



**DECLARATION OF COVENANTS,  
 CONDITIONS AND RESTRICTIONS  
 OF**

**RIVERWALK AT ESCALANTE CROSSING**

THIS DECLARATION, is made on the date hereinafter set forth, by Nature's View, LLC, a Colorado limited liability company, with an office at 755 East 2nd Avenue, Suite O-C, Durango, CO 81301, (referred to herein as "Declarant").

**RECITALS**

1. Nature's View, LLC, a Colorado limited liability company is the Owner of a tract of land located in the County of La Plata, State of Colorado, which is more particularly described on Exhibit "A" attached hereto and incorporated herein (the "Property") and as described on the Escalante Crossing Planned Development-Riverwalk At Escalante Crossing Townhomes As-Built Plat Phase 1, Units 7-16, and the Escalante Crossing Planned Development-Riverwalk As-Built Plat Phase 1, Units 1-6, filed in the records of the La Plata County Clerk and Recorder (collectively, the foregoing Phase 1 plats shall be referred to herein as the "Plat"); and

2. The Property is the subject of a Planned Development Agreement for the Escalante Crossing Planned Development between the City of Durango and Nature's View, LLC. The Property consists of a metes and bounds description of a portion of Lot 19A and shall serve as "Phase 1" of the Riverwalk At Escalante Crossing. The remainder of Lot 19A shall consist of Phase 2 of the Riverwalk At Escalante Crossing and shall be governed by its own declarations of covenants, conditions and restrictions and Homeowner's Association.

3. Declarant desires to create a Common Interest Community comprised of sixteen Townhomes located on the Property, to be described as Units 1-16 and otherwise known as the "Riverwalk Townhomes" in which the townhomes will be designated for separate ownership and the remainder of which will be designated for general or limited common ownership by the Association; and

4. Declarant states that all of the real property described in Exhibit A and the Riverwalk Townhomes shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

**ARTICLE 1  
 SUBMISSION; DEFINED TERMS**

**Section 1.1 Submission of Property.**

(a) Declarant hereby declares that all of the Property shall be held or sold, and conveyed subject to the easements, restrictions, covenants, and conditions which are set forth herein and as described on the Plat for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, legal representatives, successors, and assigns and shall inure to the

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benefit of each Owner thereof. Additionally, Declarant hereby submits the Property to the provisions of the Colorado Common Interest Ownership Act ("CCIOA"), C.R.S. §38-33.3-101, et seq., as it may be amended from time to time. In the event the CCIOA is repealed, the CCIOA, on the effective date of this Declaration, shall remain applicable.

**Section 1.2 Defined Terms.** Each capitalized term not otherwise defined in this Declaration or in the Plat or map shall have the meanings specified or used in the CCIOA.

## **ARTICLE 2 NAMES**

### **Section 2.1 Names.**

(a) The name of the development shall be Riverwalk Townhomes which shall consist of two triplexes and five duplexes.

(b) The name of the Association is Riverwalk At Escalante Crossing Townhomes Homeowner's Association, Inc. (hereinafter the "Association").

## **ARTICLE 3 THE ASSOCIATION**

**Section 3.1 Authority.** The business affairs of Riverwalk Townhomes shall be managed by the Association. The Association shall be governed by its Bylaws, as amended from time to time.

### **Section 3.2 Powers.**

(a) The Association shall have all of the powers, authority and duties permitted pursuant to the CCIOA necessary and proper to manage the business and affairs of Riverwalk Townhomes.

(b) The Association may assign its future income, including its rights to receive Common Expense assessments, only by the affirmative vote of the Unit Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose.

(c) Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the improvements. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner shall constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, to other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

**Section 3.3 Declarant Control.** The Declarant shall have all the powers reserved in C.R.S. §38-33.3-303(5) of the CCIOA to appoint and remove officers and members of the Executive Board (referred to herein as the "Board of Directors").

**Section 3.4 Memberships.** Every Owner, by virtue of being an Owner, and for so long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Unit. No Owner, whether one or more persons, shall have more than one membership per Unit owned, but all of the persons owning each Unit shall be entitled to rights of membership and of use and enjoyment appurtenant to such Ownership. An Owner shall not transfer, pledge or alienate his or her membership in the Association in any way except upon the sale or encumbrance of a Unit, and then only to the purchaser or Mortgagee of the Unit.

## **ARTICLE 4 UNITS**

**Section 4.1 Number of Units.** The maximum number of Units in Riverwalk Townhomes shall be sixteen (16).

**Section 4.2 Identification of Units.**

(a) The identification number of each Unit is shown on the Plat and Exhibit B of this Declaration. Units 1 through 3 and Units 4 through 6 shall consist of triplexes. Units 7-8, 9-10, 11-12, 13-14 and 15-16 shall consist of duplexes. The term "Unit" means that portion of the Property within the building footprint described as such on the Plat. The Unit as so described shall be conveyed in fee simple ownership together with the land upon which it is situate.

(b) The duplex units shall cover between approximately 2000 and 2800 sq. ft. of the property and shall consist of 3 levels. The triplexes shall cover approximately 1700 sq. ft. of land. All units share at least one common wall and will have a minimum of 2 bedrooms and 2 bathrooms.

**Section 4.3 Unit Boundaries.** The boundaries of each Unit are located as shown on the Plat and are more particularly described as follows:

- (a) common walls are designated as boundaries of a Unit;
- (b) the exterior of each wall and roof not a common wall are designated as boundaries of a Unit; and
- (c) each Unit shall include the heating and hot water apparatus exclusively serving the Unit whether or not located within the boundaries of the Unit.

**Section 4.4 Non-Partitionability.** No Unit may be partitioned, separated or subdivided into two or more parcels, tracts, lots or Units.

**ARTICLE 5  
COVENANT FOR COMMON EXPENSE ASSESSMENTS**

**Section 5.1 Creation of Association Lien and Personal Obligation for Assessments.** Declarant, for each Unit, shall be deemed to covenant and agree, and each Unit Owner, by acceptance of a deed therefore 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 (i) Annual Assessments or charges as provided in this Declaration to generally carry out the functions of the Association (referred to herein as the "Association Dues"); and (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration. Such assessments, together with fees, charges, late charges, attorney fees, fines and interest charged by the Association, shall be the personal obligation of the Unit Owner at the time when the assessment or other charges became or fell 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 exempt himself/herself from liability for any assessment by abandonment of his or her Unit or by waiver of the use and enjoyment of the Common Area.

The assessments of the Association shall be a continuing lien upon the Unit against which each such assessment is made. A lien under this Section is prior to all other liens and encumbrances on a Unit except: (i) liens and encumbrances recorded before the recordation of the Declaration; (ii) a first lien Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Section does not prohibit an action to recover sums for which this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Unit shall not affect the Associations' lien except that sale or transfer of any Unit pursuant to foreclosure of any first Security Interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the Association's lien as provided in the CCIOA. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Unit from continuing liability for any assessments thereafter becoming due, nor from the lien thereof.

**Section 5.2 Apportionment of Common Expenses.** Common Expenses are expenditures made, or liabilities incurred by, or on behalf of, the Association together with any allocations or reserves. Common Expenses shall be assessed against all Units for the upkeep, repair and replacement of all General Common Elements, with each Unit to pay a prorata percentage according to the percentage share as shown on Exhibit B.

**Section 5.3 Purpose of Assessments.** The assessments levied by the Association

through its Board of Directors shall be used generally for the purposes of promoting the recreation, health, safety, and welfare of the residents in the Common Interest Community and for the maintenance, repair, and replacement of General Common Elements. Without limitation, said assessments may be used for the following purposes:

- (a) Maintenance, repair, and improvement of any common access (including the private road to be known as River Oaks Court and the pedestrian and bike access trail between Units 12 and 13), sidewalks, parking areas and signage within the Property;
- (b) Weed control, and maintenance, including cutting, trimming, mowing, fertilizing and general upkeep of any common lawns, trees, shrubbery and the playground area and other common landscaped areas; including the designated landscape areas as shown on the Plat;
- (c) Common area lighting, underground irrigation sprinkler system for the purpose of watering of common landscaping, and snow removal expenses from common sidewalks, and parking spaces;
- (d) Maintenance, repair and replacement of roofs, exteriors, fencing, balconies and playground equipment;
- (e) All costs and expenses pertaining to the operation of the Association;
- (f) Obtaining and maintaining insurance, establishing and maintaining reserves for maintenance of Common Elements that must be replaced or repaired on a periodic basis, taxes, capital improvements, and satisfying unpaid assessments;
- (g) Legal and accounting fees, management fees; and
- (h) Any other purpose approved by a majority vote of all of the Members of the Association.

**Section 5.4 Assessment of Utilities.** Electricity, gas, cable, telephone, water, and sewer services are separately metered for each Unit and the charges for such utilities shall be paid by the Unit Owner directly to the utility company providing such service. Trash, water and electricity used in connection with General Common Elements shall be separately metered and billed by the Association as a Common Expense in accordance with each Unit Owner's percentage share as shown on Exhibit B.

**Section 5.5 Association Dues/Commencement of Common Expense Assessments.** The Board of Directors shall prepare a budget before the closing of each fiscal year to the Association and submit the budget to the Association. Association Dues for Common Expenses shall be based upon the Association's estimated advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such assessment year. The

Association shall establish the first assessment year by the action of adopting a budget and the levying of the first Association Dues in accordance with its Bylaws.

Within thirty (30) days after adopting a proposed Budget, the Board shall deliver a summary of the proposed Budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed budget to the Owners. Unless at that meeting a majority of the votes allocated to all Owners, whether or not a quorum is present, rejects the proposed budget, the proposed budget shall be deemed ratified. If the proposed budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent budget proposed by the Board.

If the Board deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under this Section 5.5, the Board may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the proposed amendment. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting a majority of the votes allocated to all Memberships, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

Association Dues may be collected in the manner as determined by the Board of Directors i.e., annually, quarterly or monthly. Association Dues shall begin on the first day of the month following the effective date of the first Budget of the Association. Until the commencement of the collection of assessments, the Declarant shall pay all of the expenses incurred and paid for by the Association.

**Section 5.6 Special Assessments.** In addition to the Association Dues authorized above, the Association may levy, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, or for other extraordinary expenses, provided that any Special Assessment in excess of One Thousand Dollars (\$1,000.00) per Unit shall (except in the event of an emergency where there shall be no such limit) require a majority approval of those voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present pursuant to the by laws of the Association. Special Assessments shall be allocated with the same formula as utilized for Annual Assessments. If any assessment is caused by the misconduct of any Unit Owner, the Association, at its discretion, may assess that expense exclusively against such Owner's Unit.

**Section 5.7 Effect of Non-Payment of Assessments.** Any assessment, charge or fee provided in this Declaration, or any monthly or other installment thereof, which is not fully paid within ten (10) days after the date due thereof shall bear interest at the rate of 18% per annum and the Association, at its option, may assess a late charge thereon and suspend the voting rights of the

Unit Owner during the period of delinquency. 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 monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Unit. 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 therefore.

**Section 5.8 Failure to Assess.** The omission or failure of the Board to fix the Association Dues amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Association Dues on the same basis as for the last year for which an Assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

**Section 5.9. Owner Caused Damage.** If, due to the act or neglect of an Owner, or such Owner's guests, loss or damage shall be caused to any person or property within the Riverwalk Townhomes common interest community, such Owner shall be liable and responsible for the payment of same. The amount of such loss or damage, together with the costs of collection and reasonable attorney's fees, may be collected by the Board of Directors from such Owner as an assessment against such Owner in accordance with paragraph 5.6.

**Section 5.10. Agreement in Advance Regarding Surpluses.** The Board shall establish an adequate reserve fund for the maintenance repair and replacement of those Common Elements that must be periodically maintained, repaired or replaced. To the extent possible, such reserve fund shall be funded through the monthly installments of the annual Common Expense Assessments. Any surplus funds derived from assessments shall be transferred to the reserve fund or used for Association operations during the next fiscal year, in the Executive Board's sole discretion. In no event shall any surplus funds be distributed to Owners. Each Owner by acceptance of the deed to the Owner's Unit, for each fiscal year of the Association in which such Unit is owned, hereby authorizes the Executive Board, in its sole discretion, to either use such surplus during the next fiscal year or to transfer to the reserve fund.

## **ARTICLE 6 LIMITED COMMON ELEMENTS**

### **Section 6.1 Limited Common Elements.**

(a) A "Limited Common Element" means a portion of the Common Elements, designated in this Declaration, or on the Plat, or by the CCIOA, for the exclusive use of one or more but fewer than all of the Lots.

(b) The following portions of the buildings, in addition to the portions described in

C.R.S. §38-33.3-202(1)(b) and (d) of the CCIOA, are designated as Limited Common Elements:

- (i) common walls in each building, serving two adjoining Units shall be a limited common element assigned jointly to those two Units;
- (ii) the balconies allocated to a Unit and serving only that Unit;
- (iii) the driveways allocated to a Unit and serving only that Unit;
- (iv) the fencing allocated to a Unit and serving only that Unit;
- (v) any areas designated as L.C.E. on the Plat (including the backyard areas) and
- (vi) the roofs and exteriors allocated to a Unit and serving only that Unit.

**Section 6.2 Maintenance of Limited Common Elements.** (a) The Owner of a Unit shall be responsible for routine maintenance and upkeep of all of the Limited Common Elements described in Section 6.1. The Owner of a Unit to which any such Limited Common Element is allocated shall also be responsible for removal of leaves and debris therefrom and snow removal, and for all routine yard maintenance and upkeep. The Association shall be responsible for major repairs and replacement of Limited Common Elements and shall assess Owners' the costs for such repair and replacement as described in Section 6.3.

**Section 6.3 Expense Allocation for Limited Common Elements.** Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element assigned to more than one Unit shall be assessed equally against the Units to which the Limited Common Element is assigned. Any expense associated with the maintenance, repair or replacement of a Limited Common Element assigned to one Unit shall be assessed only against that Unit. For example, the expense associated with the repair and replacement of a balcony shall be assessed only against the Unit to which that balcony is assigned.

**Section 6.4 Allocation of Reserved Limited Common Elements.**

(a) Portions of the Common Elements may be allocated as Limited Common Elements. These portions of the Common Elements may include, without limitation, vehicle parking areas and other areas.

(b) The Declarant reserves the right to allocate specified areas which constitute a part of these Common Elements as Limited Common Elements for the exclusive use of the Owners of Lots to which these specified areas shall become appurtenant. The Declarant may assign such Common Elements as Limited Common Element areas pursuant to the provisions of C.R.S. §38-33.3-208 of the CCIOA (i) by making such an allocation in a recorded instrument or (ii) in the deed to the Unit to which such Limited Common Element area shall be appurtenant or (iii) by recording an

appropriate amendment or supplement to this Declaration. Such allocations by the Declarant may be to Lots owned by the Declarant. Subsequent to the Declarant control period, the right of allocation pursuant to this Section shall pass from the Declarant to the Board of Directors and the Declarant may not thereafter exercise any such right.

**Section 6.5 Allocation of Specified Common Elements.** The Board of Directors may designate parts of the Common Elements from time to time for use by less than all of the Unit Owners or by non-Owners for specified periods of time or by only those persons paying fees or satisfying other reasonable conditions for use as may be established by the Board of Directors. Any such designation by the Board of Directors shall not be a sale or disposition of such portions of the Common Elements.

## **ARTICLE 7 COMMON ELEMENTS**

### **Section 7.1 General Common Elements.**

(a) A "General Common Element" means a portion of the Common Elements, designated in this Declaration, or on the plat or map, or by the CCIOA, for the general use of all of the Owners.

(b) The following portions of the Property, not platted as individual Units and conveyed to Owners in fee title, are designated as General Common Elements:

- (i) the access and utility easements identified on the Plat, including the River Oaks Court private road, ("Common Access and Utility Easements");
- (ii) all sidewalks, curbs, gutters, drainage systems, retaining walls, driveway entrances, and common parking areas, including the 8 additional parking spaces;
- (iii) all landscaped areas, the playground area (consisting of approximately 1025 sq. ft.) and any other areas as may be designated G.C.E. on the Plat; and
- (iv) the pedestrian and bike trail or access between Units 12 and 13 which shall extend from the parking area off River Oaks Court to the Animas River Trail.

(c) Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right, with all other Unit Owners, to use and enjoy the General Common Elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other Owners. There shall be no obstruction of the General Common Elements, nor shall anything be kept or stored on any part of the General

Common Elements without the prior written consent of the Association, except as specifically provided herein. No restriction, impairment or interference with any right of ingress or egress provided for in this Declaration shall be permitted at any time without the prior written consent of the Owner thereof. Nothing shall be altered on, constructed in, or removed from, the General Common Elements except upon the prior written consent of the Board of Directors.

**Section 7.2** The Common Elements shall be owned by the Association. Neither an Owner, group of Owners, nor the Association shall bring any action for partition or division of the Common Elements, nor by act or omission, seek to abandon, encumber, sell or transfer any of the Common Elements. If any Unit Owner, or group of Unit Owners, violates this paragraph, such Owner or Owners agree that this paragraph may be pleaded as a bar to maintenance of such an action for a partition, and further that the Association shall be entitled to personally collect, jointly and severally, from the parties violating this paragraph, the actual attorneys fees, costs and other damages the Association sustains in connection therewith.

## **ARTICLE 8 DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS**

**Section 8.1 Development Rights and Special Declarant Rights.** The Declarant reserves the following Development Rights and other Special Declarant Rights for the maximum time limit allowed by law:

- (a) the right to complete or make improvements indicated on the Plat;
- (b) the right to maintain sales offices, management offices and models in Units or on the Common Elements;
- (c) the right to maintain signs on the Property to advertise the sale of the Units;
- (d) the right to use, and to permit others to use, easements through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations under the CCIOA and this Declaration; and
- (e) the right to appoint or remove any officer of the Association or any Director during the Declarant Control Period consistent with the CCIOA.
- (f) The right to amend these Declarations and/or the Plat in connection with the exercise of any Declarant Rights.

**Section 8.2 Limitations on Development Rights and Special Declarant Rights.** Unless sooner terminated by a recorded instrument signed by the Declarant, any Development Right or Special Declarant Right may be exercised by the Declarant for a period of not to exceed ten (10) years after the date of recording of this Declaration.

**ARTICLE 9  
ALLOCATED INTERESTS**

**Section 9.1 Allocated Interests.** Each developed Unit shall be entitled to one vote in the Association irrespective of the size of the Unit. Each developed Unit shall have the same Common Expense liability.

**Section 9.2 Determination of Allocated Interest.** Each Owner shall be responsible for that Owner's share of the Common Expenses, which, except as specifically provided in this declaration, shall be divided equally among the Units included in the Property under this Declaration from time to time as shown in Exhibit B hereto. Accordingly, at any given time, an Owner's share of Common Expenses shall be determined as a fraction, the numerator of which is the number of Units owned by Owner and the denominator of which is the total number of Units with the Riverwalk Townhomes. Any Common Expenses or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited as provided in Section 6.3.

**ARTICLE 10  
RESTRICTIONS ON USE, ALIENATION AND  
OCCUPANCY**

**Section 10.1 Use and Occupancy Restrictions.** Subject to the Development Rights and Special Declarant Rights reserved by the Declarant, the following use restrictions apply to all Units and to the Common Elements:

(a) Residential Use. All Units shall be used exclusively for single family residential purposes only and shall not be used for any business, manufacturing, or commercial purpose whatsoever; provided, however, if the appropriate zoning or land use approval so allows and if prior written approval of the Association is obtained, an Owner may use a specifically designated portion of his or her Unit as a home business or office. A home occupation may be carried on provided:

(i) that the business or commercial usage does not interfere with the residential character of the dwelling or neighborhood, and is secondary to use as a dwelling place;

(ii) that the proposed usage causes no undue parking, traffic or telephone problems;

(iii) that such usage exhibit no outward appearance of business or commercial use; and

(iv) that no more than one (1) person not in permanent residency at the Unit is employed in connection with such business be on the Property at one time.

(b) Improvements. No improvements or structural alterations, including changing the exterior color, configuration or facade constructed on any Unit, shall be made except only as approved by the Board of Directors, or other entity to whom review responsibilities have been assigned as provided herein. For purposes of this Declaration, improvements shall mean any changes, alterations, modifications or improvements to buildings, structures, fencing, parking areas, walls, plantings, driveways, walkways, signs, balconies, and any change in exterior color of the town home. Any proposed improvements, landscaping or alterations to any Unit shall match the appearance, color, and materials of the other Units and landscaping within the Property. The Board of Directors shall be obligated to answer any written request by an Owner for approval of a proposed structural addition, alteration or improvement within 30 days after such request, and failure to do so within the stipulated time shall constitute approval by the Board of Directors of such proposed structural addition, alteration, or improvement.

(c) Signs. No signs, billboards, posterboards, or other advertising structure of any kind shall be erected or maintained for any purpose whatsoever except such signs as have been approved by the Association and City of Durango and are in compliance with the restrictions imposed by this Declaration. All permitted signs located on the Property shall comply with applicable local sign codes. Declarant, at its discretion, may erect promotional signs and ordinary real estate "For Sale" signs.

(d) Completion of Construction. All construction, reconstruction, alterations or improvements, approved by the Board of Directors, shall be prosecuted diligently through completion and shall be completed within six months of the commencement thereof.

(e) Abandoned or Inoperable Vehicles. Abandoned or inoperable automobiles, recreational vehicles, or motor vehicles of any kind, shall not be stored or parked within the property. Abandoned or inoperable vehicles shall be defined as any vehicle which either is incapable of legal operation upon a public highway or has not been driven under its own propulsion for a period of 14 days or longer.

(f) Noise. No exterior horns, whistles, bells, wind chimes, or other sound devices, except security devices used exclusively to protect the security the improvements on any Unit, shall be placed or used on any Unit.

(g) Nuisance. No obnoxious, offensive or illegal activity shall be carried on within the property, nor shall anything be done or permitted which shall constitute a public nuisance. No noise, lights, sounds, odors or other nuisance shall be permitted to exist or operate upon the property so as to be offensive or detrimental to any other part of the property or its Owners or occupants.

(h) Hazardous Activities. No activities shall be allowed or conducted on the property which are or might be unsafe or hazardous to any person or property, nor shall any inherently unsafe or hazardous materials be stored on the property.

(i) Maintenance and Repair. The Owner of any Unit shall keep his or her Unit in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance and condition of the Unit. If the Unit Owner fails to maintain his or her Unit, (and Limited Common Elements allocated to the Unit), or any part thereof or improvements thereon, in good repair, the Board of Directors may give the Owner written notice of the needed maintenance or repair. If said maintenance or repair is not completed by Owner within 30 days of the mailing of such notice, the Board of Directors, at its option, may obtain an injunction against the Owner to force completion of the needed work. In the alternative, the Board of Directors may contract with a third party for the needed work and assess the cost of same against the Owner pursuant to the assessment provisions contained herein.

(j) Animals. Except for common household pets, no livestock, poultry, or exotic animals may be kept on the property unless with the permission of the Board of Directors. Dogs shall be inside dogs. No dog-runs shall be permitted, and all applicable leash laws strictly followed. There shall be no more than two cats or two dogs and no combination of cats and dogs greater than three in number. No pets shall be bred, or maintained for commercial purposes. No animals shall be allowed to run free, or to otherwise constitute a nuisance to any other Unit Owners and Owners shall "clean up" after their pet at all times and in all places within the Project. The Owner of any animal shall at all times be personally liable and responsible for all actions of such animals and any damage caused by such animal.

(k) Trash. Trash containers shall be stored in the garage and out of site with the exception of the day of pickup. No trash, ashes, or other refuse or debris may be thrown, dumped, stored or accumulated on the Property. The burning of refuse out-of-doors shall not be permitted. No incinerators or other device for the burning of refuse indoors shall be constructed, installed or used by any other person except as approved by the Association. Waste materials, garbage, and trash shall be kept in sanitary containers and shall be enclosed and screened from public view and protected from disturbance and shall be disposed of with reasonable promptness. The Owner of any Unit subject to these covenants shall keep the premises free of trash, refuse, or debris of any kind, whether said Unit is vacant or occupies.

(l) Vehicle Parking. (a) No mobile home, trailer, automobile, boat, truck pickup, camper, or other vehicle may be used for temporary or permanent sleeping or living purposes. Overnight parking or storage of recreational vehicles, mobile homes, trailers, campers or boats shall not be permitted on the Property, including the 8 additional parking spaces. (b) **Unit Owners of Units 13, 14, 15 and 16 shall park vehicles inside the Unit's designated parking garage at all times.**

(m) Storage Sheds. No storage sheds or structures of any kind shall be erected or maintained on the Property.

(n) Antennae. No exterior radio, television, microwave or other antennae or antennae dish or signal capture or distribution device shall be permitted or installed on the Property, except as set forth herein, unless it is screened from view on all sides and any such screening shall be in keeping with the terrain and environment. The small (18" – 24") TV and computer dish antennae may be located on the roof areas to optimize reception.

(o) Common Parking. There are 8 parking spaces located within the parking lot of the Riverwalk Townhomes for the purpose of parking by all Unit Owners. Four of the common parking spaces shall be allocated for priority use by the Unit Owners of Lots 13, 14, 15, and 16. The remaining parking shall be for the purpose of guest parking and no Owner shall monopolize the guest parking spaces for a period of more than 14 consecutive days.

(p) Balconies. Balconies shall be used only for the purposes intended and shall in no event be used for hanging garments or used for storage of unsightly material or trash. The use of grills shall be in compliance with the following: (i) the grill's propane tank shall be limited to a 25 ounce size; (ii) only one such grill shall be permitted per balcony and (iii) no charcoal grills shall be allowed.

(q) Compliance with Subdivision Declarations. Notwithstanding any provisions to the contrary hereof, all Unit Owners must comply with the covenants and restrictions contained within the Master Declaration for Escalante Crossing Planned Development filed for record with the La Plata County Clerk and Recorder's office on June 24, 2002 at Reception No. 832513 and any supplements or amendments thereto.

(r) Rentals. No room or rooms in any townhome or parts thereof may be rented or leased and no paying guests shall be quartered in any residence. Nothing herein contained however, shall be construed as preventing the renting or leasing of an entire townhome as a single residence to a single family, pursuant to the following restrictions:

- (i) The Association may define the term "single family" as it shall apply to the rental or lease of any townhome;
- (ii) No rental or lease with a term of less than one (1) year shall be allowed; and
- (iii) The Association may prepare a standard rental lease. If the Association does prepare a standard rental lease, all lot owners shall only use the approved standard rental lease.

(s) Fencing. All fencing located within the Property shall be uniform in size and appearance as approved by the Board of Directors. The maximum height of any fence shall be three feet as measured from the tallest fence slat above the ground and shall consist of 3-rail/split-rail cedar with wire backing. All fencing must be located within the boundary of the L.C.E. yard area appurtenant to that Owner's Unit. Owners, at their expense, may have the Declarant construct

a fence within their designated L.C.E area. If the Declarant is unavailable, the Owner may cause the Board to select an approved contractor to construct a fence on behalf of the Owner. Notwithstanding the foregoing, fencing may not be constructed unless there has been a partial vacation of the Animas River Trail easement to the extent any portion of the trail easement crosses through the Owner's L.C.E.

**Section 10.02. Restrictions on Alienation.** A Unit may not be conveyed pursuant to a time-sharing arrangement described in C.R.S. §§38-33-110 to 113 of the COA.

## **ARTICLE 11 ENFORCEMENT, AMENDMENT AND REVOCATION**

**Section 11.1 Enforcement.** These covenants, conditions and restrictions may be enforced as provided hereinafter by the Association, or by separate action by any individual Owner after notification to the Board. In the event that any covenant shall be violated, the offending party shall be notified in writing by certified mail, return receipt request, by any enforcing party as defined above. Such notification shall identify the covenant which has been violated and shall notify the offending party that he shall have a maximum of five (5) days to remedy such violation, or alternatively, in the event such violation cannot be remedied within five (5) days, he shall have a period of five (5) days within which to initiate procedures reasonably calculated to remedy such violation, and shall thereafter be required to diligently pursue such action until the violation has been remedied. In the event the violation continues and no action is taken to remedy such violation within the aforementioned five (5) day period, enforcement may be by any proceeding at law or in equity, and the Association or Owner may seek an order to restrain the violation or recover damages, inclusive of reasonable attorney's fees. Failure by the Association or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter.

**Section 11.2 Amendment.** The provisions of this Declaration may be amended or terminated, in whole or in part at any time and from time to time, by an instrument (which instrument may be executed by ratification in counterpart referring to the amendment as recorded, in which event all of such counterparts shall be taken as one and the same instrument of amendment), approved as follows: Any amendment to or termination of this Declaration will require the prior written approval of the individual Owners owning not less than 67% of the aggregate ownership interests of the sold Lots and of the First Mortgagees holding First Mortgages on not less than 67% of the mortgaged Lots; provided, however, that any such action (a) terminating this Declaration in full or (b) changing the undivided nature of the Common Elements except as otherwise provided herein shall require the prior written approval of all First Mortgagees. To be effective, all amendments to or termination of this Declaration must be recorded in the office of the Clerk and Recorder of La Plata County, Colorado, and must contain evidence of approval thereof showing the acknowledged and notarized signatures of all the necessary approving parties.

**Section 11.3 Revocation.** This Declaration shall not be revoked unless the Owners representing an aggregate interest of 67% or more consent and agree to such revocation by instrument(s) duly recorded.

## **ARTICLE 12 INSURANCE**

**Section 12.1** The Association may obtain and keep in full force and effect insurance it deems appropriate for its ownership and activities, including, but not necessarily limited to, property and fire insurance; public liability and property damage insurance; workman's compensation insurance; and director's and officer's liability insurance. At a minimum, the Association shall obtain a policy of insurance for property damage, coverage for injuries to persons using the common areas, and comprehensive general liability coverage with a minimum policy limit of One Million Dollars (\$1,000,000) per occurrence and in the aggregate. The terms and conditions of such insurance policies shall comply with the requirements of C.R.S. §38-33.3-313 as applicable. The deductible, if any, on any insurance policy purchased by the Association may be treated as a Common Expense payable from Annual or Special Assessments or as an item to be paid from reserves established by the Board of Directors.

## **ARTICLE 13 CONDEMNATION**

**Section 13.1** If any Association property is taken or condemned by any authority having the power of eminent domain, all compensation and damages on account of the taking of the Association Property, exclusive of compensation for consequential damages to affected Units, shall be payable to the Association and such proceeds shall be used promptly by the Association to the extent necessary for repair and reconstruction of remaining Association property in as substantial compliance to the original plan of development as possible. If there is an award in excess of the amount necessary to so substantially repair or reconstruct such remaining Association property, it shall, at the Board's discretion, be either refunded or retained by the Association for such uses as it deems appropriate.

## **ARTICLE 14 EASEMENTS**

**Section 14.1 Recording Data.** All easements, and licenses of record to which Riverwalk Townhomes is presently subject are described herein or on the Plat. In addition, Riverwalk Townhomes may be subject to other easements or licenses granted by the Declarant pursuant to Section 8.1 in this Declaration.

All necessary easements are hereby declared for maintenance and snow removal upon the driveways, and parking areas within the Property. Such maintenance and snow removal shall be deemed a Common Expense.

**Section 14.2 Development Rights.** Declarant reserves for itself, its agents, employees and contractors, to enter upon the Property to do what is necessary and advisable in connection with the development of access, utilities, sidewalks and other general improvements necessary for Declarant to successfully complete the development of the Property. This general development right reserved by Declarant shall not extend to any Unit after the closing of the Unit to an Owner.

**Section 14.3 Owner's Easements of Access and Enjoyment.** Every Owner has, and the Declarant hereby grants, a perpetual, non-exclusive easement for access and utilities to and from his or her Unit for the purpose of access to River Oaks Court. Every Owner shall have, and the Declarant hereby grants, a perpetual, non-exclusive right and easement in common with all of the other Owners to reasonable use and enjoyment of the General Common Elements, subject to regulation by the Board and restrictions as stated in Article 10. The easements granted hereunder are appurtenant to and shall pass with the title to every Unit, subject to the provisions set forth in this Article. Nothing in this Declaration or the other Association Documents shall be construed as a dedication of the General Common Elements or Common Access and Utility Easements to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any by such authority or utility, absent and express written agreement to that effect. The General Common Elements and Common Access and Utility Easements are private amenities that are for the common use, benefit, and enjoyment of the Owners and their permitted guests only.

**Section 14.4 Association's Easement.** Declarant hereby grants the Board of Directors of the Association an easement over, across, and under each Unit to exercise any right held by the Association under this Declaration. Notwithstanding the foregoing, the Association shall not enter upon any Unit without reasonable prior notice to the Owner except in cases of emergency.

**Section 14.5 Easement for Encroachments.** To the extent that any Unit, Limited Common Element, or Common Element encroaches on any other Unit, Limited Common Element, or Common Element, a valid easement for the encroachment exists. This easement does not relieve a Unit Owner of liability in the case of willful misconduct.

**Section 14.6 Trail Easement.** Developer hereby grants to the Association a perpetual non-exclusive access easement for pedestrian and bike use located between Units 12 and 13 extending from the parking area off River Oaks Court to the Animas River Trail as shown on the Plat (the "Access Trail"). This Access Trail shall be for the benefit of the Owners and their permitted guests.

## **ARTICLE 15 TRAIL PAVING OBLIGATION**

**Section 15 Access Trail Paving.** The Association may be required to pave the single track Access Trail connecting the parking area off River Oaks Court to the Animas River Trail.

Paving shall be required only if the City determines that the grade of the Access Trail requires paving. This obligation by the Association is contingent upon the completion of the Animas River Trail by the City of Durango. It is anticipated that the Animas River Trail will be completed by the City in approximately 2007. Any required paving of the Access Trail will be a Common Expense of the Owners. The Board will use its best efforts to include such expenses in its annual budget in the year prior to the Animas River Trail completion.

## **ARTICLE 16 ALTERNATIVE DISPUTE RESOLUTION**

**Section 16.1 Alternative Dispute Resolution.** The purpose of the Declaration is to establish a harmonious Common Interest Community. Because the prompt, efficient, fair and non-belligerent resolution of any disputes is desirable, any controversy arising out of or relating to this Declaration, or a breach thereof, or any other dispute between (1) the Declarant and (2) the Association or any Owner Lot shall be resolved as set forth in this Article.

**Section 16.2 Direct Communication.** The parties to the disagreement shall set forth their respective positions in the dispute in correspondence. Each party shall respond within seven days after receipt of a letter from the other until agreement is reached.

**Section 16.3 Mediation.** If the dispute cannot be resolved through direct communication of the parties, either party may request appointment of a neutral and properly credentialed mediator. Both parties shall participate in the mediation in good faith until the dispute is resolved for a period not to exceed thirty days with the consent of all parties. The cost of the mediation shall be divided equally among the parties.

### **Section 16.4 Arbitration.**

(a) **Method.** If the dispute cannot be resolved through mediation, either party may request appointment of one or more neutral and properly credentialed arbitrators with expert knowledge and experience regarding the subject in dispute. The initiating person shall give written notice of its decision to arbitrate by providing a specific statement setting forth the nature of the dispute, the amount involved and the remedy sought. The initiating person shall be responsible for all filing requirements and the payment of any fees according to the rules of the applicable regional office of the American Arbitration Association. The parties shall have an equal and fair opportunity to present their respective positions to the arbitrators, orally or in writing, as the arbitrators may specify depending on the nature of the dispute. The arbitrators may require such testimony, materials and documentation as they may determine to be appropriate. The arbitrators shall provide a written resolution within thirty days after the conclusion of the presentations of the parties and receipt of requested materials and documents. Any dispute shall be settled by binding arbitration administered by the American Arbitration Association.

(b) Costs. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and expenses including any attorney's fees, arbitrator's fees and out-of-pocket expenses of any kind. The term "prevailing party" shall mean the party whose position is most nearly upheld in arbitration. (For example, the prevailing party would be the party who is required to pay \$1,000.00 in the arbitration proceeding where such party had, prior to the commencement of the arbitration, offered \$500.00 by way of settlement and the opposing party, refusing such offer, had claimed entitlement to \$10,000.00.)

(c) Binding Nature; Applicable Law. The consideration of the parties to be bound by arbitration is not only the waiver of access to determination by a court and/or jury, but also the waiver of any rights to appeal the arbitration finding. A judgment upon an award rendered by the arbitrator may be entered in any court having jurisdiction.

(d) Location. The alternative dispute resolution proceeding shall be held within La Plata County, Colorado unless otherwise mutually agreed by the parties.

(e) Sole Remedy; Waiver of Judicial Rights. The Declarant, the Association, and each Owner of a Lot expressly consent to these procedures established in this Article as their sole and exclusive remedy, and expressly waive any right they may have to seek resolution of any dispute contemplated by this Article in any court of law or equity, and any right to trial by judge or jury. If a dispute involves the Declarant or the Association, no person shall file a memorandum of lis pendens or similar instrument that would encumber or create a lien upon the land owned either by the Declarant or the Association.

(f) No Agreement by Association. Notwithstanding any provision in this Article 16 to the contrary, the Association shall have the right to enforce all covenants set forth herein, as provided in this Declaration and the Act and does not agree to mediate or arbitrate its claims in such enforcement actions.

## ARTICLE 17 GENERAL PROVISIONS

**Section 17.1 Severability.** Invalidation of any one of these covenants by judgment or court decree shall not affect or impair the terms, provisions and conditions of any other covenants contained herein, which covenants shall remain in full force and effect.

**Section 17.2 Covenants Running with the Land.** All provisions of this Declaration and Exhibits attached hereto and amendments thereof shall be construed as covenants running with the land, and or every part hereof and interest therein, including but not limited to every Unit and appurtenances thereto, and every Unit Owner and occupant of the Property, or any part thereof, or of any interest therein, and his or her heirs, executors, administrators, successors and assigns, shall be bound by all of the provisions of said Declaration and Exhibits annexed hereto and any amendments thereof. The subjection of the Property or surrounding properties to zoning laws and

regulations shall not then or thereafter cause any provisions of this Declaration to terminate.

**Section 17.3 Conflict Between Documents.** In the event of any conflict between the provisions of this Declaration, or the Articles of Incorporation or the Bylaws of the Association, the provisions of the Articles of Incorporation shall control. In the event of any conflict between the Declarations and the Bylaws of the Association, the Declarations shall control.

**Section 17.4 Waiver.** No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy shall operate as a waiver, except as specifically provided above in the event the Board fails to respond to certain requests. No waiver shall be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association.

**Section 17.5 Notices.** Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) days after a copy of the same has been posted in the United States mail, postage prepaid for first class mail and addressed to the receiving party at the address last given by such party to the Association. Any notice to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

**Section 17.6 Binding Effect.** Declarant, Owners, lessees, Mortgagees, permitted guests and invitees, and their heirs, personal and legal representatives, successors and assigns, or any other person using or occupying Riverwalk Townhomes, shall be bound by, and shall strictly comply with the provisions of this Declaration, the Bylaws, the Articles, any deed restrictions, and all rules, regulations and agreements lawfully made by the Association.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Restrictive Covenants, Conditions and Restrictions of the Riverwalk At Escalante Crossing to be executed this 9<sup>th</sup> day of April, 2004.

NATURE'S VIEW, LLC

By: 

FRED L. ARNOLD, Manager

By: 

JOHN G. KRINGEL, Manager

**EXHIBIT A**  
**LEGAL DESCRIPTION**

EXHIBIT "A"  
LEGAL DESCRIPTION  
(Riverwalk Town Homes)

PHASE 1

A tract of land located in Section 9, T 34 N. R 9 W, N.M.P.M., in La Plata County, Colorado being more particularly described as follows:

Beginning at the northwest corner of Lot 19A of ESCALANTE CROSSING, Lots 19 & 21, Boundary Adjustment recorded in the Office of the La Plata County, Colorado, Clerk and Recorder under Reception Number 859132; Thence along an arc of a curve to the left with a delta angle of 14°59'25" and a radius of 380.00 feet for a distance of 99.42 feet, the long chord bearing N 76°56'42" E, 99.14 feet along the southerly right of way of River Oaks Drive; Thence N 69°27'00" E, 118.24 feet along the southerly right of way of River Oaks Drive; Thence along an arc of a curve to the right with a delta angle of 17°29'53" and a radius of 170.00 feet for a distance of 51.92 feet, the long chord bearing N 78°11'57" E, 51.72 feet along the southerly right of way of River Oaks Drive; Thence N 88°56'53" E, 127.31 feet along the southerly right of way of River Oaks Drive to the northerly line of said Lot 19A; Thence S 57°16'34" E, 94.01 feet along the northerly line of said Lot 19A; Thence S 46°16'04" W, 44.13 feet; Thence S 03°00'00" W, 109.00 feet; Thence S 28°00'00" E, 84.00 feet; Thence S 14°00'00" E, 54.57 feet to the southerly line of said Lot 19A; Thence N 62°00'00" W, 65.96 feet along the southerly line of said Lot 19A; Thence N 82°03'00" W, 308.60 feet along the southerly line of said Lot 19A to the westerly line of said Lot 19A; Thence N 40°35'00" W, 174.07 feet along the westerly line of said Lot 19A; Thence N 03°54'00" W, 30.27 feet along the westerly line of said Lot 19A to the point of beginning.  
Contains 2.18 acres more or less.

**EXHIBIT B  
TABLE OF INTERESTS**

<u>Unit No.</u>	<u>Percentage share of Common Elements</u>	<u>Percentage share of Common Expenses</u>	<u>Vote in the affairs of Association</u>
Unit 1	1/16	1/16	1
Unit 2	1/16	1/16	1
Unit 3	1/16	1/16	1
Unit 4	1/16	1/16	1
Unit 5	1/16	1/16	1
Unit 6	1/16	1/16	1
Unit 7	1/16	1/16	1
Unit 8	1/16	1/16	1
Unit 9	1/16	1/16	1
Unit 10	1/16	1/16	1
Unit 11	1/16	1/16	1
Unit 12	1/16	1/16	1
Unit 13	1/16	1/16	1
Unit 14	1/16	1/16	1
Unit 15	1/16	1/16	1
Unit 16	1/16	1/16	1
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>16</b>