in the subdivision for any purpose.

(d) the display in the public view of any signs or billboards without the prior written consent of the Board [except for signs and billboards which may be utilized by Declarant in the development or sale of Lots];

(e) any activity which in the view of the Board may be or become an annoyance or nuisance to Owners Development and sale of Lots on the Property by Declarant is necessary for completion of the Development and therefore is not deemed to be an annoyance or nuisance. Further, construction of permitted improvements on Lots is necessary for completion of the Development and is therefore not deemed to be an annoyance or nuisance so long as the rules and regulations adopted by the Association or the ARB from time to time with respect thereto are adhered to;

(f) the hanging out to dry of any laundry, bedding or similar items;

(g) the storage of waste and garbage except in covered sanitary containers shielded from the public view and the view of neighboring Owners;

(h) All outside home facilities not limited to heaters, air conditioners, metal chimneys, antennas, satellite dishes, etc. must be concealed from view. All utility lines shall be buried. No heating/cooling equipment may be roof or side mounted. If placed on the ground, such systems must be concealed from view. No satellite dishes, antennas, towers or transmission lines shall be placed on Lots, except that satellite dishes 18" in diameter or less may be placed on the home (concealed) without ARB approval.

(i) No subdivision of Lots beyond that shown on the final Map of the subdivision will be permitted by the Owners. Nothing in this section shall prevent the Declarant from development of 46 total lots as shown by the final Map, as amended.

(j) All vehicles owned by Owner shall be parked in garages. There shall be no overnight parking on streets within the Subdivision.

(k) No RVs, boats, campers, trailers or similar vehicles shall be allowed on any Lot in any way that is visible. Any such items shall be stored in a matching outbuilding approved under the standards of the ARB.

3.6.3 *Mining and Drilling Activities Prohibited.* Any use of the surface of any Lot within the Property for water, oil, gas, mineral, geothermal or oil shale exploration, development, mining or drilling activities of any kind whatsoever is expressly and absolutely prohibited.

3.6.4 *Association Power.* The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Residential Unit or the Common Elements, if any.

3.6.5 *Trash and Rubbish.* Rubbish, garbage or other waste shall be kept and disposed of in a sanitary manner, and all containers shall be kept in a clean, sanitary condition.

3.6.6 *Nuisances.* No Owner shall cause or allow the origination of excessive odors or sounds from his Lot. No Owner shall cause or allow any other nuisances of any kind whatsoever to exist on his Lot.

3.6.7 *Motor Vehicles.* No motorized vehicle which is either non-operational or non-licensed shall not be stored on any Lot unless said vehicle is kept or stored in a fully enclosed building.

3.6.8 *Temporary Residences.* No structure of temporary character, recreational vehicle, camper trailer, basement, tent or accessory building shall be used on any Lot as a residence.

3.6.9 *Dwelling Quality.* All structures must be of a permanent nature constructed on site and affixed to a permanent foundation. No modular home, trailer house, mobile home, manufactured home, prefabricated home or similar shall be set upon any lot within the Subdivision. All residences must be of workmanlike quality using new materials and shall be completely finished before occupancy. Completion must normally occur within 18 months of approval of the ARB and issuance of appropriate Montrose County permits.

3.6.10 *Lighting.* No security or large yard lights shall be allowed to burn between 11:00 pm and 6:30am. Free standing or pole lights may not exceed 8 feet in height as measured from the natural or finished grade whichever is less, and such lights may not exceed 75 watts per fixture, one fixture per pole. No more than 8 such free standing or pole lights are permitted per Lot. All lights are to be shielded so as to avoid direct visibility of the light source from any neighboring Lot. All lighting installations are subject to approval of the ARB. This is not intended to preclude small, low wattage, sidewalk guide lights.

3.6.11 *Fences and Hedges.* Fences and hedges shall be at the option of the Owner of each Lot except those fences which may be constructed by Declarant or constructed and maintained by the Association in common areas. All hedges and fence material must be approved by the ARB. No fence or hedge shall extend beyond the front corners of the residence. All fences for containments of pets and children are to be constructed as unobtrusive and inconspicuous as possible. Natural landscape materials such as trees and shrubs may be

used for privacy hedging or screening so long as such landscaping does not interfere with views in the Subdivision. Fences shall not exceed 5 feet in height measured from the natural or finished grade whichever is less and shall be maintained in a neat and orderly manner with posts that are plumb and not allowed to lean. All fences shall be constructed in an open rail-type or a wooden picket type fence. Welded wire mesh may be installed on the inside of the fence. Chain link, barbed-wire or vinyl fencing shall not be permitted. Metal farm or ranch gates are not permitted.

3.6.12 *Maintenance of Scenic Views and Prohibition of activities producing unsightly Appearance.* It is recognized that the Subdivision offers exceptional views of mountains, mesas, valleys and open fields. No Owner shall erect any structure or plant or maintain any tree or shrub which will or has the potential to unreasonably obstruct, limit, or interfere with the scenic view of any other Lot within the Property. Structures that have been approved by the ARB are deemed to be in compliance with this section. Lots must be kept clear of accumulated trash, toys, equipment, building materials, and the like. Owners shall not store or keep anything on or in common areas nor shall any owner hang, affix or place anything upon any fence, mailbox, or any other structure in the common area. Owners may not hang, erect, affix or place anything in windows, walls, doors, fences, or on structures or any other place that would or might create an unsightly, objectionable, or offensive appearance.

3.6.13 *No noxious, offensive, hazardous, unsafe, excessively noisy, or annoying activities are permitted.* No noxious or offensive activity shall be carried out upon any part of the subdivision, nor shall anything be done or placed or allowed to exist which is or will become a nuisance or hazard or cause unreasonable disturbance to others. No activity shall be conducted nor any improvement made or constructed on any part of the property which is or might be unsafe, dangerous, or hazardous to any person or property. No activity shall be conducted, drainage constructed, nor any improvement made which will or might injure or seriously damage the trees, shrubs, plants, structure, or other improvement on a neighboring Lot. No sound or odor shall be emitted which is noxious or unreasonably loud. Power tools and equipment, lawn mowers, blowers, snow removal equipment and similar which produce a loud noise shall be operated only in the daylight hours.

3.6.14 *Firearms.* The discharge of firearms is prohibited on any Lot or common area within the subdivision.

3.6.15 *Off Road Vehicles.* Only "street legal" vehicles may be operated upon the streets and roads of the subdivision; provided, however, that other vehicles such as all terrain vehicles and riding lawn mowers may be operated on Lots within the subdivision and upon the streets and roads for purposes of loading and unloading.

3.6.16 *Governing Authority.* An Architectural Review Board (ARB) shall be established by the Association and shall be responsible for interpretation and enforcement of these regulations. The ARB shall follow the Architectural Standards and Review Guidelines for Eagle Heights Subdivision, as amended. The ARB may be an outside agency or person and receive reasonable compensation from the Association. The ARB shall have the sole right of interpretation of these regulations, to include disallowing a proposed building, if the ARB feels that the spirit of the regulations has been violated. All decisions by the ARB shall be deemed final.

#### ARTICLE 4

##### MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS

Section 4.1 *The Association.* Every Owner of a Residential Unit shall be a Member of the

Association. Membership shall be appurtenant to and may not be separated from ownership of a Residential Unit.

Section 4.2 *Transfer*. Membership held by the owner of a Lot is an appurtenance to such Lot and shall not be transferred, alienated, or pledged in any way, except upon the sale of such Lot, and then only to the purchaser of such Lot. Any attempt to make a transfer except by the sale of a Lot is void. Reference to the transfer of membership need not be made in an instrument of conveyance or encumbrance of such Lot for the transfer to be effective, and the same shall automatically pass with title to the Lot.

Section 4.3 *Membership*. Every person or entity who is a record Owner of a fee or undivided fee interest in any Unit which is now or hereafter subject to assessment as provided in the Declaration, including contract buyers, shall be a Member of the nonprofit corporation. Acquisition by such Owner of an interest in a Unit shall be deemed such Owner's consent to admission as a Member, and such membership may not be terminated without divestiture of such interest in a Unit. Following termination of the Common Interest Community, the membership shall consist of all former Owners entitled to distribution of proceeds under the Act or their heirs, personal representatives, successors or assigns. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment by the Association.

#### Section 4.4 *Voting*.

1. The nonprofit corporation will have voting Members as follows: The nonprofit corporation shall have one class of voting membership. Each Owner shall be entitled to one (1) vote for each Unit owned. Cumulative Voting by Owners shall not be permitted. All Members shall be entitled to vote on all matters except any Members who are in default in any obligations to the Association. The total number of votes that may be cast in connection with any matter shall be equal to the total number of Units then existing within the Association. During the Period of Declarant Control, except as may otherwise be provided in the Declaration, the Declarant or persons appointed by the Declarant may appoint and remove all officers and members of the Board of Directors. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control; but, in that event, the Declarant may require, for the duration of the Period of Declarant Control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.
2. Votes allocated to a Lot may be cast under a proxy duly executed by an Owner. If a Lot is owned by more than one (1) person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. An Owner may revoke a proxy given under this section only by actual written notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates eleven (11) months after its date, unless it provides otherwise. The Secretary of the Association must bring all proxies to each meeting where the Owners



are entitled to vote and all proxies shall be available for inspection by the officers of the Association and by any Owner in attendance at such meeting. A proxy need not be an Owner. All proxies must be in writing and may be either general or for a particular meeting.

3. The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the Board of Directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the partnership in the absence of express notice of the designation of a specific person by the partnership. The vote of a limited liability company may be cast by any manager of the limited liability company in the absence of express notice of the designation of a specific person by the limited liability company. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership, limited liability company or business trust owner is qualified to vote.
4. Votes allocated to a Lot owned by the Association may not be cast.
5. The Declarant, its successors or assigns, may exercise the voting rights allocated Lots owned by it.
6. Cumulative voting in the election of the Board of Directors shall not be permitted.

Section 4.5 *Declarant Control*. Declarant shall be entitled to appoint and remove the members of the Association's Executive Board and officers of the Association to the fullest extent permitted under the Act and as set forth in the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers are set out in the Act. Declarant may voluntarily relinquish such power by recording a notice executed by Declarant with the Clerk and Recorder but, in such event, Declarant may at its option require that specified actions of the Association or the Executive Board as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

Section 4.6 *Books and Records*. The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association, alternatively, may make the documents available digitally. The Association may charge a reasonable fee for copying such materials.

Section 4.7 *Manager*. The Association may employ or contract for the services of a Manager to whom the Executive Board may delegate certain powers, functions or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Executive Board.

Section 4.8 *Rights of Action*. The Association on behalf of itself and any aggrieved Owner shall be granted a right of action against any and all Owners for failure to comply with the provisions of the Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. The Owners shall have a right of action against the Association for failure to comply with the provisions of the

Association Documents, or with decisions of the Executive Board made pursuant to authority granted to the Association in the Association Documents. In any action covered by this section, the Association or any Owner shall have the right but not the obligation to enforce the Association Documents by any proceeding at law or in equity, or as set forth in the Association Documents, or by mediation or binding arbitration if the parties so agree. The prevailing party in any arbitration or judicial relief shall be entitled to reimbursement from the non-prevailing party or parties, for all reasonable costs and expenses, including attorneys' fees in connection with such arbitration or judicial relief. Failure by the Association or by any Owner to enforce compliance with any provision of the Association Documents shall not be deemed a waiver of the right to enforce any provision thereafter.

Section 4.9 *Implied Rights and Obligations*. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, by the Act, and by the Colorado Nonprofit Corporation Act.

Section 4.10 *Notice*. Any notice to an Owner of matters affecting the Project by the Association or by another Owner shall be sufficiently given if in writing and delivered personally, by courier or private service delivery, or on the third business day after deposit in the U.S. mail for delivery by registered or certified mail, return receipt requested, at the address of record for real property tax assessment notices with respect to that Owner's Residential Unit.

## ARTICLE 5

### POWERS OF THE EXECUTIVE BOARD OF THE ASSOCIATION

Except as provided in the Bylaws and the Act, the Executive Board may act in all instances on behalf of the Association, to:

Provide for maintenance, preservation and architectural control of that certain Property;

Promote the health, safety and welfare of the residents within the Common Interest Community;

Exercise all of the powers and perform all of the duties of the Association as set forth in the Entity Documents of the Association, the Colorado Common Interest Ownership Act and the Colorado Revised Nonprofit Corporation Act;

Adopt and amend budgets for revenues, expenditures, and reserves, and fix, levy, collect and enforce payment of, by any lawful means, all charges and assessments pursuant to the terms of the Declaration; and pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property in its own name in connection with the affairs of the Association;

Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, encumber, operate, maintain, convey, sell, lease, transfer, dedicate

for public use or otherwise dispose of real or personal property or interests therein, in its own name, in connection with the affairs of the Association upon receipt of any approval of Members as may be required in the Declaration;

Borrow money and, with the approval of Members as required by the Declaration, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property or interests therein as security for money borrowed or debts incurred and assign or pledge its right to receive future income including assessments;

Engage in activities that will actively foster, promote and advance the common interests of all Members;

Hire and terminate Managers and other employees, agents, and independent contractors;

Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Common Interest Community;

Enforce covenants, restrictions, and conditions affecting any Lot to the extent the Association may be authorized to do so under the Declaration;

Enter into, make, perform or enforce contracts, licenses, easements, leases and agreements of every kind and description, incur liabilities, and do all other acts necessary, appropriate or advisable in carrying out any purpose of the Association with any person, firm, corporation or other entity or agency, public or private; provided, however, that the following contracts and leases, if entered into before the Executive Board elected by Owners takes office subsequent to termination of the Period of Declarant Control, may be terminated without penalty by the Association at any time after such date, upon not less than ninety (90) days' notice to the other party. Any management contract, employment contract, or lease of recreational or parking areas or facilities; any other contract or lease between the Association and Declarant or an affiliate of a Declarant; or any contract or lease that is not bona fide or was unconscionable to the Owners at the time entered into under the circumstances then prevailing; and

Adopt, alter and amend or repeal such Bylaws, Architectural Guidelines, or Rules, and promulgate and publish such Rules as may be necessary or desirable for the proper management of the affairs of this nonprofit corporation; provided, however, that they shall not be inconsistent with or contrar to any provision of the Articles of

Incorporation, the Declaration, the Colorado Common Interest Ownership Act or the Colorado Revised Nonprofit Corporation Act.

## ARTICLE 6

### MECHANIC'S LIENS

Section 6.1 *No Liability*. If any Owner shall cause any material to be furnished to his Residential Unit or any labor to be performed therein or thereon, no Owner of any other Residential Unit shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Residential Unit.

Section 6.2 *Indemnification*. If, because of any act or omission of any Owner, any mechanic's or other lien or order for the payment of money shall be filed against the Common Elements, if any, or the Association (whether or not such lien or order is valid or enforceable as such), the Owner whose act or omission forms the basis for such lien or order shall at his own cost and expense cause the same to be canceled and discharged of record or bonded by a surety company reasonably acceptable to the Association, or to such other Owner or Owners, within twenty (20) days after the date of filing thereof, and further shall indemnify and hold all the other Owners and the Association harmless from and against any and all costs, expenses, claims, losses or damages including, without limitation, reasonable attorneys' fees resulting therefrom.

Section 6.3 *Association Action*. Labor performed or materials furnished for the Common Elements, if any, if duly authorized by the Association in accordance with this Declaration or its Bylaws, shall be the basis for the filing of a lien pursuant to law against the Common Elements, if any. Any such lien shall be limited to the Common Elements, if any, and no lien may be effected against an individual Residential Unit or Units.

## ARTICLE 7

### EASEMENTS

Section 7.1 *Recorded Easements*. The Property shall be subject to all easements as shown on any Map or plat, those of record, those provided in the Act (including easements for encroachment set forth in the Act and an easement for maintenance of any such encroachment), and otherwise as set forth in this Article.

Section 7.2 *Utility Easements*. There is hereby created an easement upon, across, over, in and under each Residential Unit as shown on the Map or Plat of the Project for installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, cable TV, electricity, and fences. Said easement includes future utility services not presently available to the Residential Units which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment within the easement shown on the Map in a manner customary for such companies, subject to approval by the Association as to locations.

Section 7.3 *Reservation of Easements, Exceptions and Exclusions.* The Association is hereby granted the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Elements, if any, for the best interest of all the Owners and the Association. Each Owner is hereby granted a perpetual non-exclusive right of ingress to and egress from the Owner's Residential Unit over and across the General Common Elements, if any, and Limited Common Elements, if any, appurtenant to that Owner's Residential Unit, which right shall be appurtenant to the Owner's Residential Unit, and which right shall be subject to limited and reasonable restriction on the use of Common Elements, if any, set forth in writing by the Association.

Section 7.4 *Emergency Access Easement.* A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

Section 7.5 *Access to Lots and Common Elements.* Declarant, the Association and their respective agents, employees and independent contractors shall have, and there is hereby declared, an easement to enter upon any Lot or Common Element to the extent reasonably necessary to exercise any right or responsibility of Declarant or the Association as set forth in this Declaration, as to the Lot or the Common Elements including, but not limited to the maintenance, repair or replacement of any utilities, landscaping, fences, or other improvements located on the Property.

Section 7.6 *Reservation of Easements for Benefit of Declarant.* Anything contained in this Declaration to the contrary notwithstanding, Declarant hereby reserves for itself and its agents, employees, contractors, sub-contractors, workmen and materialmen an easement under, over and across the Lots owned by the Declarant and the Common Elements for the purposes of constructing homes, garages and improvements, installing, completing, repairing, maintaining and inspecting the Development and for the purpose of exhibiting and selling Lots owned by the Declarant and improvements then owned by Declarant.

Section 7.7 *Exercise of Easement not a Trespass.* The exercise of any easement described in this Article 7 shall not be a trespass.

Section 7.8 *Easement for Beautification.* On that property identified on the Map or the Plat, or any amendments thereto, shall be easements for beautification. No changes to those Lots sold shall be made. Those easements shall be solely maintained at the cost of the Association. The scope of such easements is for aesthetics and beautification and Association maintenance of such beautification. There shall be no rights conveyed to any other owners for any physical possession or use.

## ARTICLE 8

### MAINTENANCE

Section 8.1 *Maintenance by Owners.* Each Owner shall maintain and keep in repair his Residential Unit and any structures thereon. To the extent that any culverts are damaged on the Owner's Lot, the Owner shall immediately repair such damage.

Section 8.2 *Maintenance by Association.* The Association shall be responsible for the maintenance and repair of the Common Elements, if any, including any drainage structure or facilities and any fences constructed by Declarant within the utility easement reserved in Article 7, Section 7.2 and such maintenance and repair shall be the Common

Expense of all Owners. This maintenance shall include, but shall not be limited to, upkeep, repair and replacement, subject to any insurance then in effect, of all landscaping, walls, fences, gates, signage, irrigation systems, sidewalks, driveways and improvements, if any (which shall include without limitation snow removal services unless performed by another private or public organization formed for such purposes), located in the Common Elements, if any. In the event the Association does not maintain or repair the Common Elements, if any. Declarant shall have the right, but not the obligation, to do so at the expense of the Association. Nothing in this Section shall deny the Owner's rights to enforce the Declaration under Section 18.2.

Section 8.3 *Association Maintenance as Common Expense*. The cost of maintenance and repair by the Association shall be a Common Expense of all of the Owners, to be shared by each Owner equally, including all easements and all Common Elements.

Section 8.4 *Weed and Brush Control*. All Lots within the subdivision shall remain in compliance with all County and State regulations as regards weed and brush control. Prior to completion of building, landscaping or other improvements as herein required, weeds must be cut often enough so that they do not go to seed and so as to not permit land within the subdivision to become unsightly or a fire hazard due to overgrowth of weeds or brush. Subsequent to completion of building, landscaping or other improvements weeds and brush shall be controlled per plans approved by the ARB, but in no case shall an owner permit unsightly growth of weeds or brush or allow weeds or brush to become a fire hazard. In the case of unoccupied Lots, non-resident or out of state owners, or owners who fail to maintain weed and brush control on their Lot, the Association shall have the right to burn the weeds and/or mow and bill the individual Lot owner for the expense of same. This cost may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights as provided in this Declaration. Nothing in this Section shall deny the Owner's rights to enforce the Declaration under Section 18.2.

## ARTICLE 9

### INSURANCE

Section 9.1 *General Insurance Provisions*. The Association may acquire and pay for, out of the assessments levied under Article 10 below, any insurance policies required by the Colorado Common Interest Owners Act and such other insurance as the Executive Board may, within its discretion, determine desirable for the protection of the Common Elements, if any. Such insurance shall conform to the requirements set forth in C.R.S. § 38-33.3-313(4)(a)-(d). An insurance policy issued to the Association does not obviate the need for Owners to obtain insurance for their own benefit.

Section 9.2 *Common Expenses*. Premiums for insurance that the Association acquires and other expenses connected with acquiring such insurance are Common Expenses.

Section 9.3 *Fidelity Insurance*. Fidelity insurance or fidelity bonds may be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, independent contractors and employees and on the part of all others including any manager hired by the Association, who handle or are responsible for

handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such insurance must be obtained by or for the Manager and its officers, employees and agents, as applicable. Such fidelity insurance or bond shall name the Association as insured and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 9.4 *Workers' Compensation Insurance*. The Executive Board shall obtain workers' compensation or similar insurance with respect to its employees, if applicable, in the amounts and forms as may now or hereafter be required by law.

## ARTICLE 10

### ASSESSMENTS

Section 10.1 *Obligation*. Each Owner, including Declarant while an Owner of any Residential Unit, is obligated to pay to the Association ( 1 ) the Annual Assessments; (2) Special Assessments; and (3) Default Assessments. Common Expenses shall be allocated equally among Lots regardless of size. This section shall apply to any lots later created through Declarant's special development rights.

Section 10.2 *Budget*. Within thirty (30) days after the adoption of any proposed budget for the Association by the Executive Board, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing or other delivery of the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. In the event that the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board. The Executive Board shall adopt a budget and submit the budget to a vote of the Owners pursuant to the provisions in the Bylaws. The Executive Board shall levy and assess the Annual Assessments in accordance with the annual budget.

Section 10.3 *Annual Assessments*. Annual Assessments made for Common Expenses shall be based upon the estimated cash requirements as the Executive Board shall from time to time determine to be paid by all of the Owners. Estimated Common Expenses shall include, but shall not be limited to, irrigation issues, for maintenance and repair of irrigation drainage ditches and culverts, the cost of routine maintenance and operation of the Common Elements, if any, expenses of management and insurance premiums for insurance coverage as deemed desirable or necessary by the Association, landscaping of the Property, care of grounds within the Common Elements, if any, routine repairs, replacements and renovations within and of the Common Elements, if any, wages, common water and utility charges for the Common Elements, if any, legal and accounting fees, management fees, expenses and liabilities incurred by the Association under or by reason of this Declaration, maintenance and repair of roads, payment of any default remaining from a previous assessment period, and the creation of a reasonable and adequate contingency or other reserve or surplus fund for insurance deductibles and general, routine maintenance, repairs and replacement of improvements within the Common Elements, if any, on a periodic basis, as needed.

Annual Assessments shall be payable within 30 days of the date of billing statements. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification or release of the

Owners from their obligation to pay the same. The Association shall have the right to transfer any revenue from Annual Assessments in excess of the actual expenses incurred in any fiscal year to a reserve account.

Section 10.4 *Apportionment of Annual Assessments*. The Common Expenses shall be allocated among the Residential Units equally for Common Expenses in effect on the date of assessment.

Section 10.5 *Special Assessments*. In addition to the Annual Assessments, the Association may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of improvements within the Common Elements, if any, or for any other expense incurred or to be incurred as provided in this Declaration. This Section 10.5 shall not be construed as an independent source of authority for the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners according to their Allocated Interests for Common Expenses. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than ten (10) days after such notice shall have been given.

Section 10.6 *Default Assessments*. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Residential Unit which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least ten (10) days prior to the due date.

Section 10.7 *Effect of Nonpayment; Assessment Lien*. Any Assessment installment, whether pertaining to any Annual, Special or Default Assessment, which is not paid on or before its due date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (i) Assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (ii) Assess an interest charge from the due date at the yearly rate of 18%, or such other lawful rate as the Executive Board may establish;
- (iii) Suspend the voting rights of the Owner during any period of delinquency;
- (iv) Suspend the rights of the Owner, and the Owner's family, guests, lessees and invitees, to use Common Element facilities during any period of delinquency;
- (v) Accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (vi) Bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and



(vii) Proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Residential Unit shall constitute a lien on such Residential Unit. The Association may institute foreclosure proceedings against the defaulting Owner's Residential Unit in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any late charges and interest, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Residential Unit at foreclosure sale and to acquire and hold, lease, mortgage, sell, and convey the same.

Section 10.8 *Personal Obligation*. Each Assessment against a Residential Unit is the personal obligation of the Owner who owned the Residential Unit at the time the Assessment became due and shall not pass to successors in title unless they agree to assume the obligation. No Owner may exempt himself from liability for the Assessment by abandonment of his Residential Unit or by waiver of the use or enjoyment of all or any part of the Common Elements, if any. Suit to recover a money judgment for unpaid Assessments, any late charges and interest, the cost and expenses of such proceedings, and all reasonable attorney's fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

Section 10.9 *Payment by Mortgagee*. Any Mortgagee holding a lien on a Residential Unit may pay any unpaid Assessment payable with respect to such Residential Unit, together with any and all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Residential Unit for the amounts paid with the same priority as the lien of the Mortgage.

Section 10.10 *Statement of Status of Assessment Payment*. Upon payment of a reasonable fee set from time to time by the Executive Board and upon fourteen (14) days' written request to the Association's registered agent by personal delivery or certified mail, first-class postage prepaid, return receipt, any Owner, designee of Owner, Mortgagee, prospective Mortgagee or prospective purchaser of a Residential Unit shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Residential Unit. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days after the request is delivered to or deposited in the U.S. mail addressed to the Association's registered agent by certified mail, first class postage prepaid, return receipt requested, the Association shall have no right to assert a lien upon the Residential Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 10.11 *Maintenance Accounts; Accounting*. If the Association delegates powers of the Executive Board or its officers relating to collection, deposit, transfer or disbursement of Association funds to other persons or to a manager, then such other persons or manager must (a) maintain all funds and accounts of the Association separate from the funds and accounts of other associations managed by the other person or manager, (b) maintain all reserve and working capital accounts of the Association separate from the operational accounts of the Association, and (c) provide to the Association an annual accounting and financial statement of Association funds prepared by the manager, a public accountant or a certified public accountant.

Section 10.12 *Reasonable Reserves.* The Association shall establish and maintain from annual assessments and any other available sources reasonable reserves for the costs of the obligations of the Association hereunder and to apply to any Special Improvement District instituted by proper authorities in the future.

Section 10.13 *Assessment for Lots Owned by Declarant.* Until the Association makes its initial assessment, the Declarant shall pay all common expenses. Once assessments are assessed, Units, finalized by the County, owned by Declarant shall be assessed annual and special assessments.

Section 10.14 *Notice and Quorum for any Action Authorized Under this Article 10.* Written notice of any meeting called for the purpose of taking any action authorized under this Article 10 shall be sent to all Owners entitled to vote not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of Lots entitled to vote shall constitute a quorum.

Section 10.15 Each owner agrees that the Associations lien on a Lot shall be superior to the homestead exemption provided by Colorado law as amended from time to time, and each owner hereby agrees that the acceptance of the deed conveying the to an Owner a Lot within the Subdivision shall signify the Owner's waiver of the homestead rights granted by said Colorado law.

## ARTICLE 11

### DAMAGE OR DESTRUCTION

Section 11.1 *The Role of the Executive Board.* Except as provided in Article 5, in the event of damage to or destruction of all or part of any Common Elements improvement, or other property covered by insurance written in the name of the Association under Article 9, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged property (the property insured by the Association pursuant to Article 9 is sometimes referred to as the "Association-Insured Property").

Section 11.2 *Disbursement of Funds for Repair and Reconstruction.* The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above, constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be deposited by the Association to its general fund.

## ARTICLE 12

### CONDEMNATION

Section 12.1 *Rights of Owners.* Whenever all or any part of the Common Elements shall be taken by any authority having power of condemnation or eminent domain or whenever all or any part of the Common Elements is conveyed in lieu of a taking under threat of condemnation by the Executive Board acting as attorney-in-fact for all Owners under instructions from any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice of the taking or conveying.

The Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

Section 12.2 *Partial Condemnation; Distribution of Award; Reconstruction.* The award made for such taking shall be payable to the Association for the benefit of the Owners and Mortgagees and, unless otherwise required under the Act, the award shall be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking Owners who represent at least 67% of the votes of all of the Owners shall otherwise agree, the Association shall restore or replace such Common Elements so taken on the remaining land included in the Common Elements to the extent lands are available for such restoration or replacement in accordance with plans approved by the Executive Board. If such Common Elements are to be repaired or restored, the provisions in Article 11 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Common Elements, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be deposited by the Association to its general fund.

Section 12.3 *Complete Condemnation.* If all of the Property is taken, condemned, sold or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, provided that the approval is first obtained of 51% of First Mortgagees of Residential Units subject to First Mortgages (which percentage is measured by votes allocated to such Residential Units), and the portion of the condemnation award attributable to the Common Elements shall be distributed as provided by law.

#### ARTICLE 13

##### ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of purchasing and maintaining insurance pursuant to Article 9, including the collection and appropriate disposition of the proceeds thereof, the negotiation and settlement of losses and execution of releases of liability, the execution of all documents, and the performance of all other acts necessary to purchase and maintain insurance as well as dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 11, or a complete or partial taking as provided in Article 12, above. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

#### ARTICLE 14

##### RESERVED DEVELOPMENT AND SPECIAL DECLARANT RIGHTS

Section 14.1 *Reservation of Withdrawal Rights.* Declarant reserves the right for

itself and any Successor Declarant at any time and from time to time to withdraw from the provisions of this Declaration individual Residential Units and/or Common Elements, provided however that none of the real estate may be withdrawn after any Residential Unit has been conveyed by Declarant to a purchaser.

Section 14.2 *Other Reserved Rights*. Declarant reserves the right for itself and any Successor Declarant at any time and from time to time to maintain and relocate sales offices, management offices, signs advertising the Project, of any size, on one or more Residential Units owned by the Declarant or Successor Declarant and within the General Common Elements so long as Declarant or Successor Declarant continues to be an Owner of a Residential Unit and the period of Declarant control has not terminated pursuant to the terms of the Act.

Section 14.3 *Termination of Rights*. The rights reserved to the Declarant for itself, its successors and assigns in this Article, shall expire, unless sooner terminated as required by the Act, as follows:

the period of declarant control terminates no later than the earlier of: sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant; two years after the last conveyance of a unit by the declarant in the ordinary course of business; or two years after any right to add new units was last exercised.

Section 14.4 *Transfer of Records*. Within sixty (60) days after the Owners other than the Declarant elect a majority of the members of the Executive Board, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by the Declarant, including the following:

14.4.1 The original or a certified copy of this recorded Declaration;

14.4.2 An accounting for Association funds and financial statements from the date the Association received funds and ending on the date the period of Declarant control ended;

14.4.3 The Association funds or control thereof;

14.4.4 A copy of any plans and specifications used in the construction of the Common Elements, if any;

14.4.5 All insurance policies in force;

14.4.6 All certificates of occupancy, if any;

14.4.7 Any other permits issued by governmental bodies applicable to the common interest community and which are currently in force or which were issued within one year prior to the date on which Owners other than the Declarant took control of the Association;

14.4.8 Written warranties of any contractors, subcontractors, suppliers, and manufacturers that are still effective;

14.4.9 A roster of Owners and mortgagees and their addresses and telephone numbers, if known, as shown in the Declarant's records;

14.4.10 Employment contracts in which the Association is a contracting party; and

14.4.11 Any service contract in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the person(s) performing the service.

Section 14.5 *Special Declarant Rights*. Declarant hereby reserves the right, during the period of Declarant Control, to perform the acts and exercise the rights hereinafter specified (the "Special Declarant Rights"). Declarant's Special Declarant Rights include the following:

a. Completion of Improvements. The right to complete improvements indicated on Plats and Maps filed with the Declaration.

b. Exercise of Development Rights. The right to exercise any Development Right reserved in this Declaration.

c. Construction Easements. The right to use easements through the Common Elements for the purpose of making improvements within the Property or within real estate which may be added to the Property.

d. Master Association. The right to make the Property subject to a Master Association.

e. Merger. The right to merge or consolidate a Property with another Property of the same form of ownership.

f. Control of Association and Executive Board. The right to appoint or remove any officer of the Association or any Executive Board member.

g. Amendment of Declaration. The right to amend the Declaration in connection with the exercise of any Development Rights.

h. Amendment of Map. The right to amend the Map in connection with the exercise of any Development Rights.

Section 14.6 *Additional Reserved Rights*. In addition to the Special Declarant Rights set forth in 14.5 above, Declarant also reserves the following additional rights (the "Additional Reserved Rights"):

a. Dedications. The right to establish, from time to time, by dedication, exception, reservation, utility and other easements for purposes including but not limited to streets, paths, walkways, skyways, drainage, recreation areas, parking areas, conduit installation areas, and to create other reservations, exceptions and exclusions for the benefit of and to serve the Owners within the Property on Common Elements or Lots owned by Declarant.

b. Use Agreements. The right to enter into, establish, execute, amend and otherwise deal with contracts and agreements for the use, lease, repair, maintenance or regulation of parking and/or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners and/or the Association.

c. Colorado Common Interest Ownership Act. Declarant reserves the right to

amend this Declaration to comply with the requirements of the Colorado Common Interest Ownership Act.

d. Other Rights. The right to exercise any Additional Reserved Right created by any other provision of this Declaration.

Section 14.7 *Rights Transferable*. Any Special Declarant Right or Additional Reserved Right created or reserved under this Article for the benefit of Declarant may be transferred to any Person by an instrument describing the rights transferred and recorded in every County in which any portion of the Property is located. Such instrument shall be executed by the transferor Declarant and the transferee.

## ARTICLE 15

### ARCHITECTURAL REVIEW BOARD (ARB)-who has to establish this?

Section 15.1 *Approval Required*. No residence, structure, driveway, fence, patio or other improvement shall be erected, placed, modified or altered on any Lot within the Property unless the building plans, specifications (including colors and materials) and plot plan showing the location and proposed erection, placement, modification or alteration of any such residence, structure, driveway, fence, patio or other improvement has been approved in writing by the Architectural Review Board.

Section 15.2 *Role of the ARB*. The ARB is fully authorized in its sole discretion to accept or reject applications for approval in total or to require certain specific revisions. The decisions of the ARB shall be final. Every Owner, by acceptance of a deed or other conveyance for itself, its successors, assigns, agents and employees hereby expressly waives any claim against the ARB, the Executive Board or the Association or their respective members, or against Declarant relating to or arising out of any action or inaction on the part of the ARB, including but not limited to any claim such Owner may have subsequent to the date the ARB has acted on the application of an Owner, which might have changed the nature or content of the Owner's application or which might have had the effect of a differing result on the Owner's application had action not taken place until after the occurrence of the change in the guidelines or in the rules and regulations.

Section 15.3 *Membership and Appointment of the ARB*. The ARB shall be a committee of the Association composed of between one (1) and three (3) persons as determined by the Executive Board. The ARB shall be appointed and replaced by the Executive Board and the Executive Board shall have absolute authority to remove any person on the ARB, with or without cause.

Section 15.4 *Architectural Guidelines*. The Association has established architectural guidelines and amendments thereto governing all improvements of the Lots known as Architectural Standards and Review Guidelines for Eagle Heights Subdivision. The guidelines shall be available for review at all reasonable times at the offices of the Association and copies shall be available to Owners upon request or alternatively, shall be made available digitally.

Section 15.5 *Minimum Standards*. The Standards as set forth in this Declaration shall be deemed to be minimum requirements only. The ARB shall have the right to refuse to approve any plans or specifications submitted to it and shall have broad discretion to require continuity and harmony of design, appearance and location in relation to other improvements, high standards of construction, view preservation and appropriate finish grade elevations. The ARB

shall have the right to consider the suitability of proposed buildings, the harmony thereof with the surroundings and the effect of the building on neighboring property. The ARB shall not be arbitrary in its decisions but shall have broad discretion to assure continuity and harmony of design, appearance and location in relation to the other improvements on the property, view preservation and finish grade elevations.

Section 15.6 *Fee for plan submission.* It is recognized that the ARB may encounter expenses in order to fully and properly evaluate any plan submitted hereunder. These expenses may include, but not be limited to, fees for professional or consulting services, expert opinion, and incidental costs associated with such an evaluation. The ARB may, therefore, require that a fee schedule be established, based on the type of plan and extent of evaluation the ARB feels appropriate. Such fee is due and payable upon presentation of any plan and the ARB would not be obligated to evaluate any plan until such fee is paid.

Section 15.7 *Remedies for Non-compliance.* The ARB or its representative may at any time inspect any improvement for which approval of plans is required, however, ARB's right to inspect shall terminate 60 days after such construction, modification, improvement or work has been completed and the owner has so notified ARB in writing. ARB's right to inspect shall not terminate pursuant to this section if plans for the construction, improvement, modification, or other work were not submitted and approved by ARB. If, as a result of such inspection, ARB finds that such construction, improvement, modification or other work was not done in substantial compliance with the plans approved by the ARB, or that plans for such construction, improvement, modification or other work were not submitted to the ARB for approval, and therefore were not approved, the ARB shall notify the owner in writing specifying the particulars of noncompliance. The ARB shall have the authority to require the owner to take such action as may be necessary to remedy the noncompliance. If upon 90 days from the date of such notification, the owner shall have failed to remedy such noncompliance, ARB shall notify the Board in writing of such failure. The Board shall determine if such noncompliance does in fact exist and the cost to remedy or remove same and notify the owner. If the owner does not remedy or remove said noncompliance within 60 days of the Board's notice, the Board may take whatever legal action it feels appropriate to remedy the noncompliance and levy an assessment against the owner for all costs associated with the noncompliance.

## ARTICLE 16

### MORTGAGEE'S RIGHTS

The following provisions are for the benefit of holders, insurers or guarantors of First Mortgages on Residential Units. To the extent permitted under Colorado law and applicable, necessary or proper, the provisions of this Article apply to this Declaration and also to the Articles, Bylaws and Rules and Regulations of the Association.

Section 16.1 *Distribution of Insurance or Condemnation Proceeds.* In the event of a distribution of insurance proceeds or condemnation awards allocable among the Residential Units for losses to, or taking of, all or part of the Common Elements, neither the Owner nor any other person shall take priority in receiving the distribution over the right of any Mortgagee who is a beneficiary of a First Mortgage against the Residential Unit.

Section 16.2 *Right to Pay Taxes and Charges.* Mortgagees who hold First Mortgages against Residential Units may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 16.3 *Audited Financial Statement.* Upon written request from any Agency or Mortgagee which has an interest or prospective interest in any Residential Unit or the Project, the Association shall prepare and furnish within ninety (90) days an audited financial statement of the Association for the immediately preceding fiscal year, at the expense of such Mortgagee.

Section 16.4 *Notice of Action.* Any First Mortgagee and any Agency which holds, insures or guarantees a First Mortgage, upon written request to the Association (which shall include the Agency's name and address and the Residential Unit number), will be entitled to timely written notice of:

16.4.1 Any proposed amendment of the Entity Documents effecting a change in (a) the boundaries of any Residential Unit or the exclusive easement rights appertaining thereto, (b) the interest in the Common Elements appurtenant to the Residential Unit or the liability of Assessments relating thereto, (c) the number of votes in the Association relating to any Residential Unit, or (d) the purposes to which any Residential Unit or the Common Elements are restricted or any amendment set forth in Section 17.2 below;

16.4.2 Any proposed termination of the common interest community;

16.4.3 Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Residential Unit on which there is a First Mortgage held by the First Mortgagee or insured or guaranteed by such Agency;

16.4.4 Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to the Mortgage where such delinquency has continued for a period of sixty (60) days;

16.4.5 Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to Article 9.

Section 16.5 *Action by Mortgagee.* If this Declaration or any Association Documents require the approval of Mortgagees then, if any Mortgagee fails to respond to any written proposal for such approval within thirty (30) days after such Mortgagee receives proper notice of the proposal (or such longer time as may be set forth in the notice), such Mortgagee shall be deemed to have approved such proposal provided that the notice was delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 16.6 *Liability of First Mortgagee.* Notwithstanding any other provision of this Article 16, a First Mortgagee shall not be liable for any assessment, charge, penalty or fine and the lien for any such assessment, charge, penalty or fine shall be junior to any First Mortgage on a Residential Unit taken in good faith, for value, and perfected by recording in the office of the Clerk and Recorder for Montrose County,



Colorado, prior to the time a lien for failure to pay any such amount is recorded. Any First Mortgagee who acquires title to such Residential Unit by foreclosure or deed in lieu of foreclosure shall acquire title to such Residential Unit free and clear of any lien for unpaid assessments attributable to expenses of the Association arising before the date upon which the First Mortgage receives a deed to the Residential Unit. The Association shall retain the right to collect all unpaid assessments, charges, penalties or fines from any excess bid at foreclosure payable to the predecessor Owner or from the predecessor Owner pursuant to Article 10, Paragraph 10.8.

#### ARTICLE 17

##### DURATION OF COVENANTS AND AMENDMENT

Section 17.1 *Term*. The covenants and restrictions of this Declaration shall run with and bind the land for twenty years and shall be automatically extended for successive twenty-year periods, unless an instrument is signed revoking or terminating the Declaration pursuant to the provisions of Article 17.3 of this Declaration or the Act.

Section 17.2 *Amendment*. This Declaration, or any provision of it, may be amended at any time by Owners holding not less than 67% of the votes possible to be cast under this Declaration at a meeting of the Owners called for that purpose. Any amendment must be executed by the President of the Association and recorded, and approval of such amendment may be shown by attaching a certificate of the Secretary of the Association to the recorded instrument certifying the approval of a sufficient number of Owners of the amendment after receiving County approval in writing. Notwithstanding the foregoing, Declarant, acting alone, reserves to itself the right and power to modify and amend this Declaration and the Map to the fullest extent permitted under the Act.

Section 17.3 *Revocation*. This Declaration shall not be revoked nor shall the regime created hereby be terminated (except as provided in Article 12 regarding total condemnation), without (a) the consent of all of the Owners evidenced by a written instrument duly recorded with the Clerk and Recorder and (b) the consent of 67% of First Mortgagees of Residential Units subject to First Mortgages (which percentage is measured by votes allocated to such Residential Units).

#### ARTICLE 18

##### GENERAL PROVISIONS

Section 18.1 *Restriction on Declarant Powers*. Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

Section 18.2 *Enforcement*. Except as otherwise provided in this Declaration, the Executive Board, Declarant or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Executive Board of the Association, Declarant 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.

Section 18.3 *Severability*. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 18.4 *Conflicts Between Documents*. In case of conflict between this Declaration and the Articles and the Bylaws of the Association, this Declaration shall control. In case of conflict between the Articles and the Bylaws, the Articles shall control.

Section 18.5 *Sales and Construction Activities*. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant and its agents, employees, successors and assigns shall have the right to maintain such facilities and conduct such activities as may be reasonably required, convenient or incidental to the completion, development, improvement and sale of Lots, the Development and the Property including, without limitation, the installation and operation of sales and construction trailers and offices, signs and models. The right to maintain such facilities and conduct such activities shall include specifically the right to use Lots for model residences and to use any Lot as an office for the sale of Lots or residences and for related activities.

Section 18.6 *Notice of Sale, Lease or Mortgage*. In the event an Owner sells, mortgages or otherwise disposes of any Lot, the Owner shall promptly furnish to the Association in writing the name and address of such purchaser, mortgagee or transferee.

Section 18.7 *No Trespass*. Whenever the Association or Declarant and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, replace, preserve or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

Section 18.8 *Waiver of Damages*. Declarant and its representatives, successors and designees shall not be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities reserved, granted or delegated to it by or pursuant to this Declaration whether or not such claim

- a) shall be asserted by an Owner, occupant, the Board, the Association or by any person or entity claiming through any of them;
- b) shall be on account of injury to person, damage to or loss of property wherever located and however caused; or
- c) shall arise out of a contract, either express or implied.

Without limitation to the generality of the foregoing, the foregoing enumeration includes all claims for or arising by reason of the Property or any part thereof containing any patent or latent defects, or by reason of any act of failure to act of any Owner, occupant, the Board, the ARB or the Association and their respective agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property or by reason of the failure to function or the disrepair of any utility service.

Section 18.9 *Variances*. The Executive Board or its ARB if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in this Declaration so long as such variances do not result in conditions which

are inconsistent with the general concept, harmony and values with the Property.

Section 18.10 *Notices*. 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, postage prepaid, to the last known address of the person who appears as such Owner on the records of the Association at the time of such mailing. Each Owner shall keep the Association informed of any address changes.

Section 18.11 *Singular and Plural*. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 18.12 *Liberal Construction*. The provisions of this Declaration shall be liberally construed to promote and effectuate the purposes hereof.

Section 18.13 *Scenic View Disclaimer*. While this Declaration encourages the preservation of scenic views, the Declarant, the Board, the Associations and its Owners cannot and do not warrant or guarantee in any way that any particular individual's desires or preferences for such views will be met.

## ARTICLE 19

### IRRIGATION WATER

Section 19.1. *Delivery*. The Association shall retain ownership of all water rights on the Property. Each owner shall be allowed to enjoy the beneficial use of water of the Association so long as water is available. The Association will deliver the irrigation water by an underground pipe and tap. It will be the obligation of the individual Lot owner to utilize the one and one half inch (1.5") tap provided on their Lot for their own purposes of running irrigation lines and to provide a single private pump not in excess of one and one half (1.5) horsepower for this purpose. Any line breakage within the Lot as shown on the subdivision plat shall be repaired at the sole cost and expense of the Lot owner. Each Lot Owner is responsible for waste water disposal and irrigation water drainage caused by their use of irrigation water. The Association shall establish rules and regulations as to irrigation water usage and scheduling.

Section 19.2. *Reduction of Supply*. Should the Uncompahgre Valley Water Users Association reduce the amount of deliverable water, less water may be available for individual use.

Section 19.3. *Irrigation and storm run-off*. Owners are responsible for the effects storm run-off and their use of irrigation water may have on adjacent and neighboring Lots. The owner shall include a site specific grading and drainage plan with the plot/site plan. This plan shall show how the owner proposes to conform to the overall grading and drainage plan for the subdivision.

Section 19.4. *No flood irrigation*. Owners shall not flood irrigate on their property. Only sprinkled irrigation and drip irrigation is permitted. Further,

Montrose County approval is required to amend this Section. Neither the Association nor its Board of Directors may amend this section without express written authority of an appropriate Montrose County official.

Section 19.5. Waterways and ponds. Owners whose property has waterways or ponds will be responsible for the maintenance of that portions of the waterway or pond that is on their property.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officers the date and year first above written.

Agreed to by Eagle Heights Homeowner Association, Inc this 29 day of January, 2008:

James Whittecom  
Association, President

President of Eagleview Inc  
President of Eagle Heights Homeowner Assoc

[Signature]  
Association, Secretary

Secretary of Eagleview Inc.  
Secretary of Eagle Heights Homeowner Assoc

[Signature]  
Association, Treasurer

Treasurer of Eagleview Inc  
Treasurer of Eagle Heights Homeowner Assoc.

STATE OF COLORADO )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 29 day of February, 2008,  
by Jim Whittecom, Pres.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Signature]  
Notary Public  
MINDI L. PIGGOTT  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 07/14/2011

STATE OF COLORADO )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 29 day of February, 2008,  
by Kath Jacobsen, Sec.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Signature]  
Notary Public  
MINDI L. PIGGOTT  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 07/14/2011

STATE OF COLORADO )  
COUNTY OF MONTROSE )

The foregoing instrument was acknowledged before me this 29 day of February, 2008,  
by Kevin Jacobsen, Treas.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Signature]  
Notary Public  
MINDI L. PIGGOTT  
NOTARY PUBLIC  
STATE OF COLORADO  
My Commission Expires 07/14/2011