

AFTER RECORDING RETURN TO:

Steven May  
Larsen Lynch May LLC  
175 Main St. C-104  
Edwards, CO 81632

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS OF THE TERRACE HOMEOWNERS ASSOCIATION B INC.

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
THE TERRACE HOMEOWNER'S ASSOCIATION B INC.

THIS AMENDED AND RESTATED DECLARATION is effective upon recording.

RECITALS:

A. On March 31, 1993, the Bull Terrace Subdivision Ltd, a Colorado corporation submitted the real property described in that certain Declaration of Protective Covenants, Conditions and Restrictions of the Terrace Filing No. II recorded in the real property records of Eagle County, Colorado at Reception No. 501345 in Book 605 at Page 261, as amended and supplemented by the following:

(1) First Supplemental Declaration of Protective Covenants, Conditions and Restrictions of Terrace Filing II recorded in the real property records. of Eagle County, Colorado at Reception No. 532332 in Book 836 at Page 278 on March 31, 1994; and

(2) Second Amendment to the Declaration of Protective Covenants, Conditions and Restrictions of Terrace Filing II recorded in the real property records. of Eagle County, Colorado at Reception No. 598734 on May 24, 1999.

B. The Owners within the Terrace Homeowners Association B Inc, Community desire to amend and restate the Original Declaration by virtue of this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Homeowners Association of Terrace Filing II ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Article X, Section 2, which provides in part as follows: "These covenants may be amended by a vote of two-thirds of the votes entitled to be cast by Members of the Terrace Homeowners' Association at annual or special meetings thereof, said vote to be cast at any meeting of the Members duly held in accordance with the Articles of Incorporation and By-Laws of the terrace Homeowners' Association, provided a properly certified copy of the resolution of amendment be placed on record in Eagle County, Colorado upon adoption."

D. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), and the Declaration, approval requirement for approval of amendment to the Declaration is 67% of the Members.

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the

Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that are favored by the members, add provisions that provide the proper tools for the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association as provided in the Declaration is to be developed and maintained as a highly-desirable area. The purpose of the original covenants of the Declaration was that the beauty of the Brush Creek Valley, the views from within the Terrace, the solar access and the harmony of design within the Terrace shall always be protected insofar as is possible in connection with the uses and structures permitted by the Declaration.

H. Pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a) and the Original Declaration, at least 67% of the Members have approved this Declaration.

NOW THEREFORE, the Original Declaration is replaced and superseded by the covenants, servitudes, easements and restrictions set forth below:

#### ARTICLE 1 DEFINED TERMS

##### Section 1.1 Defined Terms.

Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) “Act” shall mean the Colorado Common Interest Ownership Act, C.R.S. ~38-33.3-101 et. seq., as it may be amended.

(b) “Assessment” shall include all Common Expense Assessments, insurance Assessments, special assessments, utility Assessments, and any other expense levied to Lots or Units pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(c) “Association” shall mean The Terrace Homeowners’ Association B Inc., a Colorado nonprofit corporation, and its successors and assigns.

(d) “Board” or “Board of Directors” or “Directors” shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(e) “Common Area” or “Common Elements” shall mean owned by the Association for the common use and enjoyment of the Owners.

(f) “Common Expenses” shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(g) "Community" or "The Terrace Homeowners' Association B Community" or "Planned Community" shall mean the planned community known as "The Terrace," and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the members of the Association.

(h) "Declaration" shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Terrace Homeowners' Association B, as amended, recorded in the office of the Clerk and Recorder of Eagle County, Colorado.

(i) "Design Control Committee" or "DCC" or "DCC Committee" means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to insure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(j) "Governing Documents" shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any Maps and any Policies and Rules and Regulations of the Association; all of the foregoing may be or have been amended from time to time.

(k) "Lot" shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas.

(l) "Member" shall mean any Owner. -The terms "Member" and "Owner" may be used interchangeably.

(m) "Owner" shall mean the owner of record title, whether one or more persons or entities, to any Lot or Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(n) "Pet" shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.

(o) "Plat" or "Map" shall mean and refer to the (plats) and/or (maps) of the Property and improvements that are subject to this Declaration and which are designated in the Plat or Map recorded in the records of the Office of the Clerk and Recorder of Eagle County.

More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(p) "Policies and Procedures" shall mean the policies, procedures, rules regulations and guidelines adopted by the Board of Directors from time to time to facilitate the efficient operation of the Association.

(q) "Property" shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(r) "Rules and Regulations" shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

(s) "Unit" shall mean the Townhomes at Pinion Valley individual Unit. A Townhome Unit includes a "Lot" as described herein.

## **ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS**

### **Section 2.1. Name and Type.**

The type of Common Interest Community is a Planned Community. The name of the Planned Community is "The Terrace Filing II", or "Terrace Filing I, II, II, IV, or VI."

The name of the Association is the "The Terrace Homeowners' Association B, Inc".

### **Section 2.2. Property**

The Planned Community is located in Eagle County, State of Colorado. The Property of the Planned Community is described in Exhibit A of this Declaration, in the Original Declaration, in First Supplemental Declaration of Protective Covenants, Conditions and Restrictions of the Terrace Filing II, Second Amendment to the Declaration of Protective Covenants, Conditions and Restrictions of the Terrace Filing II, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community. The number of Lots currently included in the Community is 228.

Easements for utilities and other purposes over and across the Lots and any Common Area maybe as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this Declaration or granted by authority reserved in any recorded document.

### **Section 2.3. Owners' Easements of Enjoyment.**

Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;

(b) the right of the Association, to suspend the voting rights and the right to use of any Common Area and recreational facilities during any period of violation of any provision of the Governing Documents;

(c) the right of the Association to mortgage the Common Area as security for that purpose, provided, that the rights of such mortgagee shall be subordinate to the rights of the homeowners;

(d) the right, power and authority of the Association to grant any easement, right of-way, license, lease, dedication or similar interest through, over or in the Common Area;



(e) the right of the Association to transfer or convey ownership of any Common Area; upon approval of Members holding at least sixty seven percent 67% of the total votes entitled to be cast.

(f) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area; and

(g) the right of the Association to change use of, add or remove improvements to the Common Area.

**Section 2.4. Delegation of Use.**

Owners may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Lot.

**Section 2.5. Disclaimer of Liability.**

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstance prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**Section 2.6. Easements for the Association.**

Each Lot shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted, and the use thereof shall not unreasonably interfere with or impair the use of any improvements constructed on a Lot and shall be exercised only after reasonable notice to the Owner of the Lot.

**2.7 Utility, Map and Map Easements.**

Easements for utilities and other purposes over and across the Lots and Common Areas may be as shown upon the Plat or Map of the Community, and as maybe established pursuant to the provisions of this Declaration or granted by authority reserved in any recorded document.

**Section 2.8 Construction Easement.**

If any portion of an exterior wall of a residence is situated within three feet of any adjoining Lot line, a valid easement shall and does exist three feet in width along the adjoining Lot and adjacent to said Lot line, which easement may be used for the purpose of construction, reconstruction and maintenance of said exterior wall of the residence that is situated within three feet from the nearest point of said easement. The Owner of any Lot subject to this easement shall not erect or build any structure upon or over said easement, which will interfere with the purpose of said easement.

**Section 2.9 Maintenance Easement.**

If any portion of a residence encroaches upon the Common Area or upon the easement of any adjoining Lot established under the provisions of Section 2.8 above, a valid easement on the surface and for subsurface support below such surface and for the maintenance of the same, so long as it stands, shall and does exist.

**ARTICLE 3 THE ASSOCIATION**

**Section 3.1 Membership.**

Every person who is a record Owner of a fee interest in any Lot which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of such Lot shall be the sole qualification for such membership. Each Lot shall be allocated one vote which shall be cast as a single vote and shall not be subject to fractional voting. There shall only be one class of membership.

**Section 3.2 General Purposes and Powers of the Association.**

The Association, through its Board of Directors, shall perform functions and manage the Terrace Homeowners' Association B Inc., Community as provided in this Declaration so as to protect the value and desirability of The Terrace Homeowner's Association B Community and the Lots. The Association shall be responsible for the maintenance, repair, replacement and improvement of any Common Area. Any purchaser of a Lot shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

**Section 3.3 Authority of the Association.**

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, this Declaration, the Plat or Map, its Articles of Incorporation and Bylaws, and any Policies, Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

**Section 3.4. Managing Agent**

The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

**Section 3.5. Indemnification.**

To the full extent permitted by law, each officer, director or committee member of the Association and other volunteer appointed by the Board of Directors shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, director, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, director, committee member or volunteer at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and by Colorado law.

**Section 3.6. Security Disclaimer.**

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community; however, each Owner, for himself or herself and his or her tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

**Section 3.7. Education and Training.**

As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and directors.

**ARTICLE 4 COVENANT FOR ASSESSMENTS FOR COMMON EXPENSES**

**Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments for Common Expenses.**

Each Owner, by acceptance of a deed for a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses, insurance Assessments, and such other Assessments as imposed by the Association. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that maybe assessed and/or levied or maybe agreed to in the process of collecting past due Assessments

including but not limited to, credit card convenience fees from whatever source, shall be a charge on each Lot and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them. No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration. Except as provided in this Declaration all Assessments for Common Expenses shall be assessed against all Lots equally.

#### **Section 4.2 Basis of Assessments.**

(a) Single Family Lots and Townhome Units may be separately classified by their separate characteristics as the Board may deem appropriate and shall be assessed on the basis appropriate for each classification as determined by the Board from time to time. The rate of Assessment levied against Single Family Lots and against Townhome Units may be varied based upon the Board's sole and exclusive determination that the Association's budget may more directly benefit a certain classification more or less than the other classification, or that the Association has provided services to one classification in excess of those to other classification within the Community; provided, however, that such rate of Assessment shall be uniform within each classification.

(b) Uniform Rate of Assessment. Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and Townhome Units; provided, however, Lots and Townhome Units may each be classified, by type of use or other distinguishing characteristics (as set forth below), but the basis and rate of Assessments for each type of use or other characterization may be varied only as further provided in this Section 4.2 (a) above.

#### **Section 4.3 Annual Assessments.**

Assessments may be made on an annual basis against all Lots and 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 Assessment year.

#### **Section 4.4 Special Assessments.**

(a) In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses, expenses for capital improvements and upgrades, or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, improvements, upgrades, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund.

(b) Assessments shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of

Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

(c) Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

#### **Section 4.5 Ratification of Budget.**

The proposed budget for annual and special Assessments shall be submitted to the Owners for ratification as follows:

Within ninety days after adoption of a proposed budget by the Board which includes proposed annual and special assessments approved by the Board, the Board shall deliver by electronic mail, or other electronic delivery, or by first-class mail, including posting the proposed budget on the association's website, a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider the budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary.

The budget proposed by the board, including annual and special assessment, does not require approval from the unit owners and it will be deemed approved by the unit owners in the absence of a veto at the noticed meeting by sixty seven percent (67%) of all unit owners, whether or not a quorum is present. If the proposed budget is vetoed, the periodic budget last proposed by the executive board and not vetoed by the unit owners must be continued until a subsequent budget proposed by the executive board is not vetoed by the unit owners.

#### **Section 4.6 Supplemental Assessments.**

The Association shall have the right to add to any Owner's Assessment as provided in this Article as follows:

- (a) Those amounts expended by the Association for the benefit of the individual Lot supplementally assessed or any occupant thereof, including but not limited to; improvement, repair, replacement or maintenance specific to the Lot;
- (b) Improvement, repair, replacement or maintenance caused by the negligent or willful acts of the Owner supplementally assessed, his or her guest, employee, licensee, lessee or invitee as set forth in this Declaration;
- (c) All fines and costs assessed against the Owner pursuant to the Governing Documents; and
- (d) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot and are reasonably determined to be allocable to a particular Lot.

#### **Section 4.7 Application of Payments.**

All sums collected on a delinquent account referred to an attorney shall be remitted to the Association's attorney until the account is brought current. All payments received on an account of any Owner or the Owner's Lot shall be applied to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents prior to application of the payment to any special or regular Assessments due or to become due with respect to such Owner.

#### **Section 4.8 Effect of Non-Payment of Assessments.**

(a) Any Assessment, charge or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 30 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors, on a per annum basis to accrue monthly from the due date and shall incur late fees and penalties, thereon as determined by the Board of Directors.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Owner's Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or other installments and may also proceed to foreclose its lien against such Owner's Lot. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant his or her Lot, the Board may take possession and rent said Lot, or apply for the appointment of a receiver for the Lot without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

#### **Section 4.9 Lien Priority.**

The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot except:

- (1) liens and encumbrances recorded before the recordation of the Original Declaration;
- (2) A security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the assessment sought to be enforced became delinquent, and
- (3) liens for real estate taxes and other governmental assessments or charges against the Lot.

This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by

applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

**ARTICLE 5  
COVENANTS AND RESTRICTIONS ON USE, ALIENATION  
AND OCCUPANCY**

**Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions.**

All Lots within the Community shall be held, used and enjoyed subject to the following limitations and restrictions:

**Section 5.2 Authority.**

All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot, acknowledge that they have been given notice, and that:

- (a) The ability of Owners to use their Lots may be limited by the provisions in the Governing Documents.
- (b) The Board may, from time to time, adopt and amend definitions that are not duly defined herein of words, phrases and terms used in this Declaration and other Governing Documents.
- (c) The Board may establish penalties for the infraction of all regulations and Owners will be responsible for fines assessed against their tenants, guests and invitees for violations of the restrictions.
- (c) All fines imposed are collectable as Assessments.

**Section 5.3 Use / Occupancy.**

All Lots within the Community shall be used only for those uses and/or purposes as allowed by the local zoning, control and regulation, and permitted by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots shall not be used for any purpose other than a residential dwelling except as set forth in this Section. Home occupations shall be allowed so long as the home occupations are incidental and secondary to the use of the Lot and do not change the residential character thereof, comply with local zoning ordinances and regulations, and comply with this Declaration. External advertising of any kind is prohibited. In no instance shall a home occupation be visible externally, nor shall any home occupation employ any person other than the Owner. Uses which have one or more of the following characteristics are not permitted:

- (a) manufacturing or fabrication of any kind;
- (b) storage of hazardous materials;
- (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use;
- (d) parking of heavy equipment or vehicle, including but not limited to tow trucks, semi-trailer, cranes, earthmoving or other construction equipment is not permitted.
- (e) the use or rental of any structure on a Lot for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes, subject to provisions herein allowing short term rental as further described herein.

**Section 5.4. No Re-Subdivision:**

No single-family Lot described on a recorded plat of the Terrace Filing No. I, II, III, IV, V, and VI or subsequent or future filings shall ever be re-subdivided into smaller tracts of Lots nor conveyed or encumbered into any less than the full, original dimensions as shown on the recorded plat of the Terrace Filing No. I, II, III, IV, V, and VI or subsequent or future filings as a duplex lot be re-subdivided into smaller tracts of lots nor conveyed or encumbered into any less than the full, original dimensions as shown on the recorded plat of the Terrace Filing No. I, II, III, IV, V, and VI provided that the conveyance of dedications of the easements for utilities and open space may be made for less than all of one tract.

**Section 5.5. Duplex Lots.**

All Lots described on the recorded plat of the Terrace Filing No. I, II, III, IV, V, and VI or subsequent or future filings as a duplex lot will comply with the regulations of the P.U.D. Control Documents for Single Family lots.

**Section 5.6 Leasing and Occupancy**

Any Owner shall have the right to lease or allow occupancy of a Lot upon such terms and conditions as the Owner may deem advisable, subject to restrictions of this Declaration, subject to restrictions of record and subject to the following:

(a) "Leasing" or "Renting" for the purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person other than the Owner; provided, however, for the purposes of this Declaration, leasing shall not include the occupancy of the Lot by the child or parent of an Owner. For the purposes of this Declaration, occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence shall not constitute leasing.

(b) Occupancies and rental of less than six (6) months of Lots and Townhomes shall be allowed only in those homes and Townhomes that are occupied as primary residences by the owner of record.

(c) All leases or rental agreements shall be in writing and shall provide that the leases or rental agreements are subject to all terms of the Governing Documents. Owners are required to provide tenants with copies of the current Declaration, Articles of Incorporation, Bylaws and all Rules and Regulations of the Association.

(d) Each Owner who leases his or her Lot shall provide the Association, upon request, a copy of the current lease and tenant information, including the names of all occupants, vehicle descriptions, including license plate numbers, and any other information reasonably requested by the Association or its agents.

(e) Each Owner is strongly encouraged to conduct full background checks, including credit and criminal reports, for each lease applicant.

(f) All occupancies, leases and rental agreements of Lots shall state that the failure of the tenant, lessee, renter or their guests to comply with the terms of the Governing Documents shall constitute



a default of the occupancy, lease or rental agreement and of this Declaration and such default shall be enforceable by either the Association or the landlord, or by both of them.

(g) All occupancies of Lots shall be subject to the right of the Association to remove and/or evict the occupant for failure to comply with the terms of the Declaration, the Bylaws of the Association, the Articles of Incorporation or the Policies or Rules and Regulations of the Association. If the Association requests that the Owner evict the Owner's tenant based on the terms of this Declaration, and the Owner fails to commence such action within 30 days of the date of the Association's request and notice, the Association may commence eviction proceedings. Upon failure by the Owner to comply with the Association's request to evict, the Owner delegates and assigns to the Association, acting through the Board, the power and authority to evict the lessee as attorney-in-fact on behalf of and for the benefit of the Owner. If the Association evicts the lessee, any costs, including, but not limited to, reasonable attorney fees actually incurred and court costs associated with the eviction shall be an Assessment and lien against the Lot.

(h) All Owners who reside at a place other than the Lot shall provide to the Association an address and phone numbers) where the Owner can be reached in the case of emergency or other Association business. It is the sole responsibility of the Owner to keep this information current.

(i) The Association shall have the authority to adopt Rules and Regulations regarding leasing, including the implementation of this restriction, and for implementation of other restrictions in the Declaration and as allowed by law.

(k) SHORT TERM RENTALS of less than thirty (30) days:

Rentals of Lots, Townhomes, or of a room or portion of the Lot or Townhome that are of a duration of less than thirty (30) days shall comply with the Bylaws, Declarations, Rules and Regulations of the Association and all Town of Eagle and Eagle County rules and regulations including registration, payment of lodging tax and any and all other law of the Town of Eagle and Eagle County or other authoritative governmental or quasi-governmental agency.

In addition, to all other provisions herein, Lot owners are responsible for monitoring and maintaining their property to the highest standards of a primary residence community as described in this Declaration and other governing documents, rules and regulations. Owners who rent their Lots or a portion of their Lots for short term or long term use are advised that parties, excessive trash, excessive noise, undue increase in vehicle traffic and general mistreatment of property or persons in the community will not be tolerated. The Board may establish fines for violation of community standards by renters. The fines shall be charged to the Lot owners and assessed against the Lot.

Multiple complaints or repeated offenses may cause the Lot Owner to be estopped from future rental by the Board after determination at a duly notified hearing.

### **Section 5.7 Maintenance of Lots and Improvements.**

Maintenance obligations shall be as follows:

(a) By the Owners. Owners are responsible for the maintenance, repair and replacement of the property and improvements located within their Lot boundaries. As soon as the growing season

reasonably permits, the grounds around all residences on Lots shall be seeded, sodded or otherwise planted by the Owner thereof with grass or other native ground cover, xeriscaping or plantings and maintained in a clean and attractive manner free from dust and noxious weeds. Owners shall maintain all fences on Lots in good repair and in a clean and attractive manner. The structures and grounds of each Lot shall be maintained in a neat and attractive manner. Upon the Owner's failure to do so, the Board may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, have the grass, weeds and vegetation cut when and as often as the same is necessary in its judgment and have the dead trees, shrubs and plants removed from any Lot.

(b) By the Association. The Association shall maintain, repair, replace and improve the Common Areas. The Association, in its sole discretion, shall determine the time and manner in which such Common Area maintenance shall be performed and the materials used.

(c) Assessment of Maintenance Costs. The cost of such maintenance referred to in Section (a) of this Article shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the assessment or charge to which such Lot is subject pursuant to this Declaration.

#### **Section 5.8. Maintenance in Public Right of Way.**

Each lot owner shall be responsible for maintenance with the public right of way directly in front of the owner's lot on the lot side of the street. This area shall be maintained as if it were a part of the owner's lot. Upon failure of the owner to do so, the Board of Directors may at its option after giving the owner thirty (30) days written notice, have the area maintained when, as the same is necessary in its judgment to maintain the beauty of the Properties. The cost of this maintenance may be charged the lot owner as a special or supplemental assessment against the property by the Association. Areas adjacent to the Common Area shall be maintained by the Association.

#### **Section 5.9 Landscaping Requirements and Restrictions.**

The landscaping of each Lot shall be maintained by the Owner in a good, neat, attractive and well-kept condition, whether xeriscaped or with turf, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, and removal of noxious weeds and debris.

#### **Section 5.10. Restrictions on Pets and Animals.**

Dogs/Animal Control. The keeping of ordinary household pets shall be allowed. Areas of outdoor animal keeping must be approved by the Design Control Committee. Dogs shall be kept under strict control at all times per the Town of Eagle ordinance ([townofeagle.org](http://townofeagle.org)). All dogs are subject to leash laws of the Town of Eagle. Dogs will not be allowed to roam at large. The Town of Eagle and the Eagle County Animal Control (970)328-3647 will be primarily responsible for enforcement.

No animals of any kind or number shall be kept on any of the properties for commercial purposes. No dangerous or exotic animals of any kind may be kept or brought onto the properties; only domestic animals normally associated with residential family living may be kept on the properties. The number of animals associated with any lot or dwelling unit must be limited in number and kind in keeping with a reasonably quiet residential atmosphere of owners and not rural or farm living. No animal shall be kept within the Project which makes loud, disturbing, or objectionable noises or otherwise constitute a nuisance or inconvenience to any other residents of adjacent property. Every owner who keeps an animal shall maintain strict control over the animal and prohibit it from behaving in a manner annoying to others.

Approved fencing is required for all dogs, pets, and animals.

### **Section 5.11 Tanks**

No tanks of any kind (either elevated or buried), except small portable tanks associated with an outdoor gas grill or outdoor fireplace or fire pit shall be erected, placed or permitted upon any Lot without the prior written approval of the Association.

### **Section 5.12 Nuisances.**

No nuisance shall be permitted within the Terrace Homeowner's Association B Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a Lot or any Common Area, or any portion of the Terrace Homeowner's Association B Community by residents. Further, no improper, offensive or unlawful use shall be permitted within the Terrace Homeowner's Association B Community or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Terrace Homeowner's Association B Community or a portion thereof shall be observed.

### **Section 5.13 Vehicular Parking Storage, and Repairs.**

(a) Parking. There is no on-street parking permitted in the Terrace per the Town of Eagle. Garages, paved driveways, and other approved hard surface areas immediately adjacent to driveways should be used for all parking. Owners may not park on landscaped or grassy areas nor access parking across landscaped areas or public right of way. Owners may not create additional parking without DCC approval. Owners may request an additional parking space per lot from the DCC (see First Supplement to the Design Control Guidelines Section 3.5.3).

(b) Recreational Vehicles and Campers.

Abandoned, non-working or unregistered vehicles or campers may not be parked in the Terrace. All recreational vehicles must be maintained with factory or similar paint job. All owners of vehicles including, but not limited to, campers, trailers, recreational vehicles, etc. with or without mechanical engines must provide proof of ownership upon request by the Association or its representatives.

(c). Under no circumstances shall any recreational vehicle or camper be used as a living quarters of any kind.

(d) Any and all vehicles parked on a lot must be registered to the Lot Owner, tenant occupying the residence, or to a short term visitor of the Lot Owner or tenant.

(e) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, Community streets or guest parking, if any.

(f) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages. This provision shall not be deemed to prevent washing and polishing of a

vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs maybe performed, provided they maybe completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(g) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall not be permitted.

(h) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(i) If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or occupant's Lot, is obstructing the flow of traffic, is parked on any grassy or xeriscaped area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

(j) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

#### **Section 5.14. Common Area Obstruction or Alteration.**

There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

#### **Section 5.15 No Annoying Sight, Sounds or Odors.**

No light shall be emitted from any portion of the Terrace Homeowner's Association B Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Terrace Homeowner's Association B Community which would reasonably be found by others to be noxious or offensive including but not limited to marijuana odors. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns,

whistles, bells or other light or sound devices shall be located or used on any portion of the Terrace Homeowner's Association B Community except with the prior written approval of the Association.

**Section 5.16 No Hazardous Activities.**

No activity shall be conducted on and no improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community. No open fires shall be lighted or permitted on any Property within the Community except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace or fire pit designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on his Lot or Lots which creates a fire hazard or is in violation of applicable fire prevention regulations.

**Section 5.17 Restrictions on Clotheslines and Storage.**

Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board and except as otherwise permitted by Colorado law, no clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot unless the same, in each instance, is expressly permitted in writing by the Association. Owners shall hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot.

**Section 5.18 Restriction on Signs and Advertising Devices.**

- (a) Except as provided in this Section, no sign, poster, billboard, advertising device or display of any kind shall be erected or maintained anywhere on a Lot except such sign or signs as may be approved in writing by the Association.
- (b) Signs intended to impact the outcome of an election must be displayed in accordance with the Association's Rules and Regulations.
- (c) One professionally lettered "For Sale" or "For Rent" sign for the purposes of selling or renting a home within the Terrace not to exceed three feet by two feet and one professionally lettered security or alarm system sign not exceeding one square foot may be displayed on a Lot.
- (d) Contractors may display building permits and erect one sign identifying the Contractor, but only while the contractor is working on site and not otherwise.

**Section 5.19 Outbuildings and Temporary Structures.**

No outbuilding or temporary structure, including trailers, sheds, mobile homes, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Design Control Committee and the Town of Eagle.

**Section 5.20 Trash Removal Restriction.**

Trash Removal. Homeowners must contract with a local trash removal company.

No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

**Section 5.21 Prohibition of Marijuana Distribution and Growing.**

No Owner or occupant of a Lot may utilize such Lot for the purpose of growing marijuana or medical marijuana unless otherwise permitted by Colorado law. Distribution of marijuana, regardless of the purpose, shall be prohibited in the Community. This prohibition may further be clarified by the Board of Directors through Rules and Regulations. In the event marijuana growing is allowed by Colorado law, it will be restricted to indoor growing only within the Association. Odors emanating from the growth or consumption of marijuana may be considered a noxious odor. Owners will be responsible for any violation of this restriction.

**Section 5.22. Prohibition Against Hunting.**

There shall be no hunting of any animals whatsoever within the boundaries of the Terrace, nor shall there be the discharge of firearms.

**Section 5.23 Rules and Regulations.**

In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community, or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

**Section 5.24 Compliance with Governing Documents.**

Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

**Section 5.25 Compliance with Other Laws.**

No improper, offensive or unlawful use shall be permitted within the Community or any portion thereof. All laws, ordinances and regulations of all governmental bodies having jurisdiction over the Community or a portion thereof shall be observed.

**Section 5.26 Restriction on Mining and Drilling**

No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

**Section 5.27. Use of the Words Terrace Filing II and Terrace Homeowners Association B.**

No Owner or resident shall use the words “Terrace Filing II” or “Terrace Homeowners Association B” or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

**ARTICLE 6 ARCHITECTURAL REVIEW**

**Section 6.1 Required Approval.**

No structures, including residences, outbuildings, garages, accessory buildings, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, driveways, walkways, landscaping, or any

other improvements shall be constructed, erected, relocated, removed or installed on a Lot, nor shall any painting, alteration or change to the exterior of the improvements, the exterior of a residence, to a Lot or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Design Control Committee ("Committee") as are outlined in the TERRACE HOA (B) DESIGN GUIDELINES, FIRST SUPPLEMENT or amendments thereto. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

All submissions, approvals and or disapprovals shall be submitted in writing, dated and received. Owners shall pay a fee as determined by the DCC.

### **Section 6.2 Acknowledgment of Owners.**

Owners acknowledge, accept and agree to the following:

(a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee;

(b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Committee approval, if previously granted;

(c) Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;

(d) Owners, by submitting an application for approval, hereby certify: (i) they will construct or modify improvements located only on their own Lot or upon Property which they have permission to construct, modify or improve; and (ii) they will not violate any easements, rights-of-way, or other rights appurtenant to such Property.

(e) Owners shall notify the Committee of completion of the improvement's installation or construction within five days of such completion;

(f) Upon completion of an improvement, Owners authorize the Committee or its representatives to enter onto the Lot for exterior inspection;

(g) Failure of an Owner to notify the Committee of completion of an approved improvement, or refusal to allow inspection shall result in the withdrawal of the Committee's approval;

(h) If the improvement as built does not conform to the improvement as approved by the Committee, the Committee's approval will be deemed withdrawn, and upon written request of the

Committee, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;

(i) In the event of withdrawal of Committee approval for any reasons cited in this Section, and upon written request from the Committee, the Owner, at his or her expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

### **Section 6.3 Architectural Criteria.**

The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration and in any Design Control Guidelines. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of the exterior appearance of structures with neighboring structures, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Committee may require that the applicants reimburse the Board for actual expense incurred by it in its review and approval process.

### **Section 6.4 Establishment of the Committee.**

The Committee shall consist of a minimum of three members. The Board of Directors shall appoint the Committee chairperson, and the chairperson shall recruit and appoint the remaining Committee members. The Board shall have the authority to remove any members of the Committee at their sole discretion.

### **Section 6.5 Architectural Guidelines.**

The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association or the first supplement to the design guidelines and any future supplementations.

### **Section 6.6 Reply and Communication.**

The Committee shall reply to all submittals of plans made in accordance herewith in writing within 30 days after receipt. In the event the Committee fails to take any action on submitted plans and specifications within 30 days after the Committee has received the plans and specifications, approval shall be deemed to be denied. All communications and submittals shall be addressed to the Committee in care of the Association.

### **Section 6.7 Conditions of Approval.**

In the discretion of the Board or the Committee, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, affirms and shall assume, unless otherwise



agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

**Section 6.8 Commencement and Completion of Construction.**

All improvements approved by the Committee must be commenced within the time frame specified by the Committee. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Committee shall be completed within the time frame specified by the Committee at the time of approval.

**Section 6.9 Variances.**

In its sole discretion, the Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

**Section 6.10 Right to Appeal.**

The Owner may appeal a denial of his or her application pursuant to the procedures set forth in the Terrace HOA (B), Eagle CO First Supplement Design Guidelines (Approved 9/06/2011) and any amendments thereto.

**Section 6.11 Waivers.**

The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

**Section 6.12 Liability.**

The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. The Association will not make any investigation into title, ownership, easements, rights-of-way, or other rights appurtenant to Property with respect to architectural requests and shall not be liable for any disputes relating to the same.

**Section 6.13 Enforcement.**

Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association shall be entitled to recover its costs and reasonable attorney fees incurred

pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

## **ARTICLE 7 INSURANCE/CONDEMNATION**

### **Section 7.1 Insurance on the Lots.**

Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, or other property of that Owner located on such Lot, and liability insurance covering any injuries occurring to persons or property damages on a Lot.

### **Section 7.2 Insurance to be Carried by the Association.**

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

### **Section 7.3 Hazard Insurance on Common Area.**

The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.

### **Section 7.4 Association Liability Insurance.**

The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

### **Section 7.5 Association Fidelity Insurance.**

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

### **Section 7.6 Association Worker's Compensation and Employer's Liability Insurance.**

The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

### **Section 7.7 Directors' and Officers' Personal Liability Insurance.**

The Association shall obtain directors' and officers' personal liability insurance to protect the officers, directors, committee members and any person acting at the discretion of the Board from

personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

**Section 7.8 Miscellaneous Terms Governing Insurance Carried by the Association.**

The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of his or her household.

(c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.

(d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of first lien security interests at least 10 days prior to the expiration of the then-current policies.

(e) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(f) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a coinsurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

**Section 7.9 Other Association Insurance.**

The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

**Section 7.10 Insurance Premium.**

Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

**Section 7:11- Annual Insurance Review.**

The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

**Section 7.12 Adjustments by the Association.**

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is 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.

**Section 7.13 Duty to Repair.**

Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

**Section 7.14 Condemnation and Hazard Insurance Allocations and Distributions.**

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

**Section 7.15 Responsibility for Payment of Deductible Amount.**

Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area or other property insured by the Association unless the damage is caused by the negligent or willful act or omission of an Owner, his family, guests, renters, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

**Section 7.16 Insurance Assessments.**

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Insurance Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

**Section 7.17 Damage to or Destruction on Lots.**

In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration, unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

## ARTICLE 8 DISPUTE RESOLUTION PROCEDURES

### Section 8.1 Alternate Dispute Resolution.

The (a) Association (including its officers, directors and committee members), (b) all Owners, and (c) any other person or entity not otherwise subject to this Declaration who agrees to submit to this Article (a "Bound Party") agree to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party hereby covenants and agrees to submit all claims, grievances, controversies or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Bylaws, the policies, the rules and regulations of the Association, the design or construction of any improvements on the Property, or otherwise relating to the Community (the "Claims") to the dispute resolution procedures set forth in this Article, with the exception of the "Exempt Claims" described in this Article.

### Section 8.2 Exempt Claims.

The provisions of this Article shall not apply to, and the term "Claims" shall not include, any of the following: (a) the imposition and collection of Assessments or other charges levied under the Assessments section of this Declaration, including actions to foreclose assessment liens; (b) a suit by the Association to obtain injunctive relief; (c) proceedings involving challenges to ad valorem taxation, (d) counterclaims brought by the Association in proceedings instituted against it; (e) claims of the Association; and claims against a non-Bound Party.

## ARTICLE 9 GENERAL PROVISIONS

### Section 9.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Lot shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents: Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot; (ii) suspending the right to vote and the right to use Common Area; (iii) exercising self-help, including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot and the Owner as an Assessment or taking action to abate any violation of the Governing Documents; (iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration; (v) without liability to any person, the Association precluding any contractor; subcontractor, agent, employee, or other invitee of an Owner who fails to comply with

the terms and provisions of this Declaration from continuing or performing any further activities in the Community; (vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents; and (vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association not to pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

### **Section 9.2 Attorney Fees**

If an Owner fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the party prevailing on each claim the prevailing party's reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner shall be charged as an Assessment and shall constitute a lien against the Lot.

### **Section 9.3 Severability.**

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

### **Section 9.4 Term of Declaration.**

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

### **Section 9.5 Amendment of Declaration by Owners.**

Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions,

restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Members holding more than Fifty percent (50%) of all votes and with the written consent of the Board of Directors on behalf of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Eagle County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above and containing the written consent and approval of the Association.

#### **Section 9.6 Amendments by Board of Directors**

The Board of Directors, without the necessity of a vote by the Owners, may amend this Declaration to correct any scrivener's errors, to comply with any applicable state or federal law, and/or to bring the Community Into compliance with applicable Rules and Regulations of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") or any successor governmental agencies pursuant to federal law.

#### **Section 9.7 Amendment of Articles of Incorporation by Owners.**

Amendment of the Articles of Incorporation shall require the affirmative vote of the majority of the Owners present and voting, or voting by proxy, at a regular or special-meeting of the Members at which a quorum is present; provided, however, that no amendment to the Articles of Incorporation shall be contrary to or inconsistent with the provisions of this Declaration.

#### **Section 9.8 Captions.**

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

#### **Section 9.9 Interpretation.**

The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration.

#### **Section 9.10 Singular Includes the Plural.**

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neuter.

#### **Section 9.11 Challenge to this Amendment.**

All challenges to the validity of this amendment or any future amendments must be made within one year after the date or recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

**Section 9.11 Non-Waiver.**

Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

**Section 9.12 Conflict of Provisions.**

In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

The undersigned, being the President and the Secretary of Terrace Homeowners Association B Inc., hereby certify that pursuant to the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-217(1)(a), at least 67% of the Members have approved this Declaration.

THE TERRACE HOMEOWNER’S ASSOCIATION B INC., a Colorado nonprofit corporation,

\_\_\_\_\_  
President:

ATTEST:

\_\_\_\_\_  
Secretary:

STATE OF COLORADO     )

ss.

COUNTY OF EAGLE         )

The foregoing Declaration was acknowledged before me by \_\_\_\_\_, as President and

by \_\_\_\_\_ as Secretary, of TERRACE, a Colorado nonprofit corporation,

on this day \_\_\_\_\_ of , 20\_\_\_\_\_.

Notary Public

My commission expires: