

FILED SARPY CO. NE.  
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*Glenn J. Hawley*

REGISTER OF DEEDS

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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS, AND EASEMENTS  
OF PHASE II EAGLE VIEW  
TOWNHOMES ASSOCIATION**

THIS DECLARATION, ("Declaration") made on the date hereinafter set forth by ROGERS DEVELOPMENT, INC., a Nebraska corporation, hereinafter referred to as "Declarant."

**Preliminary Statement**

Declarant owns the real estate in Sarpy County, Nebraska, which is more particularly described as follows:

Lots 65A, 65B, 66A, 66B, 67A, 67B, 68A, 68B, 69A, and 69B in Eagle View, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Declarant desires to provide for the preservation of the values and amenities of the Eagle View residential lots, and for the maintenance of the residential character thereof.

NOW, THEREFORE, Declarant hereby declares that all the real estate described above and any other real estate hereinafter made subject to this Declaration shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value and desirability of the properties and the enjoyment of the residents and owners thereof, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I  
DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Eagle View Townhomes Association, a Nebraska nonprofit corporation, its successors and assigns.

**Section 2.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to a Lot but excluding, however, those persons or entities having any interest in any of such Lots merely as a security for the performance of an obligation. The purchaser of a Lot under a land contract or similar instrument shall be considered the Owner.

*R & R*

James D. Buser  
GAINES, PANSING & HOGAN  
10050 Regency Circle, Suite 200  
Omaha, Nebraska 68102

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**Section 3.** "Properties" shall mean and refer to the real property in Sarpy County, Nebraska, described as follows:

Lots 65A, 65B, 66A, 66B, 67A, 67B, 68A, 68B, 69A, and 69B in Eagle View, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

**Section 4.** "Lot" shall mean and refer to the individual platted lots which in total constitute the Properties, as such individual lots may from time to time be reconfigured by a legally completed and recorded replat or administrative subdivision.

**Section 5.** "Declarant" shall mean and refer to Rogers Development, Inc. and its successors, assigns or appointees.

**Section 6.** "Townhome unit" shall mean an individual dwelling/townhome unit situated on a Lot.

**Section 7.** "Architectural Control Committee" shall mean the individual or committee appointed from time to time by the Declarant or in the event Declarant terminates its status as Declarant herein in accordance with the provisions of Article VII, Section 4, then the individual or committee appointed from time to time by the Board of Directors of the Association.

**Section 8.** "Eagle View Declaration of Covenants" shall mean the Declaration of Covenants, Conditions, Restrictions and Easements For a Part of Eagle View dated July 31, 2002, and recorded with the Register of Deeds of Sarpy County, Nebraska, on August 23, 2002, Instrument No. 2002-32976. The Eagle View Declaration of Covenants are by this reference incorporated herein.

## **ARTICLE II MEMBERSHIP AND VOTING RIGHTS**

**Section 1.** Phase I of the Eagle View Townhomes is divided into ten (10) separate platted lots and Phase II of the Eagle View Townhomes is divided into ten (10) separate platted lots, each of which shall constitute a "Lot" included as part of the Association. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. From time to time, without the consent or approval of the Owners, the Association may be expanded by Declarant to include additional townhome lots in any subdivision which is contiguous to any of the Lots or which is developed as a phase of the townhomes in the Eagle View subdivision. Such expansions may be effected from time to time by Declarant's recordation with the Register of Deeds of Sarpy County, Nebraska of Declaration of Covenants, Conditions, Restrictions and Easements setting forth the identity of the additional residential townhome lots (hereinafter the "Subsequent Phase Declaration"). Upon the recording of a Subsequent Phase Declaration which expands the residential townhome lots included in the Association, additional lots identified in the Subsequent Phase Declaration shall be included in the "Lots" for purposes of this Article II, and the owners of the additional residential townhome lots shall be members of the Association with all rights, privileges and obligations afforded or accruing to members of the Association.

**Section 2.** In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member personally attends that meeting to exercise the member's right to vote. An Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant. The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. The continuing

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proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

**Section 3.** The Association shall have two classes of voting membership:

**Class A.** The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

**Class B.** Class B member(s) shall be the Declarant and it shall be entitled to eight (8) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

(b) On January 1, 2007.

### **ARTICLE III COVENANTS FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees, shall be a charge on the Owner's Lot and shall be a continuing lien upon the Lot against when each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them, and in that event all successors shall take title subject to the lien for such assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the expenses, charges, and costs of the operation of the Association and the exterior maintenance services of the Lots situated thereon as described in Article III, Section 10.

**Section 3. Maximum Annual Assessment.** Until January 1 of the year immediately following the conveyance of the first Lot to a person other than Declarant, the maximum annual assessment shall not exceed One Thousand Two Hundred and No/100 Dollars (\$1,200.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors of the Association each year without a vote of the members, provided that the amount of the increase does not exceed ten percent (10%) of the total assessment for the previous year.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the percentage increase permitted in subparagraph (a) above upon recommendation of the Board of Directors of the Association, followed

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by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors shall fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Notice and Quorum for Any Action Authorized Under Section 3.** Written notice of any meeting called for the purpose of members taking any action authorized under Article III, Section 3(b) shall be sent to all members 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 more than fifty percent (50%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, at which the presence of members or proxies entitled to cast at least ten percent (10%) of the votes of each class of membership shall constitute a quorum. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 5. Rate of Assessment.** Annual assessments must be fixed, based on the status of each Lot. All Lots which have a townhome unit completed and which have been transferred by the builder of the townhome unit shall be assessed. Lots on which townhome units are under construction, which have a townhome unit used as a model, which are owned by the Declarant, or which have not been sold by the builder to third party purchasers shall not be subject to assessment.

**Section 6. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to Lots on the first day of the month following the date on which they are to be assessed. All assessments shall be collected in advance on an annual, quarterly or monthly basis as from time to time determined by the Board of Directors of the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot or Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment and the due dates shall be sent to every Owner subject thereto. The Association shall, upon demand and for a reasonable charge (not to exceed \$25), furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 7. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the then maximum legal rate for individuals allowable in the State of Nebraska. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by maintaining his or her own Lot.

**Section 8. Abatement of Assessments.** Notwithstanding any other provision of this Declaration, (i) the Board of Directors may in its discretion, abate all or any part of the assessments due in respect of any Lot; and (ii) Lots owned by the Declarant shall not be subject to the imposition of dues, assessments or the lien of any assessments.

**Section 9. Subordination of the Lien to Mortgages/Trust Deeds.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first Deed of Trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage or trust deed foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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**Section 10. Exterior Maintenance Services.** Exterior maintenance services (as defined in this Section 10) of each townhome unit and Lot shall be provided by the Association. The Declarant does hereby reserve and each Owner does hereby consent and grant to the Association and its officers, employees, agents, contractors and repairmen, a perpetual and permanent easement over and across such townhome unit and Lot at any reasonable time to make inspections and to perform such exterior maintenance services. "Exterior maintenance services" shall mean the mowing, fertilization and application of chemicals to lawns, garbage pickup and driveway snow removal. Exterior maintenance services shall at all times be consistent with and comply with the provisions of the Eagle View Declaration of Covenants. Exterior maintenance shall not include any repairs or maintenance of sanitary sewer, water, gas or electrical lines on Owner's Lot, roof repair or replacement, repair or maintenance of gutters, downspouts, sprinkler systems, landscaping, or any damage to property of any kind normally covered by homeowners insurance policies with extended coverage including but not limited to such items as glass, garage doors, entrance doors and Owner's personal property. All maintenance services that are not the responsibility of the Association shall be the responsibility of each Owner of a townhome unit and Lot. In the event that the need for any exterior maintenance services is caused through the negligent acts or omissions of an Owner, or through the or negligent acts or omissions of the family, guests, or invitees of an Owner, the cost of such exterior maintenance services by the Association shall be the personal obligation of the Owner of the Lot and shall be in addition to the assessment to which such Lot is subject under this Declaration.

**Section 11. Insurance.** Each townhome unit Owner shall provide homeowners insurance with respect to the improvements (townhome units) in an amount equal to at least the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amounts as are normally carried by owners of like units. Upon request of the Association from time to time, each Owner shall provide written evidence of this insurance coverage.

#### **ARTICLE IV PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Any wall which is built as a part of the original construction of any townhome unit upon the Properties and placed on the dividing line between two townhome units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article IV, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair, maintenance and restoration of a party wall shall be shared equally by the Owners who make use of such party wall.

**Section 3. Destruction by Fire or Other Casualty.** If such party wall is destroyed or damaged by fire or other casualty, any Owner who has used such wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof on an equal basis, subject however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes such party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs With the Land.** The right of any Owner to contribution from any other Owner under this Article IV shall be appurtenant to the land and shall pass to such Owner's successor in title.

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## **ARTICLE V RESTRICTIONS, EASEMENTS AND MISCELLANEOUS PROVISIONS**

**Section 1. Restrictions.** Subject to the restrictions set forth in the Eagle View Declaration of Covenants, every Owner shall have full rights of ownership and enjoyment to his Lot, and to the extent not inconsistent with Article I of the Eagle View Declaration of Covenants, subject to the following additional restrictions:

(a) No noxious or offensive trade or activity shall be carried on in or from any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any Lot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means in such a manner as to conceal them from view. Trailers and recreational vehicles shall not be regularly or continuously parked on driveways or side yards.

(b) No fences (other than fences constructed by Declarant) shall be erected without the prior written consent of the Board of Directors of the Association. All Lots shall be kept free of all types of trash and debris.

(c) No trailer, basement, tent, shack, garage, barn or other building erected on any Lot shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence until all exterior construction is fully completed according to approved plans.

(d) No birds, snakes, cattle, horses, sheep, poultry, pigs or any other animals shall be kept or maintained on any Lot. Each Owner may, however, keep a maximum of two (2) domestic pets.

(e) All exterior lighting shall be so installed and maintained so as not to unreasonably disturb adjacent Lot Owners.

(f) Except for approved chemical temporary toilets to be used only during construction, no outdoor toilets may be constructed or maintained on any Lots.

(g) All Lots shall be used for residential purposes.

## **ARTICLE VI ARCHITECTURAL CONTROL**

No dwelling, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, treehouse, swimming pool, television or radio antenna, satellite dish, flag pole, solar collecting panels or equipment, tool shed, or other external improvements (including landscaping) above or below the surface of the ground shall be built, erected, placed, planted, altered, or otherwise maintained or permitted to remain upon any of the Properties, nor shall any grading, excavation, or tree removal be commenced without express written approval of the Architectural Control Committee.

## **ARTICLE VII GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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**Section 2. Severability.** Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 3. Term; Amendment.** The covenants and restrictions of this Declaration shall run with and bind the Properties through and until April 17, 2031, after which time they may be automatically extended for successive periods of ten (10) years by action of not less than seventy-five percent (75%) of the Owners. Subject to complying with the provisions of Section 4 of this Article VII, for a period of five (5) years following the date of this Declaration, this Declaration may be amended, modified or dissolved by an instrument signed by the Declarant. Any amendment, modification or extension must be recorded in the office of the Register of Deeds to be effective.

**Section 4. Special Declarant Rights.** Declarant, its successors, assigns or appointees, reserves the right to terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Declarant, or should the Declarant fail to make an appointment, the Association, shall have the right to appoint another entity or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with all the same powers and authority as the original Declarant. Notwithstanding the provisions of Section 3 of this Article VII, no amendment of this Declaration shall modify in any manner the provisions of this Section 4 unless consented to in writing by Declarant.

IN WITNESS WHEREOF, the undersigned being the Declarant herein has executed this Declaration this 23<sup>rd</sup> day of September 2003.

**ROGERS DEVELOPMENT, INC.,** a Nebraska Corporation, "Declarant"

By: [Signature]  
Michael F. Rogers, President

STATE OF NEBRASKA           )  
  ) ss.  
COUNTY OF DOUGLAS       )

The foregoing instrument was acknowledged before me this 23 day of September 2003, by Michael F. Rogers, President of Rogers Development, Inc., a Nebraska corporation, on behalf of the corporation.

Walt Slobotski  
Notary Public

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