

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
BELLE HAVEN ESTATES**

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**DECLARATION OF COVENANTS,  
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THIS DECLARATION is made this \_\_\_\_ day of \_\_\_\_\_, 2004 by Bellehaven, LLC, a Limited Liability Company, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant intends to develop as a residential neighborhood certain real property located in Montrose County, State of Colorado; and

WHEREAS, in order to preserve and enhance the value and quality of the real property subject to this Declaration, Declarant has or will form a Colorado non-profit corporation known as The Belle Haven Estates Homeowners Association, Inc. (the "Association") which will own and have responsibility for the maintenance and operation of the Common Elements (hereinafter defined), for the taking of such other actions and the performance of such other matters as are specified in this Declaration, and for the administration and enforcement of the Covenants, Conditions and Restrictions contained herein.

NOW, THEREFORE, Declarant hereby declares that all the real property described as Lots 1 through 6 inclusive and Lots 16 through 19 inclusive, The Belle Haven Estates First Filing, however, future filings will include a total of 25 lots (Lots 7 through 15 inclusive and Lots 19 through 25 inclusive), according to the plat thereof, Montrose County, State of Colorado, is subject to the covenants, conditions, restrictions and easements herein contained which are for the purpose of establishing a general plan and of protecting and maintaining the value and unique desirability of The Belle Haven Estates as a high quality single family residential development.

**ARTICLE I  
DEFINITIONS**

Unless the context clearly requires another meaning, the following words and phrases shall have the following meaning:

**Section 1. "ARCHITECTURAL REVIEW BOARD" or "ARB"** shall mean the board, which shall be appointed by the Association's Board of Directors to approve additions, improvements and changes in building design and construction on the Lots as herein provided other than those constructed by Declarant.

**Section 2. "ARTICLES OF INCORPORATION"** shall mean the Articles of Incorporation of the Association, as amended from time to time.

**Section 3. "BY-LAWS OF THE ASSOCIATION" or the "BY-LAWS"** shall mean those By-Laws of the Association which govern the administration and operation of the Association, as amended from time to time.

**Section 4. “COMMON ELEMENTS”** shall mean all real property, including the open space and ponds, the improvements thereon, if any, now or hereafter owned by the Association for the common use and enjoyment of the Owners, as designated on the Plat for Belle Haven Estates or as acquired by the Association from time to time.

**Section 5. “BOARD OF DIRECTORS”** or **“BOARD”** is the governing body of the Association.

**Section 6. “LOT”** shall mean any plot of land designated upon any recorded Plat of Belle Haven Estates which is designed and intended for use as a residence.

**Section 7. “MEMBER”** shall mean every person who holds membership in the Association, including any beneficiary of a trust holding legal title to any Lot.

**Section 8. “OWNER”** shall mean one or more persons who own a fee simple title to any Lot and including contract purchasers but excluding Declarant and those having only a security interest.

**Section 9. “PERSON”** shall mean a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

**Section 10. “PLAT”** shall mean a plat of the Property, or any part thereof, subdividing or re-subdividing the same into Lots, and recorded with the Recorder of Deeds of Montrose County, Colorado.

**Section 11. “PROPERTY”** shall be all the real property above described and may also be referred to as the “Development” or the “Belle Haven Estates.”

## **ARTICLE II COMMON ELEMENTS, EASEMENTS AND USE RIGHTS**

**Section 1. Easements of Use and Enjoyment.** Every Owner shall have a right and easement for ingress and egress on, over and across the Common Elements and shall be entitled to the use and enjoyment of the Common Elements. Such easements and right of use shall be appurtenant to and shall pass with the ownership of each Lot. Said right and easements shall be subject to the following provisions:

(a) The right of the Board to establish rules and regulations pertaining to the use, operation and maintenance of the Common Elements; and

(b) The right of the Association acting through the Board, in accordance with the Articles of Incorporation and By-Laws, to borrow money for the purpose of improving or reconstructing the Common Elements.

**Section 2. Delegation of Use.** Any Owner may delegate his/her right of enjoyment to the Common Elements to such Owner’s immediate family or to the occupants of the owner’s Lot.

**Section 3. Waiver of Use.** No Owner may become exempt from personal liability for assessments duly levied by the Association nor release the Lot owned by such Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or by abandonment of such Lot.

**Section 4. Title to the Common Elements.** Declarant covenants for itself, its successors and assigns, that it will convey or cause to be conveyed fee simple title to the Common Elements to the Association subject to:

(a) The terms of this Declaration; and

(b) current real estate taxes, not yet due and payable (for which Declarant shall pay or make arrangements to pay its pro rata share) as of the date of the conveyance.

The Common Elements shall be conveyed no later than the date of expiration of Declarant's control of the Association.

**Section 5. Access to Lots and Common Elements.** Declarant, the Association and their respective agents, employees and independent contractors shall have, and there is hereby declared, an easement to enter upon any Lot or Common Element to the extent reasonably necessary to exercise any right or responsibility of Declarant or the Association as set forth in this Declaration, as to the Lot or the Common Elements including, but not limited to the maintenance, repair or replacement of any utilities, landscaping, fences, or other improvements located on the Property.

**Section 6. Reservation of Easements for Benefit of Declarant.** Anything contained in this Declaration to the contrary notwithstanding, Declarant hereby reserves for itself and its agents, employees, contractors, sub-contractors, workmen and materialmen an easement under, over and across the Lots and the Common Elements for the purposes of constructing homes, garages and improvements, installing, completing, repairing, maintaining and inspecting the Development and for the purpose of exhibiting and selling Lots and improvements then owned by Declarant.

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

**Section 8. Easements.**

a. Easements for the installation and maintenance of utilities and drainage facilities, if any, are hereby reserved by Declarant for itself and its assignees and are dedicated to the public as shown on the Plat. No conveyance of a Lot by Declarant shall be deemed to be a conveyance or release of the foregoing easement in the absence of a specific expression of intent to do so. Subject to the rights of the City of Montrose as contained in the Certificate of Ownership and Dedication on the Plat, the Association is hereby granted the right to grant and convey to any person or firm easements and rights of way in, on, over or under any portion of Association property in carrying out any duty or power belonging to the Association.

b. Declarant expressly reserves for the benefit of all properties reciprocal easements for access, ingress and egress for all owners and Declarant to and from their respective lots; for installation and repair of utility services; for encroachments of improvements constructed by Declarant or authorized by the Board over Association assets; for drainage of water over, across and upon adjacent lots and property of the Association resulting from the normal use of adjoining lots or property of the Association; and for necessary maintenance and repair of any improvement. Such easements may be used by Declarant, its successors, assigns, the Association and all owners, their guests, tenants and invitees.

### **ARTICLE III USE RESTRICTIONS**

**Section 1. Establishment of Restrictions.** Declarant hereby declares that no Owner shall cause, permit or allow any violation of any of the following restrictions, on such Owner's Lot or on the public streets and Common Elements within the Property:

a. **Avoidance of Damage.** Anything which will result in injury or damage to any trees or other planted materials in the Development is prohibited. Any removal of existing trees must be approved by the ARB.

b. **Insurance Rates.** Anything which will increase the rate charged for or cause the cancellation of any insurance maintained by the Association is prohibited.

c. **Dwelling Cost, Quality and Size.** All dwellings must be of a permanent nature constructed on site affixed to a permanent foundation, and no modular, prefabricated, panelized home, trailer house, manufactured home or mobile home shall be set upon any Lot within Belle Haven Estates. All dwellings must be of workmanlike quality using new materials of the same or better quality than those which can be produced on the date these Covenants are recorded and shall be completely finished before occupancy. Completion must occur within one (1) year of issuance of a building permit. Each residence structure shall contain not less than two thousand two hundred (2,200) square feet of livable space but not more than six thousand five hundred (6,500) square feet, excluding garages and basements. Because of the topography of certain Lots, a walk out lower level plan may be desired in which case the livable floor space for the above ground and walk out levels shall total not less than two thousand four hundred (2,400) square feet. All dwellings must have an attached garage of not less than two (2) nor more than four (4) bays. No less than seventy five percent (75%) of the roof must have a roof pitch of not less than seven (7) inches of rise per twelve (12) inches of lineal distance (7/12 pitch). The roof height shall not exceed thirty-five (35) feet from the mean ground level to the top of the highest ridge line. No house shall contain more than two (2) stories above ground. No single-ridge roof design shall be permitted.

d. **Exterior Lighting.** No security or large yard lights will be allowed to burn from 11:00 o'clock P.M. to 6:00 o'clock A.M. Mercury and sodium vapor fixtures are prohibited. Free standing or pole lights may not exceed eight (8) feet in height above ground. No more than six (6) free standing or pole lights may be affixed on each Lot with no more than 75 watts on each fixture.

e. **Signs.** No signs (except decorative home identification signs), advertisements, billboards or advertising structures of any kind or character may be erected or maintained upon the site within the subject property, provided, however, one sign board of not more than five (5) square feet for the sole purpose of advertising the sale, lease or rental of the building site and improvements thereon may be erected.

f. **Commercial Activity Prohibited.** Other than activities related to the building of infrastructure for the Belle Haven Estates and homes and improvements on the Lots, all uses within the Belle Haven Estates are to be residential as defined by the City of Montrose zoning code and no business or commercial uses may be made of the premises.

g. **Setback.** In addition to set back requirements of ordinances of the City of Montrose, Colorado, it is required that all structures on each Lot shall be located in order to provide maximum separation and to maintain view corridors between the structures.

h. **Use.** Each Lot within the Belle Haven Estates shall be used for one single private dwelling only per Lot, designed for the occupancy of and by one family.

i. **Livestock.** No agricultural activity shall be undertaken for any business or commercial purpose and no animals, livestock or poultry of any kind shall be raised, bred or kept upon any Lot in Belle Haven Estates for business or commercial purposes. Livestock, poultry or exotic animals shall not be kept in Belle Haven Estates. Homeowners may keep not to exceed three (3) dogs provided they are properly fenced or chained.

j. **Temporary Structures.** No structures of a temporary character, tent, shack, basement, trailer, barn, garage, shed or other outbuilding shall be permitted on any part of Belle Haven Estates either temporarily or permanently except by contractors as related to infrastructure or home construction activities.

k. **Repairs.** Any building or improvement which has been damaged by fire or other casualty causing the same to be unsightly shall be repaired or removed within one (1) year from the date of such casualty. All structures, buildings and improvements erected on Lots within Belle Haven Estates shall at all times be kept in good repair and attractive.

l. **Abandoned Vehicles and Parking.** No abandoned vehicle shall be permitted on any Lot. A vehicle shall be considered abandoned if it remains non-operative for a period of thirty (30) days. In such instance, the Association shall send a letter requiring removal of the vehicle within thirty (30) days from the receipt of the letter and if the Owner does not comply within that period of time the Association may have the vehicle towed away at the violator's expense. The Association's costs so incurred may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights provided by this Declaration.

All vehicles including but not limited to recreational vehicles, horse trailers, snowmobiles, boats and boat trailers, etc. shall be stored or kept in garages so as to maintain appropriate appearances within the Belle Haven Estates.



Only guest parking (for periods not to exceed seven days) shall be permitted upon the platted streets and roads of the Belle Haven Estates.

Owners' vehicles shall be kept in garages when not in use. In the event such vehicles cannot be garaged, the Owner shall promptly obtain storage space at a location outside the Belle Haven Estates. "Appropriate appearances" within the Belle Haven Estates does not include vehicles being visible from streets and roads when not in use. "Non-operative" vehicles does not includes those which are regularly stored or parked inside a garage. Garages shall be equipped with doors. Doors must be kept closed at all times except when a vehicle is entering or exiting the garage or during periodic maintenance of the door or garage area.

m. **Waste and Trash Disposal.** During and after construction, trash or garbage shall not be permitted to accumulate upon any site except in properly covered containers which shall be emptied on a regular basis to avoid overflow and unreasonable odors or conditions resulting there from. Solid waste disposal is the responsibility of the individual homeowner or occupant. The street in front of each construction site must be kept clear of dirt and debris. Open burning of trash shall not be permitted except where authorized by the City of Montrose for burning of construction waste or for ditch cleaning and maintenance or for project clean-up. This covenant shall not be construed to prohibit barbecue pits or fireplaces or open cooking on sites. Sewage disposal must be by connection to a public sewage system.

n. **Weed Control.** Prior to completion of landscaping as herein required, weeds must be cut often enough so as to not permit land within the Subdivision to become unsightly or a fire hazard due to the overgrowth of weeds. In the case of unoccupied Lots, non-resident or out of state Owners, if weed control is not exercised by said Lot Owner, the Homeowners Association will have the right to hire the weeds mowed and bill the individual Lot Owner for the expense of same. This cost may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights provided by this Declaration.

o. **Off Road Vehicles Prohibited.** Except for lawn maintenance equipment and construction equipment used within Belle Haven Estates, only "street legal" vehicles may be operated within the Belle Haven Estates and on the Lots and roads thereof; provided, however, that such vehicles may be operated for purposes of loading and unloading.

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

q. **No Noxious, Offensive, Hazardous or Annoying Activities.** No noxious or offensive activity shall be carried on upon any part of the Subdivision nor shall anything be done or placed on or in any part of the Subdivision, which is or may become a nuisance or cause embarrassment, disturbance or annoyance to others. No activity shall be conducted on any part of the Subdivision and no improvements shall be made or constructed on any part of the Subdivision, which are or might be unsafe or hazardous to any Person or property. No sound shall be emitted on any part of the Subdivision, which is unreasonably loud or annoying. No odor shall be emitted on any part of the Subdivision, which is noxious or offensive to others. No light

shall be emitted from any part of the Subdivision, which is unreasonably bright or causes unreasonable glare. No power equipment or tools which create excessive noise or which cause interference with other appliances is permitted within the Subdivision. Vehicle maintenance (other than that required in an emergency) except within the confines of a garage, is not permitted within the Subdivision. Power lawn mowers and snow removal equipment shall be operated by Owners only between the hours of 8:00 A.M. and 8:00 P.M.

r. **No Unsightliness.** No unsightliness or waste shall be permitted on or in any part of the Subdivision. Without limiting the generality of the foregoing, no Owner shall keep or store anything (except in designated storage areas) on or in any of the Common Elements; nor shall any Owner hang, erect, affix or place anything upon any of the Common Elements; and nothing shall be placed on or in windows or doors of homes, which would or might create an unsightly appearance. Lots must be kept clear of accumulated trash, toys, equipment, etc. No outside antennae, masts, poles or flagpoles shall be constructed, installed or maintained by an Owner unless approved by the Declarant or the ARB. No Owner shall erect any structure or plant any tree or shrub which will, or have the potential to obstruct, limit or interfere with the mountain, valley or other scenic view of any Lot or Common Element without the written consent of the Declarant or the Board.

s. **Above Ground Utilities.** Above ground utilities or radio, television or cable receivers, antennae, satellite dishes larger than 24 inches in diameter or transmitters are prohibited.

**Section 2. Enforcement of Use Restrictions.** The use restrictions set forth in this Article III shall be enforceable by Declarant, any Owner or the Association in the manner provided in this Declaration, including the right to recover costs and attorney's fees incurred in enforcement.

#### **ARTICLE IV COVENANT FOR ASSESSMENTS**

**Section 1. Assessments of a Lien and Personal Obligation.** Each purchaser of a Lot by acceptance of a conveyance of a Lot, whether or not it shall be so expressed in the conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments as authorized and limited by this Declaration as common expense assessments. Each assessment together with the interest thereon and costs of collection, including attorney's fees, shall be a charge and a continuing lien upon the Lot against which the assessment is made. Each assessment, together with interest and costs of collection, including attorney's fees, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due and, when expressly assumed, of any subsequent purchaser of the Lot other than a first mortgagee or a purchaser at foreclosure sale.

**Section 2. Assessments.** The assessments levied by the Association shall be used exclusively for its operating expenses and for the purpose of promoting the health, safety, welfare and enjoyment of its Members, to enable the Association to carry out any of its duties set forth in this Declaration or in its Articles of Incorporation or By-Laws such as but without limitation, for:

- (a) maintenance, repair, replacement and improvement of the Common Elements;
- (b) payment of premiums for the insurance which is the obligation of the Association;
- (c) payment of taxes which are the obligation of the Association;
- (d) for the providing of funds for the Association and ARB to carry on their duties as set forth herein or in the Articles of Incorporation or By-Laws; and
- (e) payment for irrigation water within the Subdivision.

**Section 3. Calculation of Assessments.** The Board shall fix the assessment for each Lot for each annual assessment period at least thirty (30) days prior to the commencement of each annual assessment period. The annual assessment shall be delivered or mailed to each Owner showing the amounts and due dates for such assessment. Failure of the Board to fix the assessment within the time provided herein shall not relieve an Owner of the obligation to pay the assessment when the assessment is made.

**Section 4. Reasonable Reserves.** The Association shall establish and maintain, from assessments, reasonable reserves for depreciation and for the costs of the obligations of the Association hereunder.

**Section 5. Periodic Collections.** Annual assessments may be collected on an annual, quarterly or monthly basis as determined by the Board.

**Section 6. Assessment for Lots Owned by Declarant.** Notwithstanding the foregoing provisions in this Article IV, Lots owned by Declarant shall be exempt from assessments.

**Section 7. Deficiency Contributions.** Lots owned by Declarant are not subject to assessment. For every calendar year during which Declarant retains the right to appoint any members of the Board, Declarant shall contribute to the Association all funds in excess of the levied assessments which shall be necessary to defray the costs properly paid by the Association for the purposes for which annual assessments may be collected. The deficiency contribution for the calendar year during which Declarant's said appointment right terminates shall be prorated to the date of such termination.

The establishment of reserves pursuant to §4 above does not constitute the payment or incurring of costs by the Association and the deficiency contribution of Declarant shall not be required to be applied to the establishment of reserves.

**Section 8. Date of Commencement of Assessments, Due Dates.** The assessments provided for herein shall commence for any Lot within the Property on the day of the conveyance of that Lot by Declarant and shall be prorated for the remainder of the calendar year of said conveyance. Thereafter, the assessments will be due on January 15<sup>th</sup> of each year and shall be considered delinquent if not paid by July 15<sup>th</sup> of the same year.

**Section 9. Assessment Amounts and Budget.** The initial assessment shall be

ONE HUNDRED FIFTY DOLLARS (\$150.00) per Lot payable in periodic installments as established by the Board from time to time. The Board shall establish a budget for the Association annually.

a. The maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

b. The maximum annual assessment may be increased above ten percent (10%) by a vote of two-thirds (2/3) of members who are voting in person or by proxy at a meeting duly called for this purpose.

c. The Board may fix the annual assessment at an amount less than the maximum.

d. In all events, the assessment may not exceed the sum of Four Hundred Dollars (\$400.00) per annum, exclusive of optional user fees and any insurance premiums paid by the Association; provided, however, such maximum may be increased annually on July 1<sup>st</sup> of any year in accordance with any increase in the United States Department of Labor Bureau of Labor Statistics final Consumer Price Index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The maximum shall not be increased if the final Consumer Price Index for the preceding calendar year did not increase and shall not be decreased if the final Consumer Price Index for the preceding calendar year decreased.

#### **Section 10. Notice and Quorum for any Action Authorized Under this Article IV.**

Written notice of any meeting called for the purpose of taking any action authorized under this Article IV shall be sent to all Owners entitled to vote not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of Owners entitled to vote shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

### **ARTICLE V EFFECT OF NONPAYMENT OF ASSESSMENTS REMEDIES OF ASSOCIATION**

**Section 1. Delinquency.** Any assessment provided for in this Declaration which is not paid when due shall be delinquent. With respect to each assessment not paid within fifteen (15) days after its due date, the Association shall require the Owner to pay a "late charge" in a sum to be determined from time to time by the Board and applied uniformly. In addition, if any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the original due date at the rate of twenty four percent (24 %) and the Association may, at its option, bring an action at law or in equity or both against the Owner personally obligated to pay the same or foreclose the lien against the Lot under the procedure applicable to judicial foreclosure of Deeds of Trust, and there shall be added to the amount of such assessment the late charge, the costs of preparing and filing such action and attorney's fees;

in the event a Judgment is obtained, such Judgment shall include interest together with the cost of bringing the action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or lien foreclosure against such Owner and Lot for the collection of such delinquent assessments.

**Section 2. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Lot shall not affect the assessment lien.

**Section 3. Suspension of Voting and Use Rights.** The Association shall have the right to suspend the voting rights of a member for any period during which any assessment or fine against such Member's Lot remains unpaid and delinquent. The Association may also suspend a member's rights to use the ponds or other Common Elements for any infraction of the rules and regulations of the Association or violation of any provision of this Declaration. Such rules and regulations shall be uniform and nondiscriminatory. Each Owner agrees to accept and be bound by all such rules and regulations by virtue of ownership of a Lot.

**Section 4. Homestead Waiver.** Each Owner hereby agrees that the Association's lien on a Lot for assessments shall be superior to the homestead exemption provided by Colorado law as amended from time to time and each Owner hereby agrees that the acceptance of the deed conveying the Owner's Lot within the Property to him shall signify the Owner's waiver of the homestead right granted by said Colorado law.

## **ARTICLE VI ARCHITECTURAL REVIEW BOARD (ARB)**

**Section 1. Approval Required.** No residence, outbuilding, structure, driveway, fence, patio or other improvement shall be erected, placed, modified or altered on any Lot within the Property unless the building plans, specifications (including colors and materials) and plot plan showing the location and proposed erection, placement, modification or alteration of any such residence, structure, driveway, fence, patio or other improvement has been approved in writing by the Architectural Review Board.

**Section 2. Role of the ARB.** The ARB is fully authorized in its sole discretion to accept or reject applications for approval in total or to require certain specific revisions. The decisions of the ARB shall be final and non-appealable. Every Owner, by acceptance of a deed or other conveyance for itself, its successors, assigns, agents and employees hereby expressly waives any claim against the ARB, the Board or the Association or their respective members, or against Declarant relating to or arising out of any action or inaction on the part of the ARB, including but not limited to any claim such Owner may have by reason of any changes which may be made in the guidelines (as hereinafter defined) or the rules or regulations (herein referred to) subsequent to the date the ARB has acted on the application of an Owner, which might have changed the nature or content of the Owner's application or which might have had the effect of a differing result on the Owner's application had action not taken place until after the occurrence of the change in the guidelines or in the rules and regulations.

**Section 3. Membership and Appointment of the ARB.** Until a minimum of 22 Lots

have been sold by Declarant, Declarant shall perform the functions of the ARB. Declarant may voluntarily surrender this responsibility at any time but once surrendered, Declarant may not resume it. When Declarant ceases to act as the ARB, the ARB shall be a committee of the Association composed of from one (1) to three (3) persons as determined by the Board. Except during the period of Declarant's service as the ARB, it shall be appointed and replaced by the Board and the Board shall have absolute authority to remove any person on the ARB, with or without cause.

**Section 4. Architectural Guidelines.** Declarant may publish architectural guidelines and amendments thereto governing all improvements of the Lots. The guidelines shall be available for review at all reasonable times at the offices of the Association and copies shall be available to Owners upon request. At any time, and in any event no later than ten (10) years after the date hereof, Declarant shall release to the ARB its right to amend the guidelines and after such release, the right to amend shall be vested solely in the ARB.

**Section 5. Construction Standards.** Construction standards as set forth in the guidelines shall be deemed to be minimum requirements only. The ARB shall have the right to refuse to approve any plans or specifications submitted to it that are not suitable or desirable, in its sole discretion, for aesthetic or other reasons. The ARB shall have the right to consider the suitability of proposed buildings, the harmony thereof with the surroundings and the effect of the building on neighboring property. The ARB shall not be arbitrary in its decisions but shall have broad discretion to require continuity and harmony of design, appearance and location in relation to the other improvements on the property, view preservation and finish grade elevations. No duplication of house plans shall be permitted; however, similar but significantly modified designs may be permitted so as to maintain the uniqueness of each house in the Subdivision.

**Section 6. Construction and Design Requirements and Miscellaneous Use Restrictions.** In the event of conflict between the aforementioned guidelines and standards and these Covenants, Conditions and Restrictions, these Covenants, Conditions and Restrictions shall govern. In addition to any guidelines and standards which may be promulgated by Declarant, the ARB or the rules and regulations of the Association, the following requirements are also applicable to the Development:

a. **Roofs.** Smooth surface metal roofing or similar material is not recommended. No primary or bright roof colors are permitted. No single-ridge roof design shall be permitted.

b. **Siding.** For exterior siding material, no artificial stucco panels are permitted. The use of any plastic or vinyl siding products must be approved by the ARB in order to assure proper quality. Earth tones, pastels and white are permitted exterior colors but primary or bright siding colors are prohibited.

c. **Driveways.** All driveways must be concrete or asphalt paved or gravel surface.

d. **Garages and Outbuildings.** Garages must be a minimum of two-car and a maximum of four-car. They must be attached to the residence by roofline. Permitted outbuildings on Lots may contain additional detached garage space not to exceed four car garage bays. One outbuilding is permitted on each Lot. Permitted outbuildings may not exceed two stories and

must be limited in height to not more than thirty (30) feet above mean ground level measured at the road in front of the house to the top of the ridge line and may not exceed the height of the house. Roof pitch, siding, color, roofing, placement on the Lot and architectural design must be compatible to the residence. No outbuilding may exceed twenty-five percent (25%) of the footprint occupied by the residence or in total square footage of the residence.

f. **Hedges and Fencing.** All hedge and fence materials and styles must be approved by the ARB. Decorative or masonry walls and containment fences are preferred. On Lots bordering Common Elements, hedges and fences may not exceed four (4) feet in height. No fence or hedge shall extend beyond the front corners of the residence. All fences for containment of pets and children are to be constructed so as to be as unobtrusive and inconspicuous as possible. Natural landscape materials such as trees and shrubs may be used for privacy hedging or screening so long as such landscaping does not interfere with mountain or valley views of adjacent lots. Except as provided above, fencing is permitted on back boundary lines and side boundary lines to the front corner line of the residence, not to exceed four (4) feet in height and not extending beyond the rear corners of the residence.

g. **Exterior Maintenance.** The exterior of each residence and the landscaping on each lot shall be maintained by the Owner to original conditions of construction and installation. This requirement includes but is not limited to lawn mowing, watering and trimming, exterior repair, maintenance and painting of the residence and all other improvements on the lot; and includes such other reasonable steps as will be required to maintain Belle Haven Estates as a high quality residential development as contemplated by this Declaration and to protect neighbors' view rights. In the event an Owner fails to comply with these requirements, the Board shall submit written notice to the Owner detailing the deficiencies and stating the Association's intention to do the work necessary to bring the Lot and improvements into compliance with these requirements and in the event of the failure of the Owners to do so within thirty (30) days of the mailing of such notice, the Association may thereupon accomplish the work required and charge the cost thereof to the Owner. Said cost may be collected as an assessment and the Association shall be entitled to all collection and enforcement remedies and rights provided by this Declaration.

h. **Landscaping.** Landscaping must be installed and completed within six (6) months of occupancy of the residence. Landscaping shall consist of any combination of attractive grass, trees, rock and ground cover vegetation. To the extent rock is used, plastic material must first cover the ground surface and no more than fifty percent (50%) of the total landscaped area shall be occupied in such manner. These requirements are for both aesthetic purposes and as an aid to weed and dust control. The area of the Lot which must be landscaped is the entire width running a distance of one hundred twenty (120) feet into the interior of the Lot from the adjacent Subdivision street. Removal of trees on any Lot must be approved by the ARB. A landscaping design must be approved by ARB before occupancy.

i. **Pools.** Above ground swimming pools are prohibited

**ARTICLE VII  
DUTIES AND POWERS OF THE ASSOCIATION**

**Section 1. General.** The Association shall have the power and duty to:

(a) Pay any real property taxes and other charges assessed against the Common Elements;

(b) enforce and interpret any of the provisions hereof,

(c) adopt reasonable rules and regulations for the purpose of insuring compliance with this Declaration and for the purposes of controlling and limiting the use of the Common Elements;

(d) maintain such policies of insurance as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members, officers and directors; and

(e) after notice and an opportunity to be heard, to levy reasonable fines for violations of this Declaration, the Association's By-Laws, Articles of Incorporation and the rules and regulations of the Association; also, to impose and receive fees or charges for the use, rental or operation of the Common Elements; and exercise all powers, authority and duties permitted by its Articles of Incorporation and By-Laws.

The Association may employ a manager or other persons and contract with independent contractors, collection agents and others to perform and effectuate all or any part of the duties and powers of the Association if deemed necessary by the Board, without regard to whether such manager, person or independent contractor is affiliated with Declarant and provided such contract does not provide for compensation above a level which is normal and customary within the industry and establish such reserves as may be required hereunder, or as the Board shall from time to time deem necessary to fulfill and further the purposes of the Association.

**Section 2. Maintenance.** The Association shall maintain, repair and replace its assets and the Common Elements.

**Section 3. Budget Process.** Within thirty (30) days after the adoption of any proposed budget for the Subdivision, the Board shall mail by ordinary first class mail, or otherwise deliver the budget to all lot owners.

**ARTICLE VIII  
INSURANCE**

The Association shall obtain and maintain a policy or policies of insurance:

(a) Insuring the Association, its Board, officers, the Members and their respective agents, employees, invitees or licensees against claims for personal injury including death and property damage arising out of any occurrence in connection with the ownership, operation or



maintenance of the Common Elements or any act or omission of or on behalf of the Association, its Board, agents or employees.

(b) The expense of insurance premiums paid by the Association hereunder shall be an expense of the Association to which the assessments collected by the Association from the Owners shall be applied.

## **ARTICLE IX GENERAL PROVISIONS**

**Section 1. Enforcement.** Declarant, any Owner, or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, fines, liens and charges now or hereafter imposed by the provisions of this Declaration and shall be entitled to costs and attorney's fees expended in enforcing the same against any Owner. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver or abandonment of the right to do so thereafter. Breach of any of the provisions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to said Lots, but such provisions, restrictions or covenants shall be binding and effective against any Owner of said Lots whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

**Section 2. Severability.** Invalidation of anyone or more of these covenants or restrictions by Judgment or Court Order shall in no way effect any other provision which shall remain in full force and effect.

**Section 3. Records.** Any Owner or first mortgagee of any Lot shall be entitled, upon reasonable written request, to receive for inspection from the Association current copies of this Declaration, the Articles of Incorporation, the By-Laws, records and financial statements of the Association.

**Section 4. Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Declarant and its agents, employees, successors and assigns shall have the right to maintain such facilities and conduct such activities as may be reasonably required, convenient or incidental to the completion, development, improvement and sale of Lots, the Development and the Property including, without limitation, the installation and operation of sales and construction trailers and offices, signs and models. The right to maintain such facilities and conduct such activities shall include specifically the right to use Lots for model residences and to use any Lot as an office for the sale of Lots or residences and for related activities.

**Section 5. Notice of Sale, Lease or Mortgage.** In the event an Owner sells, mortgages or otherwise disposes of any Lot, the Owner shall promptly furnish to the Association in writing the name and address of such purchaser, mortgagee or transferee.

**Section 6. No Trespass.** Whenever the Association or Declarant and their respective successors, assigns, agents or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, replace, preserve or do any other action within any portion of the

Development, the entering thereon and the taking of such action shall not be deemed to be a trespass.

**Section 7. Term.** The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of Declarant, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a period of twenty [20] years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten [10] years unless terminated by an instrument signed by Owners comprising not less than sixty-seven percent [67%] of the total votes collectively held by the Members within six [6] months from such extension date, provided, however, that so long as Declarant owns a portion of the Property, Declarant must join in such instrument for the same to be effective. Notwithstanding the foregoing, Declarant may unilaterally amend or supplement this Declaration without any further consent for any of the following purposes:

(a) To bring the Declaration into compliance with any applicable laws which may affect the same, or

(b) to correct any typographical or scrivener's error therein.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved to Declarant as Attorney in Fact to so amend the Declaration as provided herein, and each deed, mortgage or other instrument with respect to a Lot and acceptance thereof shall be deemed a grant and acknowledgement of and a consent to such power to said Attorney in Fact. Any amendment must be recorded with the Recorder of Deeds of Montrose County, Colorado.

**Section 8. Waiver of Damages.** Declarant and its representatives, successors and designees shall not be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities reserved, granted or delegated to it by or pursuant to this Declaration whether or not such claim:

(a) shall be asserted by an Owner, occupant, the Board, the Association or by any person or entity claiming through any of them;

(b) shall be on account of injury to person, damage to or loss of property wherever located and however caused; or

(c) shall arise out of a contract, either express or implied.

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

**Section 9. Annexation.** Additional property may be annexed to the Property by Declarant or its successor or assignee.

**Section 10. Variances.** The Board or its ARB if appointed as herein authorized shall have the authority to grant variances from the terms and conditions contained in this Declaration so long as such variances do not result in conditions which are inconsistent with the general concept, harmony and values with the Property.

**Section 11. Notices.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as such Owner on the records of the Association at the time of such mailing. Owners shall keep the Association informed of any address change.

**Section 12. Singular and Plural.** Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

**Section 13. Liberal Construction.** The provisions of this Declaration shall be liberally construed to promote and effectuate the purposes hereof.

**Section 14. Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**Section 15. Amendment.** This Declaration may be amended by an instrument signed and notarized by the Declarant until it has sold ninety percent (90%) of the Lots after which any amendment must be executed by not less than sixty-seven percent (67%) of the Lot Owners. Any amendment must be recorded.

**Section 16. Voting Rights** The Board of Directors shall have authority to suspend the voting rights of any Owner who is delinquent in payment of assessments or for infraction of such rules and regulations or any provision of this Declaration.

**Section 17. Association Property.** Declarant shall convey to the Association Common Elements (open space and ponds) as shown on Belle Haven Estates Subdivision plat. Such conveyance shall take place not later than the date the first Lot described above is conveyed to an Owner. At the time of the conveyance, the property shall be free of any mortgages, judgment liens or similar liens or encumbrances. The Association shall hold such property subject to right of the Declarant, its successors and assigns, to lay, install, construct and maintain utilities in the areas designated on the Subdivision plat for utility purposes. The Declarant reserves the right to enter upon any property conveyed to the Association the purpose of construction or completing the construction of improvements or landscaping thereon. The property conveyed to the Association shall be held by it for the use, benefit and enjoyment, in common, of each Owner. The Association shall supervise, manage, repair and maintain its property at its own cost and expense.

**ARTICLE X  
MEMBERSHIP IN THE ASSOCIATION**

**Section 1. Membership.** Every person, including Declarant, who is a record owner of a fee interest in any Lot which is subject to this Declaration, including contract purchasers, shall be a Member of the Association and each purchaser of any Lot by acceptance of a deed therefore covenants and agrees to be a Member of the Association whether or not it shall be so expressed in any deed or other conveyance. Persons who hold an interest merely as security for the performance of an obligation shall not be deemed Members. For each Lot owned, the owner, whether a firm or entity or multiple persons, thereof shall be entitled to one (1) membership. Votes may not be split into fractions but must be cast in the entirety. Ownership of such Lot shall be the sole qualification for membership.

**Section 2. Transfer.** Membership held by the owner of a Lot is an appurtenance to such Lot and shall not be transferred, alienated, or pledged in any way, except upon the sale of such Lot, and then only to the purchaser of such Lot. Any attempt to make a transfer except by the sale of a Lot is void. Reference to the transfer of membership need not be made in an instrument of conveyance or encumbrance of such Lot for the transfer to be effective, and the same shall automatically pass with title to the Lot.

**Section 3. Declarant's Right to Appoint Board.** Declarant shall have the absolute right to appoint and remove the Board members and officers of the Association for a period that terminates no later than conveyance of ninety percent (90%) of the Lots by Declarant. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board before termination of the period of Declarant control, but, in that event, the Declarant may require, for the duration of the period of Declarant control, that specified actions of the Association or Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. . Thereafter, the Board must consist of no less than two (2) members elected by no less than a simple majority of a quorum of Association members.

**ARTICLE XI  
SPECIAL DECLARANT RIGHTS AND  
ADDITIONAL RESERVED RIGHTS**

Declarant hereby reserves the right to maintain sales offices, management offices and signs advertising the Property and models and the right to use easements through the Common Elements for the purpose of making improvements within the Property or within real estate which may be added to the Property.

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

BELLEHAVEN, LLC  
a Limited Liability Company

By: \_\_\_\_\_  
ALEXANDER GRINDLAY, Manager

COUNTY OF MONTROSE            )  
  ) ss.  
STATE OF COLORADO            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by ALEXANDER GRINDLAY as Manager of Bellehaven, LLC, a Limited Liability Company.

Witness my hand and official seal.

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

\_\_\_\_\_  
Notary Public