

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE EAGLE LANDING AT BRUSH CREEK TOWNHOMES ASSOCIATION, INC.**

**TOWN OF EAGLE,
COUNTY OF EAGLE,
STATE OF COLORADO
2018.**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR
EAGLE LANDING AT BRUSH CREEK TOWNHOMES ASSOCIATION, INC.**

A. THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR EAGLE LANDING AT BRUSH CREEK TOWNHOMES ASSOCIATION, INC. (this "Declaration") dated as of _____, 2018, shall be effective upon recordation and is made by Gold Dust Capital Partners, LLC a Colorado limited liability company or its assigns, ("Declarant").

B. Declarant is the owner of certain real property in the Town of Eagle, County of Eagle, Colorado, more particularly described on Exhibit A attached and made part of this Declaration by this reference (the "Property"). The Property is a re-subdivision of Lot 1, West Eagle Additional Filing 2, according to the Plat recorded February 27, 2006 at Reception No. 200604681, Town of Eagle, County of Eagle, State of Colorado, also known by street number 58 Sylvan Lake Road, Eagle, CO 81631.

C. Declarant desires to create a medium density residential common interest Project development consisting of twelve (12) buildings containing forty-two (42) units to be constructed in three (3) or more phases situated on the Property and to be known as Eagle Landing at Brush Creek Townhomes (the "Project").

D. The Project shall be subject to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statutes Section § 38-33.3-101, et. seq. (the "Act") and shall constitute a planned community within the meaning thereof

E. Declarant hereby makes the following grants, submissions, and declarations with respect to the Project.

**ARTICLE 1
IMPOSITION OF COVENANTS**

Section 1.1 Purpose.

The purpose of this Declaration is to further the interests of the Project, to protect and enhance the property values, to set forth Declarant's reserved development rights, and to otherwise effectuate the terms and provisions of the Act.

Section 1.2 Intention of Declarant.

Declarant desires to protect the value and desirability of the Project, to operate certain common elements and services for the benefit of the owner(s) of the Units and property within the Project, enable a plan for the improvement, sales, and ownership within the Project; create an harmonious and attractive development; and promote and safeguard the health, comfort, safety, convenience, and welfare of the owners in the Project.

Section 1.3 Project, Units, and Development Use.

Declarant hereby initially submits the following property to this Declaration:

Tract A, Units E1, E2, E3, E4, F1, F2, F3, G1, G2, G3, H1, H2, and H3, Eagle Landing at Brush Creek Townhomes, according to the Final Plat thereof recorded in the public records of Eagle County, Colorado on October 29, 2018 at Reception No. 201818463 (collectively, the "Initial Parcel").

The Project will be a planned community comprised of improvements to be constructed upon the Property, and the Common Elements, together with utilities, roadways, parking, sidewalks, landscaping, easements, and other improvements.

Any additional property subsequently annexed and submitted to this Declaration may be subdivided and developed in phases by the filing of successive maps or plats depicting the additional Units and the appurtenant Common Elements created. Similarly, the Declarant may de-annex and remove property from this Declaration in accordance with the reserved rights contained herein. Declarant reserves the right to create a maximum number of 100 units.

Section 1.4 Covenants Running With the Land.

All provisions of this Declaration shall be deemed to be covenants running with the land, or as equitable servitudes, as the case may be. The benefits, burdens, and other provisions contained in this Declaration shall be binding upon and shall inure to the benefit of Declarant, all Owners, and their respective heirs, executors, administrators, personal representatives, successors, and assignors.

Section 1.5 Description of Unit.

The identification of each Unit is shown on the Plat. Every deed for the conveyance of a Unit and every other instrument affecting title to a Unit shall identify the County in which the Unit is located and may describe that Unit by the letter/number combination shown or referenced on the Plat, with appropriate reference to the Plat and to this Declaration, as each shall appear in the records of Eagle County, Colorado, in the following fashion:

Unit ____,
Eagle Landing at Brush Creek Townhomes,
according to the Final Plat thereof recorded in the public records of the Eagle
County, Colorado on October 29, 2018 at Reception No. 201818463.

**ARTICLE 2
DEFINITIONS**

The following words, when used in this Declaration, shall have the meanings designated below:

- a. "Act" means the Colorado Common Interest Ownership Act as set forth in Title 38, Article 33.3-101, et seq., of the Colorado Revised Statutes, also known as the "CCIOA."

b. "Allocated Interest" means the number of votes and liability for the Common Expenses (expressed as a percentage) that are allocated to each Unit as set forth in Section 2.38, Section 4.2 and Exhibit B below and as described in the Act at C.R.S. § 38-33.3-103(2)(c) and § 38-33.3-207(1)(c).

c. "Assessments" means the monthly, annual, special, default, and other sums levied against the Owners to pay Common Expenses as provided below, including, without limitation those Common Expenses, including, Operating Expenses, Upkeep, and Reserve and Replacement Expenses. Assessments are also referred to as Common Expense Liabilities under the Act at § 38-33.3-315, C.R.S.

d. "Association" means the Eagle Landing at Brush Creek Townhomes Association, Inc., a nonprofit corporation, and its successors and assigns.

e. "Association Easements or Easement Area" means that certain area on the Plat Map of the Project depicted and described as an Easement, or such other area in which the Association, its members, or other entity is granted an easement by Declarant; or by third parties for purposes of creating or maintaining Common Areas or Common Elements, roadways, sidewalks, parking, recreations paths, utility purposes, landscaping, and other matters undertaken in the Declarant's sole discretion.

f. "Board" the Board of Directors, or Board, shall mean and refer to the Executive and governing body of the Association, as provided in this Declaration, and in the Articles of Incorporation and Bylaws of the Association. Executive Board shall mean the body, regardless of name, designated in the Declaration to act on behalf of the Association.

g. "Building" means any building, improvement or structure, (including all fixtures and improvements contained within it) located on the Property.

h. "Common Area" or "Common Element" means any real estate as shown on the Plat Map, owned by the Association or its Owners. Common Parcel shall mean and refer to, at any given time, all of the real property (excluding Buildings) owned or leased by the Association (including the improvements thereto) for the common use and enjoyment of the Owners. Common Area includes Uneva Court, Piney Court, Gold Dust Drive, and Hardscrabble Court.

i. "Limited Common Area" or "Limited Common Element" shall mean and refer to a portion of the Common Area which has been designated for the primary or exclusive (if specifically so designated) use by Owners of one or more, but less than all, of the Lots as well as that meaning set forth in Section 2.27 below.

j. "Common Expenses" shall mean and refer to all expenditures made by or liabilities incurred by or on behalf of the Association, together with funds determined by the Board of Directors to be reasonably necessary for the creation and maintenance of reserves and operating funds pursuant to the provisions of the Articles, Bylaws, and this Declaration. Common Expenses includes, but is not limited to, the following:

i. Expenses of administration, insurance, operation, upkeep, management, repair, or replacement of the Common Areas, those portions of the Units and Buildings which the Association is obligated to upkeep, manage, repair, or replace, including certain surface areas, landscaping, infrastructure, utilities, those portions of the roadways and driveways identified on the Plat Map, recreation paths, walkways, designated parking, and other portions that are contiguous with the Property, except to the extent that the cost of such repairs and replacements are the responsibilities of an Owner as set forth below.

ii. Expenses concerning the "Exterior Maintenance Area" or that are an "Exterior Maintenance Obligation" assumed by the Association by agreement, resolution, or this Declaration.

iii. Expenses associated with main electrical, gas, water and sewer lines up to but not including the electric meter, gas meter, water curb stop, and sewer cleanout.

iv. Expenses declared Common Expenses by the provisions of this Declaration, or the Bylaws of the Association;

v. All sums lawfully assessed against the Units, by the Executive Board;

vi. Expenses agreed upon as Common Expenses by the members of the Association; and

vii. Expenses provided to be paid pursuant to any management agreement.

k. "Declarant" means Gold Dust Capital Partners, LLC, a Colorado limited liability company, its successors and assigns. No party other than Gold Dust Capital Partners, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the records of the Eagle County Clerk & Recorder a written assignment from Gold Dust Capital Partners, LLC of all or a portion of such rights and privileges. Declarant shall also mean any person or group of persons acting in concert who, as a part of a common promotional plan, offers to dispose of to a purchaser such Declarant's interest in a Unit not previously disposed of to a purchaser.

l. "Declarant Control Period" shall mean and refer to the period of time which the Declarant is engaged in the ownership, development or improvement, sales, or construction or activities related thereto, anywhere on the Property or any additional adjacent land. Pursuant to the Act, the Declarant Control Period shall terminate 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.

m. "Declaration" means any recorded instruments, however denominated, that create a common interest community, including in the amendments to those instruments and also including, but not limited to Plats and Maps; and shall also mean and refer to this Declaration of Covenants, Conditions and Restrictions for Eagle Landing at Brush Creek Townhomes Association, Inc., made by the Declarant and recorded in the records of the Eagle County Clerk and Recorder's office, and all amendments thereto, and all "Supplemental Declarations," except when the context clearly requires otherwise.

n. "Design Review Committee" means the governing body of the Eagle Landing at Brush Creek Townhomes Association, and the Design Review Guidelines for Eagle Landing at Brush Creek Townhomes Association with respect to exterior appearance, design, construction, architectural detail, signage, landscaping, fencing, and all matters with respect to appearance and aesthetics. The Design Review Committee shall be such committee constituted by the Board of Directors or Manager to serve as an architectural review board and regulate the external design and appearance of the buildings and improvements thereon so as to enforce the architectural provisions of this Declaration, enforce the requirements of the Plat, and to preserve and enhance values and to maintain a harmonious relationship among Buildings and the Project.

o. "Director" means a member of the Executive Board of the Association.

p. "Documents" or "Governing Documents" means the basic documents creating and governing the Project, including, but not limited to, this Declaration, the Articles of Incorporation, the Bylaws of the Association, the Plat Map, and any procedures, rules, regulations, or governing policies relating to the Project adopted under such documents by the Association or the Executive Board, or pursuant to the Act.

q. "Expansion Property" means that area so defined on the Plat for Eagle Landing at Brush Creek Townhomes that has not yet been submitted to the Declaration for phases of construction or future development.

r. "Executive Board" means the governing body of the Association, as provided in this Declaration and in Articles of Incorporation and Bylaws of the Association.

s. "Exterior Maintenance Area" or "Exterior Maintenance Obligation" means the Common Expense for specific exterior limited maintenance, repair, or replacement of the Building or Common Area, which the Association agrees to Upkeep by agreement, resolution, or this Declaration and which may include periodic painting or staining of siding, front porches, posts, columns, and rails above the slab; trim; fascia, soffit, cladding, eaves, and overhangs; gutter heat tape; all landscaping (front and back); or periodic snow shoveling of roadways. Such Exterior Maintenance Obligation includes roof shingle repair, but not underlayment or sheathing or replacement; sidewalks for common use; common parking; dumpster pads; re- pairing, re-paving or re-black topping. Any area assumed by Owners, covered by a third-party warranty, or caused by negligence of Owner is the responsibility of Owner. The obligation created by this section does not include back decks, porches, balconies, steps; Unit entranceways, the front porch slab concrete; driveway

snowplowing; window repair or replacement; exterior lighting; doors or garage door repair or replacement. This obligation of repair, maintenance or replacement does not include these items listed as Owners' responsibility below in Article 5; any damage by an Owner's negligence (or that of an Owner's guest, licensee, or tenant); or any matter covered by Owner's third party express implied warranty.

t. "First Mortgage" means an unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Clerk and Recorder of Eagle County, Colorado, which secures financing for the construction or development of any portion of the Property or which encumbers a Unit.

u. "First Mortgagee" means the Mortgagee under a First Mortgage.

v. "General Assessments" means those Assessments levied against all Owners, as more fully discussed below.

w. "General Common Areas" or "General Common Elements" means the area of the Association so designated on Plat Map.

x. "Land Development Activity" shall mean and refer to any building, construction, reconstruction, repair, maintenance or improvements to the Property by the Declarant and/or by other persons regularly engaged in the building or construction business, if granted approval in writing by the Declarant.

y. "Landscaping" means all landscaping within the Project including trees, shrubs, bushes, flowers, grass, rock and rock gardens, and any other naturalized or landscaped area or vegetation, together with all irrigation systems servicing all landscaping within the Project. Landscaping shall also mean that obligation for the aforementioned labor and material as it relates to the portion that lies within the Eagle Ranch Association easement recorded, amended, restated and re-recorded.

z. "Limited Common Elements and Common Assessments" means, and includes, those items designated on the Plat or Map, and Unit walkways, front porches, back patios, and back decks; and means those Assessments levied against either the Units, respectively, for expenses relating to Limited Common Elements appurtenant to such expenses benefiting exclusively one such Unit or Units, and may include such expenses incurred per Section 2.20.

aa. "Lot" means the physical portion of the Project designated for separate ownership and as designated on the Plat. The term "Lot" also refers to a "unit" as that term is defined at Section 103(3) of the Act.

bb. "Management Agreement" means any contract or arrangement entered into for purposes of discharging the responsibilities of the Executive Board relative to the operation, maintenance, and management of the Common Parcels, Common Area, and Project.

cc. "Managing Agent" means a person, firm, corporation, or other entity employed or engaged pursuant to a Management Agreement to perform management services for the Common Parcels, Common Area, and Project.

dd. "Map" and "Plat Map" and means that portion of this Declaration that is a land survey plat, including any engineering survey or surveys of the Property executed by a person that is authorized to execute a declaration relating to the common interest community and recorded in the records of the office of the Eagle County, Colorado Clerk & Recorder. A Plat and a Map may be combined into one instrument locating the Project, the Property, Buildings, Units, the Common Area, Easements, Improvements, Landscaping, and may depict the location of improvements, together with other drawings or diagrams, and information regarding any portion of the Property as recorded in the office of the Eagle County, Colorado Clerk & Recorder.

ee. "Member" shall mean the Members of the Association which includes all Owners, and the Declarant, in the Project.

ff. "Mortgage" means any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the office of the Eagle County, Colorado Clerk & Recorder, which secures financing for the construction or development of the Project or which encumbers a Lot.

gg. "Mortgagee" means any person or entity named as a mortgagee or beneficiary under any Mortgage, or any successor to the interest of any such person under such Mortgage.

hh. "Owner" shall refer to the recorded owner of any Unit, which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation including Declarant, and including a natural person or persons, or an entity of a fee simple interest in and to any Unit.

ii. "Party Wall" means the vertical plane, extending half-way through the Lot line and between any Units, as shown on the Plat, that bisects the vertical planes between the Units and that runs through the roof and all the way down through the foundation.

jj. "Person" means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

kk. "Percentage Assessment Obligation" means the percentage apportionment of Assessments for which a Unit is responsible as set forth in Exhibit B below pursuant to the square footage of each townhome Building in relation to the total square footage of all townhome Buildings. If Units are added to or withdrawn from the Project pursuant to the provisions of this Declaration Percentage Assessment Obligation of each Unit shall be recalculated for the purposes of reallocating the Allocated Interests. Declarant shall record a supplement to this Declaration setting for the revised Allocated Interests of all Lots in the Project each time Units are added or withdrawn.

ll. "Plat" means collectively that certain Final Plat of the Eagle Landing at Brush Creek Townhomes, recorded in the public records of Eagle County, Colorado on October 29, 2018, at Reception No. 201818463, and any subsequent amendments or supplements thereto.

mm. "Project" means all of the Property which is submitted to this Declaration and the Plat Map, including without limitation the Common Area, and any future development shown hereon.

nn. "Property" means the real property described in the attached Exhibit A.

oo. "Roads" means any and all roadways within the Property that are now or in the future dedicated to the public as public roadways, including without limitation those roads shown on the Plat as "Piney Court", "Gold Dust Drive", "Uneva Court", and "Hardscrabble Court". All roadways not dedicated to and accepted by the Town of Eagle by recorded resolution shall be private roadways and part of the Association Common Area.

pp. "Reserved Easement Areas" shall mean all areas outside the Lot or building footprint for which the Association has assumed an Exterior Maintenance Obligation and reserved the right to use for the same upkeep activity.

qq. "Sign Plan" means a plan for signs within the Association, as approved by the Executive Board and consistent with the Design Review Guidelines, which may be amended from time to time.

rr. "Special Assessment" shall mean and refer to any special charge established pursuant to this Declaration.

ss. "Special Declarant Rights" means rights reserved for the benefit of the Declarant as set forth in this Declaration and the Act, including but not limited to: to complete improvements indicated on The Plat Maps filed with the Clerk and Recorder; To exercise any development rights; To maintain sales offices, management offices, signs advertising the Eagle Landing at Brush Creek Townhomes Project; To use easements through the Project for the purpose of making improvements within the Project; To make the Project subject to an Association; To add to, or merge, or consolidate units, buildings or property within the Project, including further subdividing property; and To appoint or remove any officer of the Association or any Executive Board member during any Declarant Control Period.

tt. "Unit" means the Lot together with improvements designed and intend for occupancy as a resident, together with all fixtures and improvements contain therein including the garage, if any.

uu. "Upkeep" as referred to in this Declaration and in Section 2.20 above shall mean and refer to routine exterior limited maintenance, repair, and replacement. When such term is used in relation to roadways, sidewalks, driveways, curbs, parking areas, utilities, or other improvements intended for vehicular ingress and egress, such term shall

include periodic snow shoveling of the same, but not of Unit driveways, walkways, steps, balconies, decks or porches. When such term is used in relation to landscaping, such term shall mean all landscaping (front and back), and not including items covered by warranties, Owners' neglect or misuse, or damage caused by Owner's tenants, guests, or invitees. When the term is used in relation to Buildings, it does include roof shingle repair, but does not include replacement or under lament sheathing anywhere on a Building. Exterior Maintenance does not include repair or replacement of doors or windows; steps or landings; garage doors; entryways. Upkeep does not include maintenance repair or replacement of foundations or party walls between Units, or Buildings, or roofs.

ARTICLE 3 COMMON AREA

Section 3.1 Common Area.

To the extent not previously covered by this Declaration or any other document, Declarant shall, upon acquisition or completion of the Project, convey to the Association the Common Areas, by written instrument (including, without limitation, the Map of the Project) recorded in the office of the Eagle County, Colorado Clerk & Recorder, by deed, easement conveyance or other appropriate property interest. Owners, by virtue of membership interest in the Association, own an undivided interest in and to the Common Areas and Common Elements. From time to time, Declarant may, but shall not be obligated to, convey to the Association upon approval of the Executive Board certain other Common Parcels or parts of the Property or other properties or interests within the discretion of such party. In addition, the Executive Board may from time to time determine additional facilities, improvements or interests which shall be Common Areas for the benefit of the Association.

The Common Areas are generally designated by this Declaration for the common use and enjoyment of the Owners and their families, tenants, employees, guests and invitees, and of such other persons as may be permitted to use the Common Areas as Declarant or the Association may specify.

Section 3.2 Third Party Rights in Common Areas.

The Association shall, in its discretion, be entitled to contract with third parties, including, without limitation other associations, allowing the members of such entities the use and enjoyment of all or a portion of the Common Area under such terms, and for such charges as may be acceptable to the Executive Board of the Association.

Section 3.3 Nonpartitionability of Common Area.

Subject to the provisions of this Article, the Common Areas shall be owned by the Association and shall remain physically undivided, and no Owner shall bring any action for partition or division of the Common Areas. By acceptance of a deed or other instrument of conveyance or assignment to a Unit, each Owner of a Unit shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other cause of action designed to cause a division of the Common Area, and this Section may be pleaded as a bar to the maintenance of such an action. Any Owner who shall institute or maintain any such action shall

be liable to the Association and hereby agrees to reimburse the Association for the Association's costs, expenses, and reasonable attorneys' fees in defending any such action. Such amounts shall automatically become a default Assessment determined and levied against such Owner's Unit, and enforced by the Association.

Notwithstanding the foregoing, the Declarant or Association shall have the right to dedicate, sell or otherwise transfer all or any part of the Common Area to any public, governmental, or quasi-governmental agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Executive Board, provided that an instrument effecting such conveyance is signed by a majority of the Executive Board of the Project Associations. Notwithstanding the preceding sentence, the granting of easements for public utilities or for other public purposes not inconsistent with the intended use of the Common Area, or the conveyance of any portion of or interest in the Common Area to a governmental or quasi- governmental district for the purposes of constructing and maintaining public improvements serving the Property shall be deemed a permitted transfer.

Section 3.4 Rights and Easements.

Every Owner shall have a perpetual right and easement of use and enjoyment of the Common Area and of access over, across, and upon the Common Area for the purpose of vehicular ingress, egress, utilities, and parking as may be designated by the Plat Map; getting to and from a Unit or Lot and the driveway of such Owner and the public ways for both pedestrian and vehicular travel, which rights and easements shall be appurtenant to and pass with the transfer of title to such Unit provided; however, that such right and easement shall be subject to the following:

- a. The covenants, conditions, restrictions, easements, reservations rights-of-way, and other provisions contained in this Declaration, the Subdivision Improvements Agreement with the Town of Eagle and the Plat Maps.
- b. The right of the Association to regulate on an equitable basis the use of the Common Parcel from time to time;
- c. The right of the Association to promulgate a Parking Plan.
- d. The right of the Association to adopt, from time to time, any and all rules and regulations concerning vehicular traffic and travel upon, in, under, and across the Property and between Units; and
- e. The right of the Association to adopt, from time to time, any and all rules and regulations concerning the Common Areas as the Association may determine is necessary or prudent including, without limitation the imposition of fees or assessments for the use and maintenance of the Common Area, the Exterior Maintenance Area, for periodic snowplowing, paving, black topping with asphalt, or landscaping.

Section 3.5 Allocation and Reallocation of Limited Common Elements.

A Limited Common Element may be reallocated by the Association between or among Units only to the extent permitted and in the manner authorized by the Act. Likewise, any

Common Element not previously allocated as a Limited Common Element may be allocated as a Limited Common Element only to the extent permitted and in the manner authorized by the Act.

ARTICLE 4 MEMBERSHIP IN ASSOCIATION

Section 4.1 Association Membership.

Every Owner of a Unit, and the Declarant, shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. Members of the Association shall at all times be, limited to the Declarant (during the Declarant Control Period) and Owners of Units. If more than one person owns a Unit then all of such persons shall collectively constitute one Owner; however, each may attend meetings of the Association. Membership in the Association is mandatory and automatic with ownership of a Unit.

Section 4.2 Classes of Association Membership.

There shall one (1) class of voting membership. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters on the basis of one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised by one person or alternative persons (who may be a tenant of the Owners) appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to a Unit shall be suspended if more than one person or entity holding an ownership interest in a Unit seeks to exercise the right to vote on any one matter. Any Owner of a Unit which is leased may assign his voting right to the tenant, provided that a copy of a proxy appointing the tenant is furnished to the Secretary of the Association prior to any meeting in which the tenant exercises the voting right.

Section 4.3 Declarant Control.

Notwithstanding anything to the contrary provided for herein or in the Bylaws, 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. Declarant may voluntarily relinquish such power evidenced by a notice recorded in the office of the Eagle County, Colorado Clerk & 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 4.4 Voting Rights.

Unless such privileges have been suspended, all members of the Association shall be entitled to vote on matters affecting the Association Common Expenses which are required by this Declaration or the Act to be submitted to the vote of the Owners.

Section 4.5 Approval of Budget.

The Budget shall be adopted in accordance with the Act.

Section 4.6 Executive Board.

All members of the Association Executive Board shall be entitled to participate in Association affairs which affect the Association in its entirety, and the Common Elements.

Section 4.7 Association's Address for Notices.

All Owners of a Unit shall have one registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners shall furnish such registered address to the secretary of the Association within five (5) days after transfer of title of the Unit to such Owner or Owners. Such registration shall be in written form, including electronic mail, and signed by all of the Owners or by such persons as are authorized by law to represent the interest of all Owners. Notwithstanding the foregoing, the Association shall be entitled to rely upon any such registration or other notice of a change in address of the Owners of a Unit which is signed by less than all of the Owners of such Unit.

The address on a vesting deed for a Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

All notices and demands intended to be served upon the Executive Board shall be sent to such address as the Executive Board may designate from time to time by notice to all of the Owners.

All notices given in accordance with this Section shall be sent by personal delivery, which shall be effective upon receipt; by overnight courier service, which shall be effective one business day following timely deposit with the courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three (3) days after deposit in the U.S. mail. The Association Executive Board may allow a policy concerning electronic notice, in their sole discretion.

ARTICLE 5 ASSOCIATION DUTIES

Section 5.1 Association Management Duties. Subject to the rights and obligations of Declarant and other Owners as set forth in this Declaration, the Association shall be responsible for the administration, operation, management, control; routine periodic maintenance, upkeep, repair, and replacement of (i) the Association Common Areas including basic periodic landscaping, and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair; (ii) the periodic clearing of snow on the Common Areas and Common driveways, but not of steps, included driveways, or stairways; and (iii) Exterior Maintenance Areas. The expenses, costs, and fees of such administration, operation, management (including snow removal), control, maintenance, upkeep, and repair, by the Association shall be part of the Assessments (subject to adjustment only as set forth in this Declaration) and, subject to the budget approval procedures, prior approval of the Owners shall not be required in order for the Association to pay any such expenses, costs, and fees. (iii) "Landscaping" shall mean all landscaping in both the front yard and back yard. Irrigation equipment repairs, except for instances of Owner negligence, are included as Common Expenses. The replacement, resurfacing, "black topping", and sealing of Unit driveways

are each Owner's responsibility. The Association shall also administer the Rules and Regulations, and policies adopted by the Executive Board, and the Design Review Guidelines, any or all of which may be amended from time to time. (iv) Periodic paint or stain on the exterior wood trim, siding, soffits, eaves, overhangs, gutters, heat tape, and fascia of a building as may be performed at the sole discretion of the Board or Association. Repair, replacement or maintenance of foundations, footers, stem walls, and roofs (except shingles) shall be performed by Owners.

a. Common Area or Common Elements subject to this Declaration shall be conveyed to the Association and the Association shall accept such conveyance from the Declarant. Thereafter, such Common Area shall be maintained by the Association, including without limitation: (i) upkeep of the Private Roadways, street lights, sidewalks and parking areas, including but not limited to snow removal and resurfacing, spalling concrete, black topping, or sealing; and (ii) upkeep of all other improvements located on the Common Areas. The cost of such maintenance and all other costs associated with such Common Areas will be assessed as a Common Expense against the Units as authorized in this Declaration. The Association shall not have any responsibility for the upkeep of any Unit or Building except for those responsibilities and duties specifically enumerated within this Declaration, Governing Documents, or separate easements or agreements or resolutions. Notwithstanding the general provisions for Upkeep of Common Parcel set forth in this Section, specific responsibilities for upkeep and allocations of the costs of upkeep shall be determined by any specific provisions therefore included in any supplement or amended Declaration or rules promulgated by the Executive Board. **If the Board of Directors determines that certain upkeep was necessitated by the negligence, misuse or misconduct of an Owner or for which an Owner is responsible, the cost of such upkeep shall be assessed against such Owner.**

b. The Declarant and/or the Association, or any other successor or designee of the Association may install, construct, and operate landscape water distribution, water treatment, sediment pond, sewer and sanitation services or utilities, and related improvements, and facilities for distribution and use throughout the Project and dedicate the same to the Town of Eagle, Colorado. Irrigation pipe, sprinklers, heads, hose bibs, and electronic control shall be the obligation to maintain and operate by the Association, subject to Owner negligence allocation. All water and other utilities is separately metered and billed to the Association.

c. Each Owner shall keep its Unit and Limited Common Elements, and all improvements located on its Unit in good order, condition and repair and in a clean and sanitary condition, as required by any applicable laws and regulations; as required by any Association covenants and Design Review Guidelines, unless such responsibility is specifically placed upon another party pursuant to this Declaration or any other agreement or easement entered into by the Association and/or the Town or public utility. Utilities, water, electric, cable, gas, and internet shall be the responsibility of beneficial Owner from the point of entry into its Unit.

d. Maintenance Standards. Unless otherwise undertaken by the Association as its duty, with respect to the items for which each Owner must manage, maintain, repair,

replace and provide Upkeep under this Declaration (or any Supplemental or amended Declaration), the following standards apply:

i. **Private Roadways and Sidewalks.** The driveways, easements and sidewalks shall be maintained in good repair and in sound condition, in good appearance, reasonably free of trash and debris, and in conformity with applicable governmental regulations. Such maintenance shall also include repair and maintenance of sidewalks, and snow removal from streets and sidewalks. All cracks and potholes in paved, concrete, or asphalt street surfaces shall be repaired by the Town of Eagle, if dedicated and accepted by the Town, otherwise by the Association. No obstruction shall be allowed to remain within the private streets or sidewalks.

ii. **Street Lights.** All street lights within the Property shall be operated from dusk to dawn each day of the year and shall be kept in good working order. Burned out bulbs or lamps shall be replaced with bulbs or lamps of comparable power and quality as originally installed. Down lighting is preferred and subject to lighting standards contained within the Town of Eagle municipal code which may be amended from time to time.

iii. **Porch Furniture.** Porch furniture shall be maintained in good working order and appearance. Trash cans shall be emptied into the common dumpsters as necessary to prevent odors and overflow, and for wildlife mitigation. Bear proof cans shall be used by all owners.

iv. **Signage.** Signs shall be maintained in good repair and as approved by the Design Review Committee, and in accordance with Town of Eagle municipal code and the Eagle County Land Use Regulations regarding signage. All graffiti, dirt or other obstruction that reduces the readability of any signage shall be promptly removed or the sign shall be replaced, as necessary. All lighting associated with any signage shall be maintained in working order and all burned out bulbs shall be promptly replaced.

e. **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair portions of the Project, and except to the extent covered by Association insurance, the Association shall not be liable to owners for injury or damage to persons, or property (personal) caused by any latent condition of those portions of the Project to be maintained and repaired by the Association, or caused by the parcels or other owners or persons.

f. Disclaimer of Liability. The Association shall not be liable for any failure of water supply or other utilities or services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the parcels or by any Building or Unit Owner, or any other Person, or resulting from among other things, electricity, water, snow or ice which may leak or flow from or over any of the Property of from any pipe, drain, culvert, pump, tank, conduit, appliance, or equipment, or any secondary or consequential damage of any type. No

diminution of value, offset, or abatement of any Assessment shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any governmental authority.

g. Services to Owners. The Association may, in the sole discretion of the Executive Board, provide additional services to Owners (including the Declarant) on a contractual basis. The charges for such services may be assessed against the Lot Owner as a Limited Common Expense.

Section 5.2 Owner Responsibility.

Except as provided otherwise in the Association Documents, or by written agreement with the Association, all Upkeep of Units, Buildings, roofs, foundations, footers, stem walls, party walls between Units and Buildings measured to the midline of the party wall to the adjacent unit, and other improvements located on a Lot and in a Unit, shall be the sole responsibility of the Owner thereof, who shall maintain such in accordance with the Declaration. The Association shall, in the discretion of the Executive Board, perform the Upkeep responsibilities of such other Owner if, in the opinion of the Executive Board, the level and quality of Upkeep and Maintenance being provided by such Owner does not satisfy the Association. Before assuming the Upkeep responsibilities, the Executive Board shall notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within thirty (30) days after the mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Executive Board shall be reimbursed to the Association by the Association or Owner, as is applicable, together with the interest from the date of the expenditure at the rate of cost plus 18% per annum. Such charges shall be a Default Assessment and a lien on the Lot of the applicable Owner. Owners shall be responsible for steps to Unit; landings, and all flatwork; windows; jambs sills; sashes, and components constituting a window system, (including interior and exterior trim); landings, steps, garage doors and trim; entry ways; snow plowing of driveways and asphalt black topping resurfacing; sealing and repairing; radon mitigation fans and pumps. Owners shall be responsible for all back deck maintenance; footers; concrete slab; columns; steps; decking; rails; posts.

Section 5.3 Delegation of Management and Maintenance Duties.

The Executive Board may delegate all or any part of its powers and duties to a Managing Agent, or committee or entity, including Declarant; however, the Executive Board, when so delegating, shall not be relieved of its responsibilities under this Declaration, and no such delegation shall modify specific requirements in the Association Documents for approval of certain actions by the Executive Board or by members of the Association.

Section 5.4 Acquiring and Disposing of Personal Property.

The Association may acquire, own, and hold, for the use and benefit of all Owners, tangible and intangible personal property, and may dispose of the same by sale or otherwise. Each Owner

may use such personal property in accordance with the purposes for which it is intended, without hindering or encroaching upon the lawful rights of other Owners.

Section 5.5 Cooperation with Governmental Entities, Special Districts and Other Associations.

The Association may contract or cooperate with governmental or quasi- governmental districts, the other Associations within the Project, or entities as convenient or necessary to provide services and privileges, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants, and invitees. The costs associated with such efforts by the Association (to the extent not assessable by another organization) shall be a Common Expense.

Section 5.6 Issuance of Rules and Regulations.

The Executive Board may make and amend reasonable rules and regulations governing the use of the Units and Common Areas, which rules and regulations shall be substantially consistent with the rights and duties established in this Declaration. The Executive Board shall provide for a reasonable opportunity for Owners to comment at a meeting of the Executive Board on the proposed adoption or amendment of any rules and regulations.

Section 5.7 Enforcement of Association Documents.

The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations and with the other provisions of the Association Documents to obtain damages for noncompliance or for injunctive relief, or both, all to the extent permitted by law, consistent with Rule 23.1 C.R.C.P., §38-33.3-209.5 and § 38-33.3-123 C.R.S.

Section 5.8 Identity of Executive Board and Managing Agent.

The Association shall maintain a list containing the names and addresses of the members of the Executive Board and the Managing Agent, if any.

Section 5.9 Implied Rights.

The Association may exercise any and all other rights or privileges given to it by this Declaration, or by the other Association Documents, or as may otherwise be given to it by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association in the Association Documents or reasonably necessary to effectuate any such right or privilege.

Section 5.10 Books and Records of the Association.

The Managing Agent or the Executive Board, as the case may be, shall keep detailed, accurate records of the receipts and expenditures affecting the Common Elements and any and shall maintain such other books and records as may be required under the Act. Owners and

Mortgagees may inspect the records of receipts and expenditures of the Managing Agent or the Executive Board at convenient business hours. In addition, the other books, records, and papers of the Association, including this Declaration, the Articles of Incorporation and the Bylaws of the Association, as well as any Management Agreement and any rules and regulations of the Association, shall be available for inspection by any Owner or Mortgagee at all time during convenient weekday business hours.

Section 5.11 Acquiring and Disposing of Personal Property.

The Association may acquire, own, and hold for the use and benefit of all Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same undivided proportion as their respective undivided interests in the Common Elements. Such interests shall not be transferable except with the transfer of a Unit. A conveyance of a Unit shall transfer ownership of the transferor's beneficial interest in such personal property without any reference thereto.

Section 5.12 Owner's Negligence.

In the event that the need for maintenance, repair, or replacement of all or any portion of the Common Elements, Area or Unit, or Building; or of any obligation for work or payment undertaken by the Association, is caused through or by the negligent or willful act or omission of an Owner, or by an Owner's invitees, licensees, tenants or guests, then the expenses incurred by the Association for such maintenance, repair, or replacement shall be a personal obligation of such Owner; and, if the Owner fails to repay the expenses incurred by the Association within seven (7) days after notice to the Owner of the amount owed, then the failure to so repay shall be a default by the Owner under the provisions of this Section, and such expenses shall automatically become a default Assessment determined and levied against such Unit, enforceable by the Association in accordance with Article 6 below.

**ARTICLE 6
ASSESSMENTS**

Section 6.1 Covenant of Personal Obligation of Assessments.

Declarant, by creating the Units pursuant to this Declaration, and every other Owner, by acceptance of the deed or other instrument of transfer of his Unit (whether or not it shall be so expressed in such deed or other instrument of transfer), is deemed to personally covenant and agree, jointly and severally, with every other Owner and with the Association, and hereby does so covenant and agree to pay to the Association the (a) annual Assessments, (b) special Assessments, (c) default Assessments, applicable to the Owner's Unit, (d) fines, penalties, fees, interest, costs, and attorney fees, and (e) all amounts that may be imposed as, or constitute, assessments pursuant to the Act. No Owner may waive or otherwise escape personal liability for the payment of the Assessments provided for in this Declaration by not using the Common Areas or the facilities contained in the Project or by abandoning or leasing his Unit.

Section 6.2 Purpose of Assessments.

The Assessments levied by the Association shall be used for the purpose of promoting the health, safety, convenience, and general welfare of the Owners, including the improvement and maintenance of the Project and the Association's obligation for certain upkeep or the exterior of buildings and Units. Proper uses of the Assessments shall include, but are not limited to, the following:

- a. Repairing, replacing, renovating and maintaining discrete portions of the exterior of Buildings and Units; and Common Areas which are not made the responsibility of the Owners by any other provisions of this Declaration;
- b. Installing underground utilities upon, across, over, and under any part of the Property;
- c. Furnishing garbage and trash pickup, and water and sewer services to the Common Parcels;
- d. Obtaining and maintaining insurance for Common Areas and Common Elements;
- e. Establishing and maintaining costs of operation, reserves for repairs, replacement, maintenance, taxes, insurance, capital improvements, and other purposes;
- f. Carrying out all other powers, rights, and duties of the Association specified in the Declaration and Governing Documents;
- g. Generally, addressing any other expenses necessary to meet the primary purposes of the Association;
- h. Consistent with the reasonable governance policies of the Association; and
- i. All other powers of the Association under the Act.

Section 6.3 Commencement of Assessments.

Until the Association makes a common expense assessment, the Declarant shall pay all Common Expenses.

Section 6.4 Amount of Total Annual Assessments.

The total annual Assessments against all Units shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such fiscal year, as approved by the Owners, which estimates may include, among other things, any costs and fees which may reasonably be expected to be incurred by the Association for the benefit of the Owners under or by reason of the Declaration. In the event of surplus funds remain after payment of or provision for Common Expenses and any prepayment of or provision for reserve the Executive Board may within its discretion apply the surplus funds

(a) into reserves, (b) toward the following year's Common Expenses, (c) toward a credit to Owners against future assessments, or (d) any combination of the foregoing.

Section 6.5 Apportionment of Annual Assessments.

The total annual Assessment for any fiscal year of the Association shall be assessed to the Units in proportion as shown in Exhibit B. The Executive Board, with the assistance of any company providing insurance for the benefit of the Owners, may reasonably adjust the allocation to each Owner of the cost of premiums for any insurance carried for, and to be charged to, a particular Owner, as well as Property taxes for the annual assessment of the Common Area.

Section 6.6 Annual Budget.

The fiscal year of the Association shall commence January 1. Within ninety (90) days after the adoption of any proposed budget for the Association, 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 within a reasonable period of time after mailing or other delivery of the summary.. Unless at that meeting sixty-seven percent (67.0%) 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.

Section 6.7 Special Assessments.

In addition to the annual Assessments authorized above, the Executive Board, if permitted under the Act, may at any time and from time to time determine, levy, and assess in any fiscal year (without the vote of the members of the Association, except as provided in the Act and in this Section below) a Special Assessment applicable to that particular fiscal year (and for any such longer period as the Executive Board may determine) for the purpose of defraying, in whole or in part, the unbudgeted costs, fees, and expenses including any construction, reconstruction, installation, repair, demolition, replacement, renovation or maintenance of the Common Area and Common Elements, or any other improvements maintained and operated by the Association, including Exterior Maintenance Area obligations and other obligations and expenses undertaken by the Association. Any amounts determined, levied and assessed pursuant to this Declaration shall be assessed to the Units in the same percentage applicable to annual Assessments; provided, however, that any extraordinary insurance costs incurred as a result of the value of a particular Owner's Unit or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner. The Association may adopt a new budget prior to levying a special Assessment and payable as determined by the Executive Board.

Section 6.8 Real Estate Transfer Assessments.

In order to provide the Association with working capital funds, upon the occurrence of any Transfer of a Unit, as defined below, the Transferee under such Transfer shall pay to the Association a real estate transfer assessment equal to \$750 (the "Real Estate Transfer Assessment"). Such amount may be amended by the Executive Board without a vote of the Owners or amendment to this Declaration. Payment of the Real Estate Transfer Assessment shall

not be considered advance payments of annual Assessments. This Real Estate Transfer Assessment complies with C.R.S. § 38-35-127(2)(b)(IV).

a. "Transfer" means and includes, whether in one transaction or in a series of related transactions, any conveyance, assignment, lease or other transfer of beneficial ownership of any Unit, including but not limited to (1) the conveyance of fee simple title to any Unit, (2) the transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Units, and (3) the transfer of more than 50 percent of the interest in net profits or net losses of any partnership, joint venture or other entity which, directly or indirectly, owns one or more Units, but "transfer" shall not mean or include the transfers excluded under "Exemptions" below.

b. "Transferee" means and includes all parties to whom any interest passes by a transfer, and each party included in the term "transferee" shall have joint and several liability for all obligations of the transferee under this Declaration.

c. "Exemptions" means:

i. The portion of any Transfer wherein the United States, or any agency or instrumentality thereof, the State of Colorado, any county, city and county, municipality, district or other political subdivision of the state, is the party.

ii. Any Transfer to a corporation, association or trust that has been organized, operated and maintained solely and exclusively for charitable purposes and has attained approval from the Internal Revenue Service for tax exempt status as a section 501(c)(3) entity.

iii. Any Transfer granting or conveying title to a Unit in consequence of a gift of a Unit, where no consideration other than love and affection, charitable donation or a nominal compensation is evidenced by the terms of the instrument of transfer.

iv. Any Transfer terminating or evidencing termination of a joint tenancy in a Unit except where additional consideration is paid in connection with such Transfer, or a decree or agreement partitioning any portion of a Unit held under common ownership unless consideration is paid in connection therewith.

v. Transfers for estate planning purposes where the grantor and grantee are family members or entities in which the individuals or principals (including the settlors of any trust) in the grantor entity are family members of the individuals or principals (including beneficiaries of any trust) in the grantee and any Transfer of title or change of interest in a Unit by reason of death.

vi. Transfers made pursuant to mergers or consolidation of entities; or Transfers by a subsidiary to a parent entity for no consideration other than cancellation or surrender of the subsidiary's ownership interests, or from a parent to a subsidiary entity for no consideration other than the ownership interests in the subsidiary.

vii. Any Transfer made and delivered without consideration for the purposes of confirming, correcting, modifying or supplementing a Transfer previously recorded; making minor boundary adjustments, removing clouds on titles; or granting easements, rights-of-way or licenses.

viii. Any Transfer resulting from a decree or order of a court of record determining or vesting title, including, without limitation, the final awarding title pursuant to a condemnation proceeding, a dissolution of marriage proceeding, quiet title proceeding, etc.

ix. Any Transfer of ownership from one or more individuals or from an entity, to an entity where the individuals or principals in the grantee entity are the same as the individuals or the principals in the grantor.

x. Transfers to secure a debt or other obligation, or Transfers or releases of any portion of the Unit which is security for a debt or other obligation.

xi. Any Transfer under execution, sale, foreclosure sale under a power of sale or court decree of lien foreclosure; sheriff's deed; public trustee's deed; or treasurer's deed.

xii. Any lease of a Unit (or assignment or Transfer of any interest in any such lease), provided such lease by its terms does not exceed 50 years. In the event the lease is for more than 50 years, the assessment shall be paid annually by the tenant based on the rent paid, excluding payments of common area charges, maintenance, utilities, taxes, and similar reimbursable items.

Section 6.9 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 and collected in accordance with this Declaration and applicable governance policy shall become liens against such Owner's 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 the Assessment pursuant to the Act.

Section 6.10 Due Dates for Assessment Payments.

Unless otherwise determined by the Executive Board, the annual Assessments and any special Assessments which are to be paid in installments shall be paid quarterly in advance and shall be due and payable to the Association at its office or as the Executive Board may otherwise direct in any Management Agreement, without notice (except for the notices required by this Article), on the first day of each quarter. If any such installment shall not be paid within fifteen (15) days after it shall have become due and payable, then the Executive Board may assess a "late charge" on the installment in an amount as the Executive Board may fix by rule from time to time as provided in the Bylaws and applicable governance policy of the Association to cover the extra expenses involved in handling such Delinquent Assessment as described below in Section 6.22.

Section 6.11 Lien for Assessments.

The annual, special, and default Assessments (including installments of the Assessments) arising under the provisions of this Declaration together with any and all interest, costs, late charges, expenses, and reasonable attorneys' fees, shall be burdens running with, and a perpetual lien in favor of the Association upon, the specific Unit to which such Assessments apply. To further evidence such lien upon a specific Unit, the Association may, but shall not be obligated to, prepare a written lien notice setting forth the description of the Unit, the amount of Assessments on the Unit unpaid as of the date of such lien notice, the rate of default interest as set by the Bylaws of the Association, the name of the Owner or Owners of the Unit, and any and all other information that the Association may deem proper. Any such lien notice shall be signed by a member of the Executive Board, an officer of the Association, or the Managing Agent and shall be recorded in the office of the Eagle County, Colorado Clerk & Recorder. Any such lien notice shall not constitute a condition precedent or delay the attachment of the lien, but such lien is a perpetual lien upon the Unit and attaches without notice at the beginning of the first day of any period for which any Assessment is levied.

Section 6.12 Effect of Nonpayment of Assessments.

If any Assessment (or any installment of the Assessment) is not fully paid within thirty (30) days after the same becomes due and payable, then as often as the same may happen, (i) interest shall accrue at the maximum rate on any amount of the Assessment which was not paid within such thirty (30) day period or on the amount of Assessment in default, whichever shall be applicable, accruing from the due date until date of payment, (ii) the Association may declare due and payable all unpaid quarterly or other installments of the annual Assessment or any special Assessment otherwise due during the fiscal year during which such default occurred, (iii) The Association may thereafter bring an action at law or in equity, or both, against any Owner personally obligated to pay the same, and (iv) the Association may proceed to foreclose its lien against the particular Unit in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

If any such Assessment (or installment thereof) is not fully paid when due and if the Association commences such an action (or counterclaims or crossclaims for such relief in any action) against any Owner personally obligated to pay the same, or proceeds to foreclose its lien against the particular Unit, then all unpaid installments of annual and special Assessments and all default Assessments (including any such installments or Assessments arising during the proceedings of such action or foreclosure proceedings), any late charges, any accrued interest under this Section, the Association's costs, expenses, and reasonable attorneys' fees incurred for any such action and/or foreclosure proceedings shall be taxed by the court as part of the costs of any such action or foreclosure proceedings and shall be recoverable by the Association from any Owner personally obligated to pay the same and from the proceeds from the foreclosure sale of the particular Unit in satisfaction of the Association's lien.

Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installments thereof) which are not fully paid when due or for any subsequent default Assessments. The Association shall have the power and right to bid

on or purchase any Unit at foreclosure or other legal sale and to acquire and hold, lease, or mortgage the Unit, or exercise the votes in the Association appurtenant to ownership of the Unit, and to convey, or otherwise deal with the Unit acquired in such proceedings.

Section 6.13 Successor's Liability for Assessments.

Notwithstanding the personal obligation of each Owner of a Unit to pay all Assessments on the Unit, and notwithstanding the Association's perpetual lien upon a Unit for such Assessments, all successors in interest to the fee simple title of a Unit, shall be jointly and severally liable with the prior Owner or Owners of the Unit for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Unit, without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. However, such successor in interest shall be entitled to rely upon the existence and status of unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees as shown upon any certificate issued by or on behalf of the Association to such named successor in interest.

Section 6.14 Waiver of Homestead Exemption; Priority and Subordination of Association's Lien for Assessments.

By acceptance of the deed or other instrument of transfer of a Lot, each Owner irrevocably waives the homestead exemption provided by Part 2, Article 41, Title 38, Colorado Revised Statutes, as amended. The Association's perpetual lien on a Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- a. Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute;
- b. To the extent permitted under the Act, the lien of any First Mortgage, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been made subsequent to the date of the attachment of the Association's liens; and
- c. Any lien created by the Association Documents.

With respect to the foregoing, to the extent permitted under the Act, any First Mortgagee who acquires title to a Unit by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Unit free of any claims for unpaid Association Assessments, interest, late charges, costs, expenses, and attorneys' fees against the Unit which accrue prior to the time such First Mortgagee or purchaser acquires title to the Unit, and the amount of the extinguished lien may be reallocated and assessed to all Units as a Common Expense at the direction of the Executive Board.

All other persons not holding liens described above and obtaining a lien or encumbrance on any Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments,

interest, late charges, costs, expenses, and attorneys' fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of any Unit, including but not limited to a foreclosure sale, except as provided above, and except as provided below, shall not affect the Association's lien on such Unit for Assessments, interest, late charges, costs, expenses, and attorneys' fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Unit from liability for, or the Unit from the lien of, any Assessments made after the sale or transfer.

Section 6.15 Statement of Status of Assessments.

Upon fourteen (14) calendar day's written request by personal delivery or certified mail, return receipt requested, to the Managing Agent, Executive Board or the Association's registered agent and payment of a reasonable fee set from time to time by the Executive Board, any Owner, prospective purchaser of a Unit, or Mortgagee shall be furnished, by personal delivery or by certified mail, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) a statement of the Owner's account setting forth:

- a. The amount of any unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;
- b. The amount of the current installments of the annual Assessment and the date that the next installment is due and payable;
- c. The date of the payment of any installments of any special Assessments then existing against the Unit; and
- d. Any other information deemed proper by the Association.

Upon the issuance of such a certificate signed by a member of the Executive Board, by an officer of the Association, or by a Managing Agent, the information contained therein shall be conclusive upon the Association as to the person or persons to whom such certificate is addressed and who rely on the certificate in good faith. Unless such a statement of status of Assessments is delivered as described above within said fourteen (14) calendar day period, the Association shall have no right to assert a priority lien upon the Unit over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

Section 6.16 Liens.

Except for annual, special, and default, civic, or other Assessment liens as provided in this Declaration, mechanics' liens, tax liens, and judgment liens and other liens validly arising by operation of law, and liens arising under Mortgages, there shall be no other liens obtainable against interest of any Unit in the Association.

Section 6.17 Separate Tax Assessments.

Upon the recording of the Plat or any Map in Eagle County, Colorado, Declarant or the party filing such Plat or Map shall deliver a recorded copy thereof to the Assessor of Eagle County, Colorado, as provided by law, which notice shall set forth the descriptions of the Units set forth on such Plat or Map so that thereafter all taxes, assessments, and other charges by the State or any governmental or political subdivision or any special improvement district or any other taxing agent or assessing authority shall be assessed against and collected on each Unit, each of which shall be carried on the tax records as a separate and distinct parcel for that purpose. For the purpose of such assessment against the Units, valuation of the Common Areas shall be apportioned among the Units in accordance with the apportionment of annual Assessments as described herein. Accordingly, the Common Parcels shall not be assessed separately but shall be assessed with the Units as provided pursuant to § 38- 33.3-105(2) C.R.S. No forfeiture or sale of any Unit for delinquent taxes, assessment, or other governmental charge shall divest or in any way affect the title to any other Unit.

Section 6.18 Owner Liability.

Each Owner shall pay to the Association all Assessments and other charges assessed by the Association pursuant to the provisions of this Declaration. Each Owner shall be personally liable for all Assessments made against such Owner's Unit at the time such Owner owned such Unit. No Owner shall be exempted from liability for Assessment by reason of waiver of the use or enjoyment of any of the Common Area, or by abandonment of the Unit, or by temporary unavailability of the Common Area, if any. No Owner shall be liable for the payment of any part of the Common Expenses assessed against the Unit subsequent to the date of recordation of a conveyance by such Owner in fee of such Unit. Prior to or at the time of any conveyance, all liens, unpaid charges and Assessments due and owing shall be paid in full and discharged; and unless so discharged; such unpaid amount shall remain a continuing lien against the Unit and shall be the joint and several personal obligation of the prior Owner and the successor Owner.

Section 6.19 Assessment of Declarant.

For the duration of the Declarant Control Period, the Declarant shall satisfy any operating budget deficit or shortage that the Association may incur or experience. Any cumulative budget surplus shall be credited against any deficit. The obligation of the Declarant to satisfy such deficit shall create a lien on the Lots or portion of the Property owned by the Declarant. Lots owned by Declarant shall be subject to the full amount of such Assessments commencing upon transfer or conveyance of any such Unit from Declarant to any other Owner.

Section 6.20 Mortgagee Liability.

Each holder of a Mortgage who comes into possession of a Unit by virtue of foreclosure or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid Assessments or charges against such Unit that accrued prior to the time such Person comes into possession thereof, except as provided below and for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all Units including the mortgaged Unit assessed after the holder of the

Mortgage or purchaser takes possession. However, if the proceeds of a foreclosure exceed the total amount due to the holder of the Mortgage, the excess shall be paid to the Association and applied to the satisfaction of the Association's lien in accordance with law and the relative priority of the Association's lien.

Section 6.21 Reserves.

The Association shall establish and maintain a reserve fund for, among other things, the Upkeep of any property or facilities required to be maintained by the Association pursuant to this Declaration, Colorado law, or pursuant to any easement, agreement, the direction of any governmental authority; or agency (the "Reserve Fund"). The Executive Board shall set the required contribution to the "Reserve Fund", if any, annually; in an amount sufficient to meet the projected reserve needs of the Association. The Reserve Fund Contribution shall be included as part of the Association's Annual Budget and shall be payable as part of the Annual Assessment. The Association may establish such other reserve funds at the Executive Board may from time to time consider necessary or desirable, including, without limitation a general operating reserve. All reserve funds established by the Association and the corresponding required reserve fund contribution shall be approved by the affirmative vote of a majority of the members of the Executive Board, and by Declarant during the Declarant Control Period. The proportional interest of an Owner in any reserve fund established by the Association shall be considered an appurtenance to such Owner's Unit and shall not be separately withdrawn, assigned, transferred, or otherwise separated from the Unit to which it appertains, and shall be deemed to be transferred with such Unit. The Executive Board shall specifically ensure that the Reserve Fund is adequately funded at all times to cover the cost of all necessary Upkeep of the roads, parking areas, and other improvements in the Property that fall within the Association's responsibility under this Declaration. These funds shall be specifically earmarked for that purpose. In order to ensure that adequate funds are reserved for this purpose, the Executive Board shall commission periodic inspections of all of the Association-maintained areas, including the Common Area, portions of Units and Buildings as described in this Declaration, and other improvements at least once every five (5) years or as prescribed by the Association's governance policies concerning reserves, and adjust the funds held in the Reserve Fund accordingly.

Section 6.22 Delinquent Assessments.

In addition to any other charges or remedies allowed under this Declaration, any Assessment (including an installment of the Annual Assessment) not paid within fifteen (15) days after the due date shall be delinquent and shall accrue a late charge in the amount of one percent (1.0%) per month on the amount due or such other amount as may be established from time to time by the Executive Board. The Association shall take prompt action to collect any Assessments due from any Owner that remains unpaid for more than thirty (30) days after the due date for payment thereof.

ARTICLE 7
INSURANCE AND FIDELITY BONDS

Section 7.1 **General Insurance Provisions.**

The Association shall maintain, to the extent reasonably available:

a. Property insurance on the Common Area for broad form covered causes of loss; except that the total amount of insurance must be not less than the full insurable replacement costs of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, utilities, pipe, conduit, water lines, sewer lines, pumps, paving, landscaping, and other items normally excluded from property policies, and covered by Unit Owners.

b. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Areas and the Association, in an amount, if any, deemed sufficient in the judgment of the Executive Board, insuring the Executive Board, the Association, the Managing Agent, and their respective employees, agents, and all persons acting as agents. Declarant shall be included as an additional insured in Declarant's capacity as an Owner and Executive Board member. The Owners shall be included as additional insureds but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Areas. The insurance shall cover claims of one or more insured parties against other insured parties.

c. The Association may carry fidelity and such other and further insurance that the Executive Board considers appropriate, including insurance on Units that the Association is not obligated to insure to protect the Association or the Owners.

Section 7.2 **Cancellation.**

If the insurance described above is not reasonably available, or if any policy of such insurance is cancelled or not renewed without a replacement policy therefore having been obtained, the Association promptly shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners.

Section 7.3 **Policy Provisions.**

Insurance policies carried must provide that:

a. Each Owner is an insured person under the policy with respect to casualty or liability arising out of such Owner's interest in a Unit, Building, roof, foundation area, and party wall if shared with an adjacent Unit Owner; and any interest in Common Areas, or membership in the Association.

b. The insurer waives its rights to subrogation under the policy against any Owner or member of his or her household;

c. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

d. If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 7.4 Insurance Proceeds.

Any loss covered by the property insurance policy described above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Owners and Mortgagees holding a first security interest in a Unit as their interests may appear. Subject to the provisions below, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners and First Mortgagees are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored or the regime created by this Declaration is terminated.

Section 7.5 Association Policies.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to the Property or the Project, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration all or any equitable portion of the deductibles paid by the Association.

Section 7.6 Insurer Obligation.

An insurer that has issued an insurance policy for the insurance described above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Owner or Mortgagee. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Association and to each Owner and Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last-known addresses.

Section 7.7 Repair and Replacement.

a. Common Area Repair. Any portion of the Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

i. The regime created by this Declaration is terminated;

ii. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety;

iii. Eighty percent (80%) of the Owners and all directly adversely affected Owners agree in writing not to rebuild; or

iv. Prior to the conveyance of any Unit to a person other than Declarant, the Mortgagee holding a Mortgage on the damaged portion of the Common Area rightfully demands all or a substantial part of the insurance proceeds.

b. Repair as Common Expense. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If all are not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Project, and except to the extent that other persons will be distributes, the insurance proceeds must be distributed to all the Owners or Mortgagees, as their interests may appear, in proportion to their respective ownership interests in the Common Area.

Section 7.8 Common Expenses.

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

Section 7.9 Fidelity Insurance.

To the extent reasonably available, fidelity bonds must be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees in an amount not less than two months' current Assessments plus reserves as calculated from the current budget of the Association. The Association must also secure and maintain, or require to be secured or maintained by any parties handling the collection, deposit, transfer or disbursement of Association funds, fidelity insurance with aggregate coverage of not less than two (2) months' current Assessments plus reserves, as calculated from the then-current budget of the Association; provided, however, in no event shall the coverage for third parties handling the collection, deposit, transfer or disbursement of Association funds be less than \$50,000. In addition, all funds and accounts of the Association being held by a Managing Agent or other third persons shall be kept in an account separate from the funds of other parties held by such Managing Agent or third party, and all reserves of the Association shall be kept in an account separate from the operational account of the Association. Any such fidelity coverage shall name the Association as an obligee and such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions.

Section 7.10 Worker's Compensation Insurance.

The Association shall obtain worker's compensation or similar insurance with respect to its employees in the amounts and forms as may now or hereafter be required by law.

Section 7.11 Other Insurance.

The Association shall also maintain insurance to the extent reasonably available and in such amounts as the Executive Board may deem appropriate on behalf of Directors against any liability asserted against a Director or incurred by him in his capacity of or arising out of his status as a Director. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

Section 7.12 Insurance Obtained by Owners.

It shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage and casualty insurance on such Owner's personal property and furnishings, and premises liability insurance covering such Owner's Unit, and limited Common Areas or limited Common Elements and improvements, including the Unit, foundations, walls, roofs, party walls, garages, utilities, utility lines and connections and anything owned or used by Owner and not insured by the Association. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable, including but not limited to flood insurance, even if not required by Owner's lender. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. The Executive Board may require an Owner who purchases additional insurance coverage for the Owner's Unit (other than coverage for the Owner's personal property) to file copies of such policies with the Association within thirty (30) days after purchase of the coverage to eliminate potential conflicts with any policy carried by the Association. Insurance coverage is different from builder, seller, or third party warranties, and is different than mortgage insurance. Owner is charged with the duty of knowing the differences.

ARTICLE 8
MECHANIC'S LIENS

Section 8.1 Mechanic's Liens.

Subsequent to the filing of the Plat and recording of this Declaration, no labor performed or materials furnished for use and incorporated in any Lot with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Area. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from

the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner or against the Common Area, or any part thereof.

Section 8.2 Enforcement by the Association.

At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper) the Association shall enforce the indemnity provided by the provisions above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain or substitute release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association.

**ARTICLE 9
USE RESTRICTIONS**

Section 9.1 Use Restrictions.

All Units shall be used solely for lawful residential purposes in conformity with the Plat, all laws and codes of the Town of Eagle, the County of Eagle, the State of Colorado, and the United States of America, and all ordinances and regulations and restrictions of record, and shall meet, at all times and in all respects, the standard of the Project of Eagle, Colorado. The uses permitted are only residential. Notwithstanding the foregoing, no use shall have an unreasonable impact on any other Owner or occupant. Owners may rent or lease to others for these purposes, subject to regulation by the Board and its policies, concerning short term rentals. Owners will be subject to the rules and regulations of the Association.

Section 9.2 Conveyance of Units.

All Units, whether or not the instrument of conveyance or assignment shall refer to this Declaration, shall be subject to the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration, as the same may be amended from time to time.

Section 9.3 Use of Common Areas.

There shall be no obstruction of the Common Area, nor shall anything be kept or stored on any part of the Common Area by any Owner without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from the Common Area by any Owner without the prior written approval of the Association. Common Areas shall be subject to rules and regulations regarding particularly concerning pets, fencing restoration and obligations for grass cutting, watering and landscaping.

Section 9.4 Prohibition of Increases in Insurable Risks and Certain Activities.

Nothing shall be done or kept in any Unit or in, or on the Common Area, or any part thereof, which would result in the cancellation of the insurance on all or any part of the Association or in an increase in the rate of the insurance on all or any part of the Project over what the Association, but for such activity, would pay, without the prior written approval of the Association. Nothing shall be done or kept in any Unit or in or on the Common Area which would be in violation of any statute, resolution, the Subdivision Improvement Agreement, rule, ordinance, regulation, permit, or other imposed requirement of any governmental body. No damage to or waste of the Common Area(s) shall be committed by any Owner, or by any guest, invitee, tenant, licensee or contract purchaser of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him, his guests, invitees, tenants, licensees or contract purchasers. Failure to so indemnify shall be a default by such Owner under this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit. At its own initiative or upon the written request of any Owner (and if the Association determines that further action by the Association is proper), the Association shall enforce the foregoing indemnity as a default Assessment as provided herein.

Section 9.5 Structural Alterations and Exterior Appearance.

No structural or exterior alterations shall be made or caused to be made by an Owner without the prior written approval of the Executive Board of the Association per the Design Review Guidelines.

Section 9.6 Use of Units.

Each Owner acknowledges the use of Units only for residential purposes, and during the time of construction, and thereafter as permitted, will include delivery truck and construction vehicle ingress and egress over and across the private and public roadways adjacent to the Project and over and across the Common Area, and that noise and other attendant inconveniences may be experienced pursuant to such use at any time, during construction of all Units.

Section 9.7 Nuisances.

No nuisance or any use or practice that is the source of annoyance to Owners, or which interferes with the peaceful possession and proper use of the Project by the Owners shall be allowed upon the Project. All parts of the Project shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate and create a nuisance or hazard of any kind.

Section 9.8 Rezoning, Subdivision, and Amendments.

No Owner shall seek to rezone, subdivide, or amend land use affecting such Owner's Unit without the prior written approval of the Declarant during the Declarant Control Period, and thereafter, without the prior written approval of the Association's Board of Directors. The Declarant reserves the right to seek to rezone or amend the zoning applicable to any portion of the Property or any expansion property or additional land during the Declarant Control Period owned

by it, without approval. The Project shall be constructed in three (3) phases, at the Declarant's sole discretion.

Section 9.9 Operational Restrictions.

- a. No Waste. No waste shall be committed on the Property.
- b. Compliance with Laws. No improper, offensive, or unlawful use shall take place within the Property, and all state and federal laws, zoning ordinances, restrictions, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations, or requirements or any governmental agency having jurisdiction thereof relating to any portion of the Property shall be complied with by the person responsible for the Upkeep of such portion of the Property.
- c. Harmful Discharges. There shall be no emissions, no production, storage, or discharge of hazardous wastes or odors, vapors, or smoke on the Property or discharges of liquid, solid wastes, or other harmful matter into the ground or any body of water, if such emission, production, storage, or discharge may adversely affect the use or intended use of any portion of the Property. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer. No Person shall allow the escape or discharge of any fumes, gases, smoke, vapors, steam, or other substances into the atmosphere which discharge, in the opinion of the Executive Board, may be detrimental to the health, safety, or welfare of the occupants of the Property or vegetation located in the Property. The foregoing shall not be interpreted to prevent normal construction or development, or food preparation activities in a Unit.
- d. Noise. No Person shall cause any unreasonably loud noise (except for security devices) anywhere in the Property, nor shall any Person permit or engage in any activity, practice, or behavior resulting in significant and unjustified annoyance, discomfort, or disturbance to any Person lawfully present on any portion of the Property.
- e. Trash. No burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials, or trash of any other kind shall be permitted on any Lot. Trash or recycling containers must be screened or enclosed and shall not be permitted to remain visible from adjacent land and must be in approved containers and deemed wildlife-safe by the Colorado Division of Wildlife.
- f. Landscaping. No plant, tree, shrub, flower, hedge, vegetation, or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public or private streets in violation of applicable governmental regulations, or which is invasive species prohibited by Eagle County, Colorado. Fences of any kind shall not be allowed anywhere upon the Property or Project, unless placed on or near the Common Parcel by the Association, or as approved by the Design Review Committee.
- g. Lighting. All exterior lighting is subject to the standards contained within the Town of Eagle Municipal Code and the Association Design Review Guidelines.

h. Utility Lines. Except for waterlines, which are reasonably necessary in connection with construction activities or normal landscape maintenance by the Association, and except for equipment used to provide or meter utilities or services that are temporarily installed above ground during periods of construction, and except in connection with promotional or seasonal activities, no water pipe, sewer pipe, gas pipe, drainage pipe, television or telephone cable, DSL, fiber optic, electric line, or other similar transmission line shall be installed or maintained upon any Lot or in a Unit, or above the surface of the ground without the approval of the Declarant during the Declarant Control Period or the Executive Board thereafter, and in such event, only in designated easements.

i. Antennae. Subject to the Town of Eagle Municipal Code and the Association Design Review Committee approval, no outside antenna, satellite dishes, or amateur radio equipment, or similar equipment may be maintained on a Lot attached to a Unit or Building, unless screened from street level view and only when otherwise approved by the Declarant during the Declarant Control Period, or the Executive Board thereafter. The Declarant or Executive Board shall not restrict such equipment as allowed by Federal Law.

j. Restriction on Further Subdivision. During the Declarant Control Period, the Project site may be subdivided or altered so as to relocate the boundaries between Units and Building. This section is not intended to require the Declarant's approval of leases, deeds of corrections, deeds to resolve boundary line disputes or similar corrective documents.

k. Leasing. No Owner shall lease a Unit other than on a written form of lease that requires the lessee to comply with the Association policies, Governing Documents, and Rules and Regulations, and that provides that failure to comply constitutes a default under the lease. To enable the Executive Board to ensure compliance with this, the Executive Board may in its sole discretion, require all Owners to submit a copy of their lease agreement to the Executive Board for review and approval prior to the Owner executing the lease with a lessee. All leases or short term rentals less than thirty (30) days shall be subject to the Association Rules and Regulations.

l. Rules and Regulations. The Executive Board shall have the power to adopt, amend, repeal, and enforce Rules and Regulations and restricting and regulating the use and enjoyment of the Common Area, the appearance of the Buildings and Units, and the actions of the Owners and occupants of any portion thereof that affect the appearance, use, or enjoyment of the Property. The Property shall be occupied and used in compliance with the Rules and Regulations. Copies of the Rules and Regulations shall be furnished by the Executive Board to each Owner. Changes to the Rules and Regulations shall be published prior to the time when the same shall become effective and copies thereof shall be provided to each Owner.

m. Exclusion for the Declarant and Designees of the Declarant. Notwithstanding any other provision of the Governing Documents, neither restrictions in this Article nor the Rules and Regulations of the Association shall apply to any otherwise

lawful acts or omissions of the Declarant or its designees during the Declarant Control Period.

ARTICLE 10 EASEMENTS

Section 10.1 Easement of Enjoyment.

Every Owner shall have a nonexclusive easement for the use and enjoyment of the Common Area, which shall be appurtenant to and shall pass with the title to every Unit, subject to the easements set forth in this Article.

Section 10.2 Delegation of Use.

Any Owner may delegate, in accordance with the Documents, the Owner's right of enjoyment in the Common Parcel to the Owner's tenants, employees, invitees, licensees, and guests.

Section 10.3 Recorded Easements.

The Property shall be subject to any easements as shown on any recorded Plat Map affecting the Property, and as shown on the recorded Map. The recording data for recorded easements, licenses or other matters appurtenant to or included in the Property or to which any parts of the Property may become subject is set forth on the attached Exhibit C.

Section 10.4 Easements for Encroachments.

The Project, and all portions of it, is subject to easements hereby created for encroachments between the Buildings, Units, and the Common Area as follows:

- a. In favor of the Association so that they shall have no legal liability when any part of the Common Area encroaches upon a Lot;
- b. In favor of each Owner of each Lot and Unit so that the Owner shall have no legal liability when any part of his Lot or Unit encroaches upon the Common Area or upon another Lot or Unit due to deviation in normal construction tolerances or maintenance; settling or shifting of land or improvements.
- c. In favor of the Association upon a Lot or Unit to perform any Upkeep or work on the Exterior Maintenance Area.

Encroachments referred to in this Section include, but are not limited to, encroachments of improvements located on the Common Area, encroachments of overhangs or other portions of Units, Buildings or other improvements, onto an adjacent Lot or Unit, as part of the original design, specifications and construction. For example, roof overhangs from one Unit to another, or onto the Common Area and other encroachments caused by error or variance from the original plans in the construction of a Building constructed on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any part of the

Project. Such encroachments shall not be considered to be encumbrances upon any part of the Project or the Common Parcel.

Section 10.5 Utility Easements.

There is hereby created a general easement upon, across, over, in, through, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, landscaping, irrigation pipe, conduits, controls, and components, gas, telephone, DSL, fiber optic, electricity, or a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the entities providing electrical, telephone, and other communication services to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company or entity using this general easement shall use its best efforts to install and maintain the utilities provided without disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company or entity furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Executive Board shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

Section 10.6 Reservation of Easements, Exceptions and Exclusions.

Declarant reserves for itself and its successors and assigns and hereby grants to the Association the concurrent right to establish from time to time by declaration or otherwise, utility and other easements for purposes including but not limited to driveways, streets, paths, walkways, drainage, landscape irrigation system components, recreation areas and paths, parking areas, ditches, conduit installation areas, and retaining wall areas as shown on the Plat and consistent with the ownership of the Project for the best interest of all of the Owners and the Association, in order to serve all the Owners within the Project.

Section 10.7 Easement for Construction.

Declarant hereby reserves for itself, its successors and assigns, an easement and right-of-way over, upon and across the Property for construction, utilities, drainage, and ingress and egress from properties abutting and contiguous to the Property, and for use of the Common Area as may be reasonably necessary or incident to the construction of improvements relating to the Units or other improvements on the Property such as storage or movement of materials; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access to the Property by the Owners. The location of these easements and rights- of-way may be made certain by Declarant or the Association by instruments recorded in the office of the Clerk and Recorder, Eagle County, Colorado.

Section 10.8 Emergency Access Easement.

A general easement is hereby granted to the Association Board, its managers and all police, sheriff, fire protection, wildlife, ambulance, and all other similar emergency response agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

Section 10.9 Easement.

An easement is hereby granted to, the Association and any Managing Agent and their respective officers, agents, employees, and assigns upon, across, over, in, and under the Units and Common Area, and a right to make such use of the Units, and Common Area as may be necessary or appropriate to perform the duties and functions which they are obligated or permitted to perform pursuant to this Declaration.

Section 10.10 Drainage Easement.

An easement is hereby reserved to Declarant and its successors and assigns and granted to the Association and its officers, agents, employees, successors, and assigns to enter upon, across, over, in, and under any portion of the Project for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water on the Property.

Section 10.11 Easements of Access for Repair, Maintenance and Emergencies.

Some of the Common Area may only be accessible through certain Lots. The Association shall have the irrevocable right, to be exercised by the Association, as applicable, as the Owners' agent, to have access to each Lot or Unit and to the Common Area from time to time during such reasonable hours as may be necessary for the maintenance or repair upon the Common Area or the Exterior Maintenance Area or accessible therefrom or for making emergency repairs therein necessary to perform work, or prevent damage to the Common Area or to any Unit. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, removal, or replacement of any of the Common Area, Exterior Maintenance Area at the instance of the Association or of Owners shall be a Common Expense.

Section 10.12 Declarant's Rights Incident to Construction and Marketing.

Declarant, for itself and its successors and assigns, hereby retains a right pursuant to § 38-33.3-215 C.R.S., and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials on the Property and to make such other use of the Property as may be reasonably necessary or incident to the complete construction and sale of the Project, including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs. Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Unit for sales offices, management offices or models so long as Declarant, or its successors or assigns, continues to be an Owner of a Unit. The use by Declarant of any Unit for a model, office, or other use shall not affect the Unit's designation on the Plat.

Section 10.13 Right of Declarant and Association to Own Units and to Use Common Areas.

An easement is hereby reserved by Declarant for itself and its successors and assigns and granted to the Association and its officers, agents, employees, successors and assigns to maintain offices, storage areas, conference areas, and recreational areas for use by the Association within the Common Area, subject to all rules and regulations established under this Declaration. The Association shall also have the right (but not the obligation) to purchase and own any Unit for the purpose of maintaining an office for the Association or for any other use which the Association determines is consistent with the operation of the Project. The costs and carrying charges incurred by the Association in purchasing and owning any such Unit shall be part of the Common Expenses.

Section 10.14 Remodeling Easement.

Declarant, for itself and its successors and assigns, including Owners, retains a right and easement for the construction and installation of any work, landscaping, or other additional services or utilities in the Common Area, and adjacent parcel in connection with the improvement or alteration of any Unit, including the right of access to such areas of the Common Area as is reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Executive Board shall be final.

Section 10.15 Governmental Requirements.

Declarant hereby reserves the right to grant such easements and rights-of-way from time to time, as may be required by any government agency. Such easements and rights-of-way shall specifically include, but not limited to, any public rights-of-way and any environmental easements required by federal, state, or local environmental agencies, for so long as the Declarant holds an interest in any Unit subject to this Declaration.

Section 10.16 Declarant Easements.

Declarant reserves unto itself, its successors, specific assigns, lessees, guests, licensees, and invitees, for so long as it holds any interest in any Unit, the same easement rights granted to Owners under this Declaration and specific easement rights over and across the Project as it may deem necessary for its use from time to time.

Section 10.17 Signage Easement.

An easement on and a right is hereby reserved to Declarant and its successors and assigns and granted to the Association and its successors and assigns to permit, authorize, regulate and deny signage in accordance with applicable Land Use Regulations of Eagle County and within the discretion of Declarant and/or the Executive Board of the Association, and with respect to installation, maintenance, repair, and replacement of the same.

Section 10.18 Easement for Association.

The Declarant under the Declaration and the officers, agents, employees and independent contractors of the Association shall have a nonexclusive easement to enter upon the Unit of any Owner, or the Property for the purpose of performing or satisfying their respective obligations as set forth in the Declaration and other Association Documents.

Section 10.19 Easements Deemed Created.

All conveyances of Units hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance; including but not limited to easements for roadways, trails, ingress, egress, drainage, and utilities.

Section 10.20 Relocation.

If an easement is relocated, the cost of relocation shall be borne by the party requesting relocation

Section 10.21 Reservation for Expansion.

Declarant hereby reserves to itself and the Association and/or for Owners in all future phases of the Property, if any, regardless of whether those future phases of the Property are subjected to this Declaration, an easement and right-of-way over, upon, and across the Property for construction, utilities, drainage, and ingress to and egress from other properties abutting and contiguous to the Property, and for use of the Common Parcel as may be reasonably necessary or incident to the construction of improvements on the Lots or other improvements on the Property; provided, however, that no such rights shall be exercised by Declarant in a way which unreasonably interferes with the occupancy, use, enjoyment, or access by the Owners. The location of these easements and rights-of-way may be certain by Declarant or the Association by instruments recorded in the office of the Eagle County, Colorado Clerk & Recorder.

Section 10.22 No Dedication.

This Declaration does not dedicate the easements for the benefit of any Person not expressly made a beneficiary thereof. Declarant disclaims the creation of any right in or for the benefit of the general public.

Section 10.23 Miscellaneous.

Declarant hereby creates an Emergency Easement in favor of the Association, and its Members, through the Common Parcel which as shown on the Plat, for emergency ingress, egress, and vehicular access only. In the event Gold Dust Drive is dedicated to and accepted by Town of Eagle as a public road, the portion lying within the Common Area shall remain a private drive and not accessible to the general public.

a. The Declarant reserves during the Declarant Control Period, the right unto itself to dedicate, reserve, grant, vacate, or terminate any easement, right-of-way, and

licenses as may be required by any applicable governmental authority to carry out the Subdivision Improvement Agreement, or the Declarant's intent.

b. In addition to the easement through Gold Dust Drive and the recreational path, these easements are hereby created for the benefit of the Association and its designees or assigns; for sidewalks, driveways, curbs, retaining walls, drainage, existing roads, or easements shown on the Plat.

ARTICLE 11 DAMAGE OR DESTRUCTION

Section 11.1 The Role of the Executive Board.

Except as provided herein, in the event of damage to or destruction of all or part of any Common Area, or other property covered by insurance written in the name of the Association, the Executive Board shall arrange for and supervise the prompt repair and restoration of the damaged areas of the Common Area.

Section 11.2 Estimate of Damages or Destruction.

As soon as practical after an event causing damage to or destruction of any part of the Common Areas or Elements or to the recovered property, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Areas or Elements damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed part of the Common Areas or Elements to substantially the same condition in which it existed prior to the damage or destruction.

Section 11.3 Repair and Reconstruction.

As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the part of the Common Areas or Elements damaged or destroyed. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary in connection with that action.

Section 11.4 Funds for Repair and Reconstruction.

The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction, except as otherwise provided below.

Section 11.5 Insurance Proceeds Sufficient to Repair.

In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association as attorney-in-fact to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair

and restoration of the improvements. Assessments for Common Expenses shall not be abated during the period of insurance adjustments and repair and reconstruction.

Section 11.6 Insurance Proceeds Deficit; Special Assessment:

If the insurance proceeds are insufficient to repair and reconstruct the improvements damaged, using the proceeds of insurance and, if permitted under the Act, a special Assessment will be made against all of the Owner's Units. Any such Special Assessment shall be a Common Expense and shall be due and payable within thirty (30) days after written notice as provided above. The Association shall have full authority, right, and power as attorney-in-fact to cause the repair, replacement, or restoration of the improvement using all of the insurance proceeds for such purpose, notwithstanding the failure of an Owner to pay the Assessment.

Any Assessment provided for in this Section shall be a debt of each Owner and a lien on the Owner's Unit and may be enforced and collected as provided above. In addition, the Association as attorney-in-fact shall have the absolute right and power to sell the Unit of any Owner refusing or failing to pay such deficiency Assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Unit of the delinquent Owner shall be sold by the Association as attorney-in-fact pursuant to the provisions of this Section. Assessments for the Common Expenses shall not be abated during the period of insurance adjustment and repair and reconstruction. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notice, interest at the maximum rate on the amount of the Assessment, and all reasonable attorneys' fees.

Section 11.7 Repairs.

All repairs and reconstruction contemplated by this Article shall be performed substantially in accordance with this Declaration, the Plat or Map, and the original plans and specifications for the Project unless other action is approved by the Association in accordance with the requirements of this Declaration, the Subdivision Agreement, and the other Documents.

Section 11.8 Declarant.

Declarant shall be listed as an additional insured during the Declarant Control Period.

ARTICLE 12
ARCHITECTURAL AND DESIGN REVIEW

Section 12.1 Design Review Committee.

a. Purpose. The Executive Board of the Association may establish a Design Review Committee, consisting of at least three (3) persons appointed by the Executive Board, with at least one (1) person being Declarant, or representative of Declarant and; at least two (2) persons being an Owner of a Unit. The Executive Board may expand the number of members of the Design Review Committee for the sole purpose of compliance with any Design Review Guidelines mandating an architect be a member of the Design Review Committee. Each person appointed to the Committee shall serve for a term of three (3) years as may be amended by the Executive Board. The purpose of the Design Review

Committee shall be to assure that the Property and the Common Parcel shall always be maintained in a manner: (i) providing for visual harmony and soundness of repair; (ii) avoiding activities deleterious to the aesthetic or property values of the Property; and (iii) promoting the general welfare and safety of the Owners, such Owners' tenants and such Owners' (or tenants') guests, employees, agents, and invitees. If the Executive Board does not appoint a Design Review Committee, the Executive Board shall perform the duties of the Design Review Committee.

i. Except for the Declarant during the period of Declarant control, the Design Review Committee may from time to time establish requirements regarding the form and content of plans and specifications to be submitted for approval. The Design Review Committee shall have the power to charge Owners reasonable application fees. Such fees shall be assessed against the Unit owned by the Owner making application; provided, however, that the Design Review Committee shall inform the applicant Owner of the potential fees before incurring or assessing such fees and the Owner shall have the option to withdraw such Owner's application.

ii. The Design Review Committee shall propose Architectural Guidelines for approval by the Executive Board. Such Architectural Guidelines approved by the Executive Board, and as amended by the Executive Board from time to time are hereby incorporated by this reference and shall be enforceable as is set forth herein in full. Any such guidelines are subordinate to the Association's Declaration and are void to the extent they are inconsistent with those governing documents.

iii. A majority vote of the Design Review Committee shall be required in order to take any action. The Design Review Committee shall keep written records of all its actions. Any action, ruling or decision of the Design Review Committee may be appealed to the Executive Board by any party who appeared at a hearing with respect to such action, ruling, or decision or who submitted a written protest prior to the action, decision or ruling or as otherwise determined by the Executive Board and the Executive Board may modify or reverse any such action, decision, or ruling.

b. Authority. The Design Review Committee shall have such additional duties, powers, and authority as the Executive Board may from time to time provide by resolution. The Executive Board may relieve the Design Review Committee of any of its duties, powers, and authority either generally or on a case-by-case basis. The Design Review Committee shall carry out its duties and exercise its powers and authority in accordance with and in the manner provided for in the Rules and Regulations adopted by the Executive Board or by resolution of the Executive Board. Neither the Design Review Committee nor the Executive Board shall have the authority to require prior approval of, or otherwise regulate, construction by the Declarant or approval by the Declarant during the Declarant Control Period.

c. Time for Response: Variances. The Design Review Committee shall act on all matters property before it within forty-five (45) days after submission of a complete

application in the form prescribed by the Design Review Committee. The Owner whose application was not acted on by the Design Review Committee within this required time period shall be required to provide written notice thereof to the Executive Board; such notice shall constitute an automatic referral to the Executive Board. Except when a request is being handled by the Design Review Committee, the Executive Board shall be obligated to answer any properly submitted written application for approval of a proposed structural addition, alteration, or improvement within fifteen (15) days after the first Executive Board meeting held following such referral to the Executive Board, and failure to do so within the stipulated time shall constitute an approval by the Executive Board of the proposed structure, addition, alteration, or improvement; provided, however, that neither the Executive Board nor the Design Review Committee has the right or power, either by action or failure to act, to waive enforcement or grant variances from written Architectural Guidelines without a specific finding stating the variance in a written instrument which shall be part of the recourse of the Association. Upon such written approval of any specific variance or exception from the requirements of the Architectural Guidelines, all development conforming to such variance or exception shall be deemed to comply. However, in no event shall the Executive Board or the Design Review Committee have the authority to grant a variance or waiver that would result in a condition or use that violates the Association's Declaration or the Association Design Review Guidelines.

Section 12.2 Initial Construction.

Initial construction on the Property shall be consistent with the Subdivision Improvement Agreement, and with any applicable Design Standards adopted by the Design Review Committee, or pursuant to the Town of Eagle Municipal Code, and any codes adopted by Eagle County, Colorado.

Section 12.3 Compensation of the Design Review Committee.

One or more members of the Design Review Committee may be compensated by the Association for their service on the Design Review Committee as may be determined by the Executive Board.

Section 12.4 Additions, Alterations, or Improvements by the Owners.

a. Approval Required. No building, fence, sign, or other structure, landscaping modifications, or improvement of any kind shall be commenced, erected, or kept upon the Property, nor shall any exterior addition to or change or alteration therein be made (including, but not limited to changes in color, changes or additions to driveways, parking areas, or walkway surfaces and landscaping modifications) be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Design Review Committee or Executive Board, as applicable. Owners' applications shall be either approved or disapproved within the time frames established herein. Approval by the Design Review Committee or Executive Board shall in no way be construed as to pass judgment on the correctness of location, structural design, suitability of water flow or drainage,

location of utilities, or other qualities of the item being reviewed, nor shall such approval be substituted in lieu of applicable governmental approvals and permits or be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions. Any exterior addition to or change or alteration may be required by either the Association to be restored to the original condition at the Owner's cost and expense. In any event, no such exterior addition to or change or alteration shall be made without approvals and permits thereof having first been obtained by the Owner from the applicable public authorities or agencies. In addition, no changes, alterations, or additions may be construed that are not in compliance with local zoning ordinances, governmental guidelines, or restrictions.

b. Initiation and Completion of Approved Changes. Construction or alteration in accordance with plans and specifications approved pursuant to the provisions of this Article shall be commenced within six (6) months of such approval and completed within twelve (12) months of such commencement. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no deviations from approved plans and specifications without the prior consent in writing of the Executive Board. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right to disapprove such plans and specifications, or any parcels or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. Declarant is not affected by these provisions; Declarant intends to construct the project in three (3) phases over a three (3) year limited period.

i. Certificate of Compliance. Upon completion of any construction or alterations or other improvements or structures in accordance with plans and specifications approved in accordance with this Article, the Design Review Committee or Executive Board, as applicable, shall, at the request of an Owner, issue a certificate of compliance, which shall be prima facie evidence that with respect to such Owner's Lot, the construction, alteration, or other improvements referenced in such certificate have been approved in full compliance with this Article and with such other provisions and requirements of the Association as may be applicable.

ii. Limitations. The provisions of this Section shall not apply to Property or Units owned by the Declarant or to improvements on any Lot if such improvements have been approved by the Declarant during the Declarant Control Period. The Declarant or an Owner, if approval was obtained from the Declarant during the Declarant Control Period, shall have the right to construct improvements or make alterations without the approval of the Executive Board or the Design Review Committee; provided, however, that the Declarant shall, upon written request of the Executive Board, provide the Association with written confirmation that the Owner in question, did in fact obtain the Declarant's approval during the Declarant Control Period for the improvements or alterations then existing on such Owner's Lot.

iii. Design Review Guidelines Policy. The Association has promulgated specific Design Review Guidelines. In the event of a conflict between this Declaration and the Design Review Guidelines, the Design Review Guidelines shall control.

ARTICLE 13 OBSOLESCENCE

The Owners representing an aggregate ownership of sixty-seven percent (67%) or more may agree that the Project is in its form obsolete and adopt a written plan for its use, operative, maintenance, repairs. Written notice of the adoption of such a plan shall be given to all Owners and a copy of such plan shall be recorded in the office of the Eagle County, Colorado Clerk & Recorder, and the expense of renewal and reconstruction shall be payable by all of the Owners.

ARTICLE 14 CONDEMNATION

Section 14.1 Consequences of Condemnation.

If, at any time or times during the continuance of the Project pursuant to this Declaration, all or any part of the Common Area or Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu or in avoidance of condemnation, then all compensation, damages, or other proceeds of condemnation, the sum of which is referred to as the "condemnation award" below, shall be payable to the Association, and the provisions of this Article shall apply.

The condemnation award shall be apportioned among the Owners and the Mortgagees as soon as practical, by the Association, who shall determine the share of the condemnation award to which each Owner and Mortgagee is entitled.

Section 14.2 Repair and Reconstruction.

Any repair and reconstruction necessitated by condemnation shall be governed by the procedures contained above.

Section 14.3 Notice of Condemnation.

In the event that any portion of the Common Area shall be made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then timely written notice of such condemnation shall be given by the Association to each Owner and First Mortgagee.

ARTICLE 15 ASSOCIATION MATTERS

Section 15.1 Association Matters.

Each Owner, by accepting a deed to a Unit, recognizes that (a) the Property is subject to the Declaration of Eagle Landing at Brush Creek Townhomes Association, (b) by virtue of his

ownership, he/she has become a member of the Association, and (c) such Owner is subject to any rules and regulations and governance policies of the Association. Each Owner, by accepting a deed to a Lot, acknowledges that he has received a copy of the Declaration, and the Articles of Incorporation, Bylaws, and the Association Design Review Guidelines. The Owner agrees to perform all of its obligations as a member of the Association as they may from time to time exist, including, but not limited to the obligation to pay assessments as required under the Declaration and other governing documents of the Association.

Section 15.2 Enforcement of Declaration.

The Association shall have the power, subject to the primary power of the executive board of the Association, to enforce the covenants and restrictions contained in the Declaration.

Section 15.3 Enforcement Provisions.

a. Compliance. Each Owner shall be governed by, and shall comply with, all of the terms of the Declaration, the responsible governed Notices or the responsible governance Polices and the Rules and Regulations, as amended from time to time. A default by any Owner in complying with the Declaration, governance policies, or the Rules and Regulations or the Design Review Guideline Polices, shall entitle the Association, acting through its Executive Board or through the Managing Agent, to relief at law or equity.

b. Additional Liability. Each Owner shall be liable to the Association or to any affected Owner for any costs incurred by the Association and the expense of all Upkeep rendered necessary by such Owner's act or omission regardless of neglect or culpability, and to the extent that such expense is not covered by the proceeds of insurance carried by the Association. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit, or its appurtenances. Any costs, including without limitation costs and legal or accounting fees, incurred as a result of a failure to comply with the Declaration may be assessed against such Owner.

c. Cure Right for Maintenance. If any Owner shall fail to keep the improvements on such Lot or Unit as allocated and, not the obligation to be regularly maintained by the Association, in good repair and condition as required herein, then the Executive Board may give notice to that Owner of the condition complained of, specifying generally the action to be taken to rectify that condition. If the Owner fails to take the actions specified or to otherwise rectify the condition within the time specified on any notice that is given (or such other period as may be specified in the notice if the circumstances warrant a different period), the Executive Board may take the actions specified in its notice to the Owner, as the Owner's costs, and the Owner shall reimburse the Association upon receipt of the Association's bill.

d. Lien Enforcement. If an Owner fails to pay an Assessment (or an installment), the Assessment, and any other sum due from such Owner under this Declaration, the Association may enforce and foreclose the lien granted hereunder in any manner permitted by the laws of Colorado or by an action in the name of the Association.

The Association may foreclose notwithstanding the pendency of any suit to recover a money judgment. The Association may bid on the Unit at foreclosure or other legal sale any may acquire, hold, lease, mortgage, convey, or otherwise deal with such Unit.

e. Legal and Accounting Fees. If the Association incurs any legal or accounting fees and expenses against an Owner for a violation, breach, or enforcement of this Declaration, Articles, Bylaws, Rules and Regulations, responsible Governance Policies, or Design Review Guidelines, the defaulting Owner shall pay the Association's reasonable attorneys' fees and costs pursuant to this Declaration and § 38-33.3-123 C.R.S. In any suit brought by the Association, or in any legal matter for which legal counsel is consulted to interpret or enforce this Declaration or the Association governing documents, policies, rules, regulations, or the act, the Association shall be entitled to recover the reasonable attorneys' fees and costs of from such Owner. Such sums shall be paid to the Association within thirty (30) days after receipt of the Association's bill.

f. Interest. If any amount due the Association under this Declaration is not paid when due, the Association may also charge interest on the amount due, from the date due until the date paid at twelve (12%) percent per annum.

g. Violation Charges. In addition to any means of enforcement provided elsewhere in the Declaration, the Association shall have the authority to assess violation charges against an Owner for violations by such Owner or such Owner's tenants, guests, invitees, agents, and employees. Such charges shall be collectible as any other Assessment, including but not limited to constituting a lien against such Owner's Unit and being the personal obligation of such Owner.

h. No Waiver of Rights. The failure of the Association, the Declarant, or an Owner to enforce any right, provision, covenant, or condition which may be granted by this Declaration shall not constitute a waiver of the right of such Person to enforce such right, provision, covenant, or condition in the future.

i. Cumulative Rights. All rights, remedies and privileges granted to the Association, the Declarant, or any Owner pursuant to any term, provision, covenant, or condition of this Declaration shall be deemed to be cumulative and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the Person exercising the same from exercising such other privileges as may be granted to such Person by the Declaration or at law or in equity.

Section 15.4 Notice and Hearing.

Before assessing violation charges authorized by this Article, the Association shall afford the defaulting Owner the following rights:

a. Notice. The defaulting Owner shall be afforded prior written notice of the proposed sanction, which may include an opportunity to cure, prior to the Association assessing violation charges. The notice shall also state that the defaulting Owner is entitled to a hearing, if one is requested by the Owner in writing within the time period stated in the notices.

b. Hearing. If the defaulting Owner requests in writing a hearing within the time period stipulated in the notice, then the imposition of violation charges shall be suspended until the Association schedules a hearing and gives the defaulting Owner an opportunity to be heard at the hearing. A defaulting Owner appearing at such a hearing shall have the right to be represented at the hearing but such Owner's legal counsel, at such Owner's own expense.

Section 15.5 General Reservation.

Declarant reserves the right to dedicate any access roads, sidewalks, utilities and streets serving the Property for and to public use; to grant road, driveway and/or parking easements with respect thereto, and to allow such road, driveway and/or parking to be used by owners of adjacent land and the general public.

Section 15.6 Access.

Each Owner acknowledges that the access roads to and within the Project may be private, limited access roads. Each Owner, by accepting a deed to a Lot, agrees to be subject to the easements and the rules and regulations of the Association governing the use of roads, as from time to time in effect.

Section 15.7 Limit on Timesharing.

No Owner of any Building or Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan, without written consent of all Owners and the Executive Board.

Section 15.8 Construction Activities.

Each Owner is hereby advised that substantial construction-related activities relating to the development of the Project, as well as adjacent projects not owned by Declarant or other development within the adjacent Eagle Ranch area may cause considerable noise, dust, traffic and other inconveniences to the Owners.

Section 15.9 Amenities.

No interest in any amenity located on or near the Project, including recreational amenities, golf or swimming shall be conveyed to an Owner pursuant to this Declaration. The owners of those facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any Owners within the Project.

Section 15.10 Collection and Enforcement Policies.

The Association shall have a policy concerning collection and enforcement of this Declaration. In the event of a conflict, the collection and enforcement policies shall control.

ARTICLE 16 MORTGAGEES

The following provisions are for the benefit of holders, insurers, or guarantors of First Mortgages on 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 of Incorporation and Bylaws of the Association, Rules and Regulations, and responsible Governed Polices.

Section 16.1 Approval Requirements.

Unless at least 50% of the Mortgagees holding First Mortgages against any portion of the Property (based on one vote for each Mortgage held against an individual Unit), and at least 50% of the Owners (other than Declarant) have given their prior written approval, the Association shall not be entitled to:

- a. By act or omission seek to abandon, partition, subdivide, sell, or transfer all or part of the Common Area (provided, however, that the granting of easements of rights-of-way for public utilities or for other purposes consistent with the intended use of such Common parcels shall not be deemed a transfer within the meaning of this clause);
- b. Change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner.
- c. Fail to maintain insurance required to be maintained under this
- d. Declaration;
- e. Use hazard insurance proceeds for losses to improvements which are the Common Area other than the repair, replacement, or reconstruction of such Common Area property; or items allocated as Association's responsibility to maintain, repair, or replace as stated in this Declaration.
- f. Change to Exterior Maintenance Area, Upkeep, and association authority for maintenance and repair of exterior items on Buildings or Units, other than as set forth herein.

Section 16.2 Title Taken by Mortgagee.

Any Mortgagee holding a First Mortgage of record against a Lot who obtains title to the Unit pursuant to remedies exercised in enforcing the Mortgage, including foreclosure of the Mortgage or acceptance of a deed in lieu of foreclosure, will be liable for all Assessments due and payable as of the date title to the Unit (i) is acquired or (ii) could have been acquired under the statutes of Colorado governing foreclosures, whichever is earlier. Such Mortgagee shall also become liable for any Assessments having priority over the Mortgage pursuant to the terms and provisions of the Act.

Section 16.3 Distribution of Insurance or Condemnation Proceeds.

In the event of a distribution of insurance proceeds or condemnation awards allocable among the Units for losses to, or taking of, all or part of the Common Area, 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 Unit.

Section 16.4 Right to Pay Taxes and Charges.

Mortgagees who hold First Mortgages against Units may, single or joint, pay taxes or other charges which are in default and which may or have become a charge against any Common Area, or Unit, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Areas, and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

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 in perpetuity, subject to the termination provisions of the Act, as amended and set forth in C.R.S. § 38-33.3-101, *et. seq.*

Section 17.2 Amendment.

The provisions of this Declaration may be amended or terminated, in whole or in part, from time to time, upon the written consent of Owners representing an aggregate ownership interest in the Association and Common Area of sixty- seven percent (67%) or more, subject, however, to any other provisions of this Declaration requiring the consent of a certain percentage of First Mortgagees or Eligible Mortgage Holders.

Section 17.3 Unilateral Amendment Rights Reserved by Declarant.

Notwithstanding the provisions above or any other provision of this Declaration, 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, including, without limitation, amendments to conform this Declaration or the Map to the requirements of the Act.

Section 17.4 Recording of Amendments.

Any amendment to this Declaration made in accordance with this Article shall be immediately effective upon recording in the office of the Eagle County, Colorado Clerk & Recorder, a copy of the amendment, executed and acknowledged by the appropriate number of Owners (and by First Mortgagees and/or Eligible Mortgage Holders, as required), or upon the recording of a copy of the amendment, together with a duly authenticated certificate of the secretary of the Association stating that the required number of consents of Owners (and First Mortgagees and/or Eligible Mortgage Holders, as applicable).

ARTICLE 18
DECLARANT'S RIGHTS

Section 18.1 Rights Reserved.

Declarant hereby reserves, to the fullest extent permitted by law, the following development rights and the right to supplement and amend this Declaration in the exercise of all or any of the following development rights:

a. The right to create Units, Common Elements and Limited Common Elements within the Project;

b. The right to construct and complete the Units and Common Elements shown on the Plat and any additional Units and Common Elements hereafter added, platted and approved, in any sequence and order that the Declarant shall determine;

c. The right to develop the Project in phases and to annex and add all or some part of the Property or other unspecified real estate, to the extent permitted in the Act, in the manner described herein or in such other manner as the Act may permit

d. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across any portion of the Property for the purpose of furnishing utilities and other services to buildings and improvements to be constructed on the Property;

e. The right to withdraw and grant easements and licenses to public utility companies and to convey improvements within those easements anywhere in the Project not occupied by buildings for the purposes mentioned.

f. The right to reconfigure all or any of the Units, with the approval of the Town of Eagle and construct and complete the Units as reconfigured, together with the Common Elements and Limited Common Elements, provided that the Declarant shall have no right to reconfigure a Unit the Declarant does not own;

g. The right to phase the construction of the buildings, Units and Common Elements.

h. The right to use so much of the Common Elements as it may deem necessary or convenient for the purpose of the construction and development of the buildings, and other improvements on the Property; provided, however, that such use shall not unreasonably interfere with an Owner's access to his Unit.

i. The right to prepare, execute and record an Amendment or Amendments to this Declaration, by way of a Supplemental Declaration or otherwise, assigning or reassigning identifying numbers to each Unit created and describing the Common Elements and any Limited Common Elements thereby changed or created, and in the case of Limited Common Elements, designating the Unit or Units to which such Limited Common Elements are allocated, and to prepare, execute and record therewith, an additional,

supplemental or amended Plat depicting and addressing the matters required by the Act or deemed proper by the Declarant in connection with any such amendment;

j. To assign or reassign parking spaces within the Common Elements, which are not designated Limited Common Elements, without discriminating among the Units;

k. To annex and develop and include in the Project all or any part of the additional real estate mentioned below;

l. To exercise those development rights extended with respect to the Property by the Town of Eagle, including but not limited to those set forth on the Plat.

m. The right to combine two (2) or more contiguous Units into one (1) Unit and reallocate the allocated interests attributable to the resulting Unit in any reasonable manner, together with the right to reconstruct and complete the resulting Unit and Common Elements as so reconfigured;

n. The right to subdivide and successively subdivide and convert a Unit previously created into additional Units, Common Elements or both and to reallocate all of the allocated interests of the Unit among the Units created by the subdivision in any reasonable manner, together with the right to construct and complete the additional Units and Common Elements created, in any sequence and order that the Declarant shall determine; provided always that, the number of Units shall in no event exceed the maximum number of Units indicated above;

o. The right to reallocate the Common Elements, including any Limited Common Element designated as appurtenant to a Unit or Units owned by the Declarant, in the exercise of Declarant's reserved development rights to further subdivide a Unit or to combine two (2) or more Units into one (1) Unit;

p. The right to designate Common Elements as Limited Common Elements for the exclusive use of less than all of the Unit Owners for purposes including, but not limited to, providing exclusive amenities, design elements, and Project spaces for the Owners of Units in specific building(s) within the Project.

q. To exercise the "Special Declarant Rights" defined in the Act, including the rights to construct and complete the improvements, to exercise any development right, including those expressly reserved in this Declaration, to maintain sales offices, management offices, model units and signs advertising the Project and models, to use easements through the Common Elements for the purpose of making improvements within the Project, to make the Project subject to a Master Association, to merge or consolidate the Project with a common interest Project of the same form of ownership, to appoint and to remove any officer of the Association or any Executive Board member during the period of Declarant Control herein set forth

Section 18.2 Right to Annex Additional Real Estate.

Developer further reserves the right to add and annex to the Project any, all or any part of the remainder of the Property. The maximum number of each type of Unit that will compose the Project, if all such real estate is annexed, shall not exceed the maximum number of each type of Unit as specified herein. Additional real property hereinafter more particularly identified, may be submitted to this Declaration, added to and made a part of the Project through one or more subsequent Filings. The Owners of any Units added to the Project shall become Members of the Association, the same as if such Units were originally a part of the Project. The addition of such property and inclusion within the Project shall be accomplished by recording in the office of the Clerk and Recorder of Eagle County, Colorado, a Supplemental Declaration and Plat of the Filing, executed by the Declarant and any other party having an ownership interest in the property to be added. The Supplemental Declaration shall contain the legal description of such additional real property, declare the same an addition to the Project, assign the appropriate weighted value to each Unit for the purpose of determining each Unit's undivided interest in the Common Elements and submit such additional property to this Declaration. Such Supplemental Declaration may contain and establish such additional provisions as are consistent with the intended development of such additional property. The Common Elements established through any and all subsequent Filings shall be merged for the common benefit of all Units which form a part of the Project and the undivided interest in the Common Elements and other allocated interests of each Unit shall automatically be adjusted and reallocated in compliance with the formula stated herein

Section 18.3 Exercise of Development Rights.

Any development right may be exercised with respect to different portions of the Property, at different times and in such sequence as the Declarant may determine. No assurances are made as to which portions of the Property may be subjected to the exercise of each development right, or in which order each development right may be exercised or applied to any portion of the Property. If any development right is exercised in any portion of the Property that development right need not be exercised in all or any portion of the remainder of the Property. Declarant may, but has no obligation to add or annex all, any or any portion of the additional real estate described above. The exercise of development rights with respect to some portions of the Property will not obligate the Declarant to exercise any development rights as to other portions. No assurances are made by Declarant as to whether Declarant will exercise its development rights herein reserved or any of them or as to the order in which any portion of the Property may be developed.

Section 18.4 Assignment of Rights.

Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, by written instrument executed by both Declarant and the transferee or assignee and recorded in the office of the Eagle County, Colorado Clerk & Recorder. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

ARTICLE 19
MISCELLANEOUS

Section 19.1 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 19.2 Enforcement.

Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, and other provisions contained in this Declaration and the other Documents shall be through any proceedings at law or in equity brought by any aggrieved Owner, the Association, or Declarant against the Association or any Owner. Such actions may seek remedy by injunction or restraint of a violation or attempted violation, or an action for damages, or any of them, without the necessity of making an election. Jurisdiction and venue of all legal actions shall be in the Courts of Eagle County, Colorado. Attorney fees shall be awarded to the Association to interpret or enforce the Act or enforce this Declaration, the Articles, Bylaws, Responsible Governance Policies, or Rules and Regulations, in or out of Courts per § 38-33.3-123 C.R.S.

Section 19.3 Nonwaiver.

Failure by Declarant, the Association, or any Owner or First Mortgagee to enforce any covenant, condition, restriction, easement, reservation, right-of-way, or other provision contained in this Declaration shall in no way or event be deemed to be a waiver of the right to do so thereafter.

Section 19.4 Severability.

The provisions of this Declaration shall be deemed to be independent and severable, and the invalidity of any one or more of the provisions of it by judgment or court order or decree shall in no way affect the validity or enforceability of any of the other provisions, which provisions shall remain in full force and effect.

Section 19.5 Number and Gender.

Unless the context provides or requires to the contrary, the use of the singular herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include all genders.

Section 19.6 Captions.

The captions to the Articles and Sections and the Table of Contents at the beginning of this Declaration are inserted only as a matter of convenience and for reference, and are in no way to be construed to define, limit, or otherwise describe the scope of this Declaration or the intent of any provision of this Declaration.

Section 19.7 Conflicts in Legal Documents.

In case of any conflict between the Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, and the Design Guidelines, the Rules and Regulations and Responsible Governance Policies this Declaration shall control except as noted elsewhere in the Declaration to the contrary. In case of conflicts in the provisions in the Articles of Incorporation of the Association and the Bylaws of the Association, the Bylaws of the Association shall control.

Section 19.8 Exhibits.

All the Exhibits attached to and described in this Declaration are incorporated in this Declaration by this reference.

Section 19.9 Limitation of Liability.

The Declarant shall not be liable for any failure of any services to be obtained by the Association or paid for by the Association out of the Common Expense funds, or for injury or damage to persons or property caused by the Common Parcels or resulting from water that may leak or flow from any property, improvements or facilities under the control or supervision of the Association, or from any wire, pipe, drain, conduit, or the like. Notwithstanding the limitation of liability contained in the foregoing sentence, if any such failure or injury or damage to persons, real or personal property, the Association shall not be liable for such failure or such injury or damage. No diminution or abatement of Assessments, as herein provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to any property, improvements or facilities under the control or supervision of the Association, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directive of any municipal or other governmental authority.

Section 19.10 Conflict Resolution.

In the event any disputes between an Owner and the Declarant or Association and the Declarant, the parties shall first attempt non-binding mediation; split the costs thereof; and each party shall pay their own costs and attorney fees or mediation. The Association shall have a policy concerning enforcement of covenants and dispute resolution.

~ Signature Pages Follow ~

Executed as of the 29th day of October, 2018.

EAGLE LANDING AT BRUSH CREEK
TOWNHOMES ASSOCIATION, INC.

BY DECLARANT:

GOLD DUST CAPITAL PARTNERS, LLC

A Colorado limited liability company

By: 
Bruce Hagedorn
Its Manager

STATE OF COLORADO)
)ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 29th day of October 2018, 2018, by the Declarant, Gold Dust Capital Partners, LLC, a Colorado limited liability company, by its Manager, Bruce Hagedorn.

WITNESS my hand and official seal.

LAUREN BLICKENSTAFF
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20054026538
My Commission Expires August 8, 2022



Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

All property subject to that certain Final Plat of the Eagle Landing at Brush Creek Townhomes, recorded in the public records of Eagle County, Colorado on October 29, 2018, at Reception No. 201818463.

Final Plat, Lot 1, West Eagle Addition, Filing No. 2, According to the Plat Recorded February 27, 2006, at Reception Number 200604681, the Town of Eagle, County of Eagle, State of Colorado, containing 6.993 acres, more or less, also known as 58 Sylvan Lake Road, Eagle, Colorado 81631

EXHIBIT B
PERCENTAGE ASSESSMENT OBLIGATION

Each Unit's liability for Common Expenses is equal to its Percentage Assessment Obligation, which shall be determined by the square footage of each townhome Building in relation to the total square footage of all townhome Buildings. If Units are added to or withdrawn from the Project pursuant to the provisions of this Declaration Percentage Assessment Obligation of each Unit shall be recalculated for the purposes of reallocating the Allocated Interests. Declarant shall record a supplement to this Declaration setting for the revised Allocated Interests of all Lots in the Project each time Units are added or withdrawn.

UNITS	ALLOCATED INTERESTS OF COMMON ELEMENTS AND EXPENSES
UNIT E1	7.6%
UNIT E2	7.6%
UNIT E3	7.6%
UNIT E4	7.6%
UNIT F1	7.6%
UNIT F2	7.6%
UNIT F3	7.6%
UNIT G1	7.8%
UNIT G2	7.8%
UNIT G3	7.8%
UNIT H1	7.8%
UNIT H2	7.8%
UNIT H3	7.8%
TOTAL	100%

EXHIBIT C
RECORDED INTERESTS

The policy or policies to be issued will contain exceptions to the following items in the public record. There will be additions to this list as closing approaches for Declarant items such as the Plat Map, Declaration, and certain easements related to site development.

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
6. RIGHT OF PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENT RECORDED OCTOBER 12, 1901, IN BOOK 48 AT PAGE 252.
7. TERMS, CONDITIONS AND PROVISIONS OF A TEN FOOT WIDE EAGLE TELECOMMUNICATIONS INC./COLORADO RIGHT OF WAY EASEMENT FOR THE PURPOSE OF CONSTRUCTION, RECONSTRUCTION, OPERATION AND MAINTENANCE OF A TELEPHONE LINE OR SYSTEM WITH APPURTENANT STRUCTURE RECORDED DECEMBER 24, 1985 IN BOOK 432 AT PAGE 779, AND AS SHOWN ON THE ALTA/ACSM SURVEY PREPARED BY ROGER W. MEYER, PLS NO. 26967, DATED MAY 8, 1999.
8. ANY ADVERSE CLAIM BASED UPON THE ASSERTION THAT (A) SOME PORTION OF SAID LAND HAS BEEN CREATED BY ARTIFICIAL MEANS, OR HAS ACCRETED TO SUCH PORTION SO CREATED, (B) ANY ADVERSE CLAIM BASED UPON THE ASSERTION THAT THE LOCATION OF THE BRUSH CREEK HAS MOVED. RIGHTS AND EASEMENTS FOR NAVIGATION AND FISHERY WHICH MAY EXIST OVER THAT PORTION OF SAID LAND LYING BENEATH THE WATERS OF BRUSH CREEK AS SHOWN ON THE RECORDED PLAT OF WEST EAGLE ADDITION FILING NO. 2 RECORDED FEBRUARY 27, 2006 UNDER RECEPTION NO. 200604681.
9. TERMS, CONDITIONS AND PROVISIONS OF EASEMENT AND UTILITIES AGREEMENT BY AND BETWEEN EAST EAGLE RANCH LLC, A DELAWARE

LIMITED LIABILITY COMPANY AND ROGER HESSLETINE RECORDED SEPTEMBER 08, 1999 AT RECEPTION NO. 707788, AND AS AMENDED IN INSTRUMENT RECORDED SEPTEMBER 26, 2000 AT RECEPTION NO. 740056.

10. RIGHT OF WAY EASEMENT AS GRANTED TO HOLY CROSS ENERGY IN INSTRUMENT RECORDED MARCH 22, 2000, AT RECEPTION NO. 725251.
11. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE NO. 1, SERIES OF 2006 RECORDED FEBRUARY 27, 2006 AT RECEPTION NO. 200604680.
12. EASEMENTS, CONDITIONS, COVENANTS, RESTRICTIONS, RESERVATIONS AND NOTES ON THE PLAT OF WEST EAGLE ADDITION, FILING 2 RECORDED FEBRUARY 27, 2006 UNDER RECEPTION NO. 200604681.
13. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN MAINTENANCE AND EASEMENT AGREEMENT RECORDED MAY 07, 2010 UNDER RECEPTION NO. 201008707.
14. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE NO. 25, SERIES 2013 RECORDED DECEMBER 10, 2013 UNDER RECEPTION NO. 201324382.
15. TERMS, CONDITIONS AND PROVISIONS OF PUBLIC SEWER EASEMENT AND AGREEMENT RECORDED OCTOBER 26, 2016 AT RECEPTION NO. 201618090.
16. TERMS, CONDITIONS AND PROVISIONS OF DEVELOPMENT IMPROVEMENTS AGREEMENT, SYLVAN LAKE ROUNDABOUT PLANNED UNIT DEVELOPMENT RECORDED JANUARY 23, 2017 AT RECEPTION NO. 201701157.
17. TERMS, CONDITIONS AND PROVISIONS OF RESOLUTION NO. 29 (SERIES OF 2016) RECORDED JANUARY 27, 2017 AT RECEPTION NO. 201701532.
18. TERMS, CONDITIONS AND PROVISIONS OF TOWN OF EAGLE DEVELOPMENT IMPROVEMENTS, ESCROW AND DISBURSEMENT AGREEMENT RECORDED JANUARY 27, 2017 AT RECEPTION NO. 201701533.
19. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN AMENDED AND RESTATED MAINTENANCE AND EASEMENT AGREEMENT RECORDED FEBRUARY 7, 2018 UNDER RECEPTION NO. 201802098.
20. MATTERS DISCLOSED ON IMPROVEMENT LOCATION CERTIFICATE ISSUED BY MERIDIAN LAND SURVEYING, L.L.C. CERTIFIED NOVEMBER 0204, 2017, JOB NO.17008.
21. TERMS, CONDITIONS AND PROVISIONS OF ORDINANCE NO. 05 (SERIES OF 2018) RECORDED MARCH 23, 2018 AT RECEPTION NO. 201804385.

22. TERMS, CONDITIONS AND PROVISIONS OF TRENCH, CONDUIT, AND VAULT AGREEMENT RECORDED JUNE 12, 2018 AT RECEPTION NO. 201809972.
23. PLAT MAP FOR EAGLE LANDING AT BRUSH CREEK TO BE RECORDED.
24. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAGLE LANDING AT BRUSH CREEK TO BE RECORDED.

