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Tax Parcel No.:
a portion of
DC-17-009.20-02-56.00-000

Prepared by and return to: John E. Tracey, Esq.
Young Conaway Stargatt & Taylor, LLP
The Brandywine Building
1000 West Street, Ste. 1700
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DECLARATION OF RESTRICTIONS

THIS DECLARATION, made this 24th day of November, 2004, by EAGLE LAND, LLC, a Delaware limited liability company (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the Owner of all those certain lots, pieces, or parcels of land, situate in the Town of Smyrna, Kent County, State of Delaware, comprising approximately 21.81+/- acres of land (the "Property"), and now being known as the Eagle's View Subdivision, as shown on that certain Overall Subdivision Plan for Eagle's View, prepared by Becker Morgan Group, dated December 5, 2003 and last revised August 12, 2004, and recorded in the office of the Recorder of Deeds in and for Kent County, State of Delaware (the "Recorder's Office") on November 10, 2004 at Plot Book 74, Page 91, as it may be amended from time to time (the "Plan"), being a residential subdivision of one hundred forty-five (145) townhouse lots (individually referred to as a "Lot" or collectively as "Lots") and attendant open spaces. The Property is more particularly bounded and described in *Exhibit A*, attached hereto and made a part hereof; and

WHEREAS, Declarant desires to develop on the Property a residential subdivision for the benefit of said subdivision and which subdivision shall consist of a variety of single-family attached dwelling units (the "Community"); and

WHEREAS, Declarant desires to set aside certain interests in the Subdivision and to impose upon certain portions of the Subdivision the covenant that they be held as Common Areas for the use and enjoyment of the Owners of the Lots in the Subdivision; and

WHEREAS, Declarant, as described herein, proposes to create an Association for the purpose of maintaining and administering the Common Facilities (as defined below), to administer this Declaration, and to levy, collect and administer any assessments hereinafter created; and

WHEREAS, Declarant desires to provide for the orderly preservation of property values for the Property and, specifically, the Lots and, to that end, desires to impose certain restrictive covenants and deed restrictions hereinafter set forth, each and all of which is and are for the benefit of the said Property and each owner of any Lot thereof (individually, an "Owner," and collectively, the "Owners"), the Town of Smyrna and the Kent Conservation District.

NOW, THEREFORE, the Declarant does hereby covenant and declare that it shall hold and stand seized of the Property subject to the following covenants and restrictions, which shall be covenants running with the land and which shall be binding upon the Declarant, its successors and assigns, and shall inure to the benefit of the Declarant, the Owners of the Lots, Kent Conservation District and the Town of Smyrna:

ARTICLE I

For purposes of this Declaration, the Declarant shall have the sole and exclusive right to determine when Lot lines and/or street lines shall be "front" or "side" lines.

ARTICLE II

CHANGES IN THE DECLARATION

Subject to any other applicable provision of this Declaration, this Declaration may be amended in the following manner:

A. Prior to the incorporation of the Association (as defined below), the Declarant shall have the absolute right to amend this Declaration from time to time without the joinder of any other Owners by executing and recording an amendment in the Recorder's Office.

B. An amendment to this Declaration may be proposed by either the Board of Directors of the Eagle's View Homeowners Association (the "Association") or by 20% of the Lot Owners, provided, however, that no resolution of the Board of Directors adopting a proposed amendment to this Declaration shall be effective unless it has been approved by 75% of the Lot Owners by a vote conducted in accordance with the Bylaws of the Association. Any such amendment approved by the Lot Owners shall be recorded in the Recorder's Office.

C. Except as stated elsewhere in this Declaration, no amendment proposed by the Board of Directors or the Lot Owners may alter any assessment or voting power allocated to each Lot by this Declaration or the Bylaws of the Association, or to the uses which the Lots are restricted without the unanimous consent of the Lot Owners. No amendment to this Declaration or any action taken by the Association or its Board of Directors shall be made or taken which, in any way, would affect any of the rights, privileges, powers or options of the Declarant, the Town of Smyrna, Kent Conservation District, their successors or assigns, unless the Declarant, the Town of Smyrna, Kent Conservation District, or their successors and assigns, shall join in the execution of such amendment or consent, in writing, to the action of the Association or its Board of Directors.

D. A copy of each amendment to this Declaration shall be attached to or included with a certificate, certifying that the amendment was duly adopted, which certificate shall be executed and acknowledged by the officers of the Board of Directors.

E. If any amendment to this Declaration or the Bylaws is necessary in the judgment of the Board of Directors to change, correct or supplement anything appearing or failing to appear therein which is ambiguous, incorrect, defective or inconsistent with anything in either this Declaration or the Bylaws, the Board of Directors may, at any time and from time to time effect an appropriate corrective amendment without the approval of the Lot Owners upon receipt by the Board of Directors of an opinion from independent counsel to the effect that the proposed amendment is permitted by the terms of this paragraph.

ARTICLE III

ENFORCEMENT

A. Each Lot Owner shall be governed by and shall comply strictly with the terms, covenants, conditions and restrictions of the Declaration, the Bylaws and the Rules and Regulations of the Association adopted pursuant thereto, and the same as they may be amended from time to time.

B. The Board of Directors shall have the power to adopt, amend and enforce compliance with such reasonable Rules and Regulations relative to the operation, use and occupancy of including, but not limited to, such enforcement procedures and penalties for violations as the Board of Directors shall deem appropriate. Any such Rules and Regulations shall be adopted or amended, from time to time, by means of appropriate resolutions duly approved by the Board of Directors in accordance with the Bylaws.

C. The Declarant, the Association, the Owners, Town of Smyrna and the Kent Conservation District shall be entitled to enforce this Declaration by any proceeding at law or in equity. Failure of any Lot Owner to comply with any provisions of this Declaration, the Bylaws or any Rules and Regulations shall entitle the aforementioned parties to the remedies provided in this Declaration, and also to the following relief, none of which remedies shall be exclusive of any other remedies:

- (i) To sue the offending Lot Owner for the recovery of damages, injunctive relief, specific performance, or any combination thereof.
- (ii) The prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees. The award of such fees and costs shall constitute a lien on such offending Lot Owner's Lot, such lien to be collected in the manner described in Article VII below.

D. The failure of the Declarant, the Board of Directors, any Lot Owner, Kent Conservation District and/or the Town of Smyrna to enforce any covenant, restriction or other provision of this Declaration, the Bylaws or the Rules and Regulations of the Association shall not constitute a waiver of the right to do so thereafter.

ARTICLE IV

PARTY WALLS

(1) General Rules of Law to Apply. To the extent not inconsistent with the provision of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful act or omissions shall apply to each party wall, party fence, deck, or other structure and/or improvement which is built as part of the original construction of the dwellings upon the Property and any replacement thereof.

In the event that any portion of any dwelling, structure or improvement, as originally constructed by the Declarant, including, but not limited to any party wall, fence, or deck shall

protrude over an adjoining Lot, then such dwelling, structure or improvement (including any party wall, fence or other projection) (collectively the "Projections") shall not be deemed to be an encroachment upon the adjoining Lot or Lots, and Owners shall neither maintain any action for removal of any such Projections nor any action for damages. In the event there is a projection as described aforesaid, it shall be deemed that the Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the Projections. The foregoing shall also apply to replacements of any such Projections if same are constructed in conformance with the original Projection constructed by the Declarant. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and, restrictions.

(2) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

(3) Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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(5) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and assigns in title.

(6) Arbitration. In the event of any dispute arising concerning a party wall or party fence, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators and be binding upon the parties. The costs of such arbitration shall be shared equally by the parties.

ARTICLE V

DECLARANT EXEMPTION

While the provisions of this Declaration are intended to restrict certain uses that may be harmful or affect the ambience or aesthetic appeal of the Community to be constructed by the Declarant, these restrictions are not intended to prohibit Declarant from performing such work as may be necessary in the completion of the Community. The covenants and restrictions set forth in this Declaration shall therefore not be binding upon Declarant in the performance of any of its work required to complete the construction of the Community.

ARTICLE VI

SEVERABILITY

Invalidation of any one of these covenants or restrictions or any portion thereof by judgment or court order shall in no way affect any other provisions herein, which shall remain in full force and effect.

ARTICLE VII

HOMEOWNERS ASSOCIATION

I. In order that the Common Open Space, Stormwater Management and Active Recreation Areas (collectively, the "Common Facilities"), as set forth on the Plan, shall be maintained according to the provisions of Kent County, Kent Conservation District, Town of Smyrna and State of Delaware law, there shall be organized as provided below, a homeowners association, hereinafter referred to as the "Association," whose members shall be the record Owners of Lots shown on the Plan, which Association shall be charged with the duty of providing for snow removal for subdivision streets until such time as that responsibility is assumed by the Town of Smyrna (or other appropriate government agency) and for maintaining said Common Facilities in the condition required by the any federal, state or local laws or ordinance, including, but not limited to, the Code of the Town of Smyrna and or the rules and regulations of the Kent Conservation District.

A. Every person or entity which is an Owner of a fee or undivided fee interest in any Lot shall be deemed to be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of a Lot. The foregoing is not intended to include persons or entities which hold an interest in a Lot merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership in the Association.

B. The Association shall have two classes of voting membership:

(1). Class A members shall be all Owners of a Lot other than the Declarant. Each Class A member shall be entitled to one (1) vote for each Lot that it owns. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event more than one total vote shall be cast with respect to any such Lot. In the event that members, who hold title to any Lot either by the entireties, or as joint tenants, or as tenants in common, attempt to cast the vote for such Lot in conflicting ways, such vote shall be recorded as a fractional vote. Upon recording a deed evidencing the conveyance of a Lot

from Declarant to an Owner, that Owner shall become, for so long as he or she is an Owner, a Member of the Association and each such Owner, upon the transfer of his or her Lot to a subsequent Owner, shall then cease to be a Member and the acquiring Owner shall then become a Member.

(2). The Class B member shall be the Declarant, or any successor developer or builder of the Lots in the Community (for the purposes of this Article VII, collectively referred to as the "Declarant"). The Declarant shall be entitled to three (3) votes for every Lot that it owns in the Community. Class B membership in a Lot shall terminate upon the sale of the Lot from the Declarant to an Owner and such Class B membership shall automatically convert to Class A membership upon the recordation of the Deed evidencing the sale of the Lot from Declarant to the Owner.

(3). Notwithstanding the foregoing, until such time as more than seventy five percent (75%) of the Lots in the Community have been sold by the Declarant to and closed upon by the Owners, the Class B Member shall be the only Member of any class entitled to vote on any matter brought before the Association.

(4). Notwithstanding the foregoing, until such time as more than seventy five percent (75%) of the Lots in the Community have been sold by the Declarant to and closed upon by the Owners, the Class B Member shall be the only Member of any class entitled to amend or modify the Certificate of Incorporation or the Bylaws of the Association.

C. The Association shall be created for the following purposes:

(1). To operate, maintain, repair and replace the Common Facilities and any improvements located thereon.

(a). Maintenance of the Common Facilities shall include, but not be limited to, mowing of grass and the care, upkeep, repair and replacement of landscaping located within the Common Facilities, and the repair, maintenance and upkeep of the six foot (6') high board on board fence along the shared property lines of the Community as depicted by the Plan.

(b). Maintenance of the Stormwater Management Areas, as shown on the Plan, shall include, but not be limited to, mowing of grass, the care, upkeep, repair and replacement of all landscaping, the planting and maintenance of any and all landscaping or vegetation within any stormwater management pond, maintaining existing grades to promote adequate drainage, the treatment of

water and/or waste, the filtration and/or aeration of water, the removal of accumulated sediment from any drainage easement or stormwater management pond, and any other maintenance deemed reasonably necessary by the Kent Conservation District, Kent County and the Town of Smyrna; and

(2). To enforce this Declaration.

D. Assessments.

(1). Assessments levied by the Association shall be used to promote the health, safety, recreation and welfare of the Owners of the Lots, including the maintenance, improvement, repair and replacement of the Common Facilities and any improvements located thereon, including the taxes and cost of insurance thereon, and for the creation of any sinking or reserve funds associated therewith.

(2). The purchaser of any Lot, by the acceptance of a deed to said land, is deemed to covenant and agree to pay to the Association, when necessary (1) any annual assessments or charges and (2) any special assessments for capital improvements, operation, repair, replacement or the creation of any reserve fund.

(3). It is expressly agreed that the assessments referred to herein shall be a lien or encumbrance on the Lot in respect to which said assessments are made and it is expressly stated that by acceptance of title to any of the land included in said tract the Owner (not including mortgagee) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay said assessments to the Corporation, including prior unpaid assessments.

(4). Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the legal rate per annum, and the Association and/or the Town of Smyrna may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of said Common Facilities or the abandonment of his or her Lot.

(5). By his or her acceptance of title, each Owner shall be held to vest in the Association and/or the Town of Smyrna the right and power in its own name to take and prosecute all actions or suits, legal, equitable

or otherwise, which may be, in the opinion of the Association, necessary or advisable for the collection of such assessments.

(6). Said assessments shall be subordinate in lien to the lien of any mortgage or mortgages on any property which is subject to such charges regardless of when said mortgage or mortgages were created or when such charges accrued; provided, that such subordination shall apply only to charges that shall have become payable prior to the passing of title under foreclosure, of such mortgage or mortgages, and the transferees shall not be liable for payment of any assessment accruing prior to said foreclosure, but nothing herein shall be held to affect the rights herein given to enforce the collection of such charges accruing after sale under foreclosure of such mortgage or mortgages; and provided, further, that such charges accruing after the sale shall also be subordinate in lien to the lien of any further mortgage or mortgages which are placed on property subject to such charges, with the intent that no such charges shall at any time be prior in lien of any mortgage or mortgages whatsoever on such property.

(7). Anything herein to the contrary notwithstanding, Lots owned by the Declarant shall not be subject to any such assessment.

E. Creation of Assessment. An annual assessment shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting, and any special assessments shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting or at a meeting duly called for this purpose. It shall be the duty of the Board of Directors of the Association, to recommend an annual assessment amount to the Members for the coming year for consideration at the annual meeting. Any assessments shall become effective unless disapproved at the meeting by a vote of a majority of the Class A members or by the Class B member. In the event the members disapprove the proposed assessment, the Board of Directors may, without the consent of the Class A members, increase the annual assessment in an amount not to exceed twenty percent (20%) of the annual assessment for the proceeding fiscal year. In addition:

(1). All assessments must be fixed at a uniform rate for each Lot in the Community;

(2). An initial annual assessment, in the amount of _____, shall be collected by Declarant at the time of settlement on the Lot. Said assessment shall be used to capitalize the Association.

(3). In addition to the annual assessment, the Association may levy in any assessment year a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, operation, reconstruction, repair or replacement of any

Common Facility or improvement located thereon, provided such special assessment is approved by a majority of the members entitled to vote and by the Class B member, if applicable.

(4). The following property shall be exempt from any assessments, charges or liens created herein:

(a). Any property dedicated to and accepted by a governmental body, agency or authority and devoted to public use;

(b). All Common Facilities; and

(c) All Lots owned by the Declarant.

F. The Declarant shall retain all of the control and power of the Association until such time as the Association has been created and transferred to the control of the Owners of the Lots. The formation and transfer of the Association to the owners of the Lots shall take place prior to the issuance of seventy-five percent (75%) of the certificates of occupancy by the Town of Smyrna or such other appropriate government body for the homes to be built on the Property, but in no event shall such transfer occur before the issuance of fifty percent (50%) of such certificates of occupancy. Good, marketable and legal Title to the Common facilities shall be conveyed by the Declarant to the Association prior to the issuance of seventy-five percent (75%) of the certificates of occupancy for the dwelling units to be constructed in the subdivision.

G. Declarant hereby grants to Town of Smyrna and Kent Conservation District, their successors and assigns, the right, privilege and authority to enter upon said premises and maintain said Common Facilities at the expense of the Owners of said Lots. In the event that Town of Smyrna or Kent Conservation District elects to maintain the Common Facilities as set forth above, all expenses of maintenance shall be assessed pro rata against the Owners of each Lot, and shall be collectible by Town of Smyrna or Kent Conservation District in the manner set forth above in relation to collection by the Association. Any lien for such expenses or maintenance asserted by the Town of Smyrna or the Kent Conservation District and filed with the Recorder of Deeds in accordance with the this Declaration shall be a lien from the time of recording and shall have priority in relation to other liens, either general or special, including mortgages and other liens according to the time of recording of such liens in the proper office, as in the said Section provided. This paragraph may not be amended by the Association.

H. These covenants and restrictions shall be taken to be real covenants running with the land and binding thereon perpetually.

I. Declarant, for itself, its successors and assigns, grants to the Lot Owners the reasonable uninterrupted use of said Common Facilities as shown on the Plan in common with others entitled thereto forever. Each Lot Owner, by acceptance of a deed, grants to all other Lot Owners, their guests, invitees and licensees the free and uninterrupted use of said

Common Facilities and grants to the Association the right to come upon any Lot Owner's Lot for purposes of maintaining said Common Facilities.

ARTICLE VIII

GENERAL USE RESTRICTIONS

Each Lot shall be subject to the following restrictions:

Section 1. **Residential Purposes.** Except as used by the Declarant in connection with construction and marketing of Lots in the Community, each Lot shall be used for residential purposes only; provided (subject to Section 9 below) that occupations carried on in the Lot are permitted only if such use is incidental to the Lot's primary residential use; provided further that the Lot Owners who pursue such incidental occupational use of their Lot shall have no employees, customers or clients at the Lot and shall obtain prior approval from all authorities having jurisdiction over the use of the Lot.

Section 2. **Occupancy.** Lots shall be occupied by no more persons than the maximum permitted by law for the Lot.

Section 3. **Alteration.** Except for work done by the Declarant in connection with the construction and marketing of Lots, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Common Facilities without the prior written approval of the Board of Directors and the Declarant, until such time as the Declarant no longer owns a Lot in the Subdivision.

Section 4. **Property Maintenance.** Each Lot Owner or occupant shall maintain his or her Lot in a safe, clean and sanitary manner and condition, in good order and repair and in accordance with all applicable restrictions, conditions, ordinances, codes and any Rules and Regulations which may be applicable hereunder or under law. Each Lot Owner shall maintain his or her Lot in a manner satisfactory to the Association and in accordance with the Declaration

and any Rules and Regulations of the Association. In the event that a Lot is not so maintained, the Association and/or the Town of Smyrna shall have the right to enter upon the Lot to maintain the same, after giving the Lot Owner at least fifteen (15) days written notice to cure any maintenance problems or deficiencies. In the event that the Association and/or the Town of Smyrna exercises their right of entry for maintenance purposes, the Association shall have the right to assess the particular Lot Owner for the cost of such maintenance. The Association, by its Board of Directors, shall have the right to establish Rules and Regulations governing the maintenance of any Lot.

Section 5. Quiet Enjoyment. No Lot Owner or occupant of any Lot shall carry on, or permit to be carried on, any practice on his or her Lot or on the Property which unreasonably interferes with the quiet enjoyment and proper use of another Lot or the Common Facilities by the Lot Owner or occupant of any other Lot, or which creates or results in a hazard or nuisance on the Property.

Section 6. Signs, Banners, Flags, etc. No sign, banner, flag, billboard or advertisement of any kind, including, without limitation informational signs and those of contractors and subcontractors, shall be erected on the Lot, without the prior written consent of the Board of Directors. If permission is granted to any Owner to erect a sign on the Lot, the Board of Directors reserves the right to restrict the size, shape, color, lettering, height, material and location of the sign, or in the alternative, provide the Owner with a sign to be used for such purposes. No sign shall be nailed or otherwise attached to trees. Lot Owners may not erect any sign on a dwelling or other structure on a Lot or on any of the Common Facilities.

Section 7. Obstruction of Common Facilities. Lot Owners or occupants may not obstruct the Common Facilities, as delineated on the Plan, in any way including, but not limited

to, interfering with any storm water drainage. Lot Owners or occupants may not store anything in or on the Common Facilities without the prior written approval of the Board of Directors.

Section 8. Clotheslines, Draperies, Awnings, etc. No clotheslines and no outdoor clothes drying or hanging shall be permitted in the Community, nor shall anything be hung, painted or displayed on the outside of the windows (or inside, if visible from the outside) or placed on the outside walls or outside surfaces of doors of any of the Lots, and no awnings, canopies or shutters (except for those heretofore or hereinafter installed by Declarant) shall be affixed or placed upon the exterior walls or roofs of Lots, or any part thereof, nor relocated or extended, without the prior written consent of the Board of Directors. Window air conditioners are prohibited.

Section 9. Compliance with Local Zoning. No commercial, industrial, recreational or professional activity not permitted by the present zoning or other applicable laws or ordinances as amended, shall be pursued on any Lot, at any time. No Lot Owner shall permit his or her Lot to be used or occupied for any prohibited purpose.

Section 10. Animals. Lot Owners shall not keep in any Lot animals, wildlife, livestock, reptiles or poultry of any kind, other than domesticated household birds and fish, house dogs or domesticated house cats. Pets shall not be permitted to run loose or uncontrolled on their Lot or the Common Facilities. Lot Owners shall immediately clean up any waste left by their pets anywhere on the Lot or the Property. No doghouses shall be permitted. Subject to compliance with Section 19 herein electric underground fences may be permitted.

Section 11. Trash Disposal. No portion of the Property shall be used or maintained as a dumping ground for rubbish, trash, new or used lumber or wood, metal scrap, garbage or other waste, except that such material may be kept in the Lot or in areas of the Property

designated for this purpose by the Declarant (in connection with its construction) or by the Board of Directors, provided that these materials are kept in sanitary containers in a clean and sanitary condition. Lot Owners shall place these containers for collection only in the designated areas and only on the day these refuse materials are to be collected. Empty containers shall be removed promptly after collection and shall be concealed from public view within the Lot.

Section 12. Satellite Antennas. To the extent permitted by law, a DBS antenna, MDS antenna or transmission-only antenna may be erected on a Lot provided it is not greater than one (1) meter in diameter and prior approval of the Board of Directors is obtained, which shall not be unreasonably withheld. No television broadcast antennae or masts of any size attached to any of the above-listed antennas may be erected. Qualified antennas must be erected on the rear of the Lot, unless such placement impedes reception in which event such antenna may be erected in another location on the Lot provided that it is screened by landscaping or other material where reasonable.

Section 13. Parking and Prohibited Motor Vehicles. Driveways, streets and other exterior parking areas on the Property shall be used by Owners, occupants and guests for fully operable, inspected and registered four wheel passenger vehicles, motorcycles and standard bicycles only. No recreational vehicles, vans (other than non-commercial passenger vans), mobile homes, trailers, boats, trucks (unless licensed as a passenger vehicle and less than one (1) ton capacity) or commercial vehicles (whether or not registered as a commercial vehicle with the Delaware Department of Transportation) shall be permitted to be parked on the Property, except on a day-to-day temporary basis in connection with deliveries, repairs, maintenance or construction work on the Lot or if entirely enclosed in a Lot Owner's garage. Motor vehicles including, but not limited to, mini-bikes, all terrain vehicles (i.e. "ATV"), snowmobiles and

unlicensed motorcycles, may not be driven on the streets of the Community or the Common Facilities by any Lot Owner, occupant or guest.

Section 14. **Subdivision.** Except for the Declarant, no Lot Owner may subdivide or partition his or her Lot.

Section 15. **Construction Activities.** No Lot Owner shall perform or permit to be performed any work to any portion of his or her Lot, which work may require access to, over or through the Common Facilities or other Lots without the prior consent of the Board of Directors except in the case of an emergency. All such work may only be performed by a person who shall deliver to the Board of Directors prior to commencement of such work, in a form satisfactory to the Board of Directors:

- (i) releases of the Board of Directors and the Association for all claims that such person may assert in connection with such work;
- (ii) indemnities of the Board of Directors and the Association, holding each and all of them harmless from and against any claims asserted for loss or damage to persons or property, including, but not limited to, the Common Facilities or other Lots;
- (iii) certificates of insurance, including liability and workmen's compensation coverage, in amounts and with companies reasonably acceptable to the Board of Directors; and
- (iv) all other information and protections which the Board of Directors may reasonably require.

Section 16. **Design.** Nothing herein shall give the Board of Directors authority to regulate, control or determine external design, appearance, use or location of portions of the Property under development, or to be developed, or Lot under construction, or to be constructed, marketed or sold by the Declarant if and when such design, appearance, use and location shall have received any required approvals by the appropriate departments or officials of the Town of Smyrna.

Section 17. **Use of Common Facilities.** The Board of Directors may prohibit or restrict the use of the Common Facilities from time to time, on a non-discriminatory basis, if and to the extent required for safety or other valid reasons.

Section 18. No Lot Owner may alter the exterior of his or her Lot except in compliance with this Declaration.

Section 19. **Accessory Structures, Gaming Courts, Pools, etc.** No Owner shall erect or permit to be erected on any Lot any fence, in-ground pool, tennis court or other outdoor game court without the prior written consent and design approval of Declarant until such time as Declarant no longer owns a Lot in the Community. Under no circumstances may any hedges, fountain or mass plantings of any type be erected or planted in front of the front wall line of the Dwelling. No aboveground pools may be erected or maintained at any time. No portable basketball hoop may be erected or maintained at any time. Permanent basketball hoops may be erected and maintained by a Lot Owner, subject to the Declarant's and Board of Director's approval and to the applicable Rules and Regulations. Each Owner shall act to ensure that the Property and each Lot remain open to light and air. As an example, no stockade fence or similar fence that blocks one's view or any other structure that will in any way prohibit free view of the Property will be permitted.

Section 20. **Grading.** The grading of any Lot shall not be changed in any manner that will cause an adverse effect on any adjacent Lot.

Section 21. **Fences.** With the exception of the six foot (6') high board on board fence depicted on the Plan, no enclosing or non-enclosing fences or barrier (hereinafter the "fence") shall be erected on any Lot closer to the front street line than the rear-most wall of the principal building on said Lot. No fences shall be of a height of more than four (4) feet and all such fences

shall be of "split rail" design and constructed only of wood left in its natural color. Green wire mesh may be applied to the inside perimeter of the split rail fence. No such fences shall be constructed or maintained upon the Lots until the plans for the same have been approved by Declarant, in accordance with the provisions of Article XI herein, and approved by the Town of Smyrna as required by the Town of Smyrna Zoning Code.

Privacy fences, defined by the Town of Smyrna as those types of fences which enclose only a small portion of the rear yard in close proximity to the primary dwelling (e.g. a fence enclosing a patio), are permitted, subject to the approval of the Declarant in accordance with Article XI herein and the prior written approval of the Town of Smyrna. Such fences may not exceed six (6) feet in height and must be constructed of PVC, vinyl or wood in its natural finish.

Section 22. **Outbuildings.** No outbuildings, including, but not limited to storage sheds, detached garages, dog houses or other animal enclosures, or other detached exterior building, addition or improvement shall be permitted on any Lot in the Community.

Section 23. **Applicability.** The foregoing use restrictions are not intended to and do not expand permitted uses under the applicable zoning code of the Town of Smyrna in effect at the time of the final approval of the Community.

ARTICLE IX

EASEMENTS

A twenty (20) foot wide utility easement, ten (10) feet on each side of the centerline of pipe, structure, line or swale, unless otherwise indicated, shall be created, wherever possible, where sanitary sewer, storm sewer, water or electric is designated for public use and is outside of the designated right-of-way. No building or other permanent structure shall be erected or maintained on any part of any area herein reserved as an easement and/or right-of-way.

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A six (6) foot wide easement around the perimeter of each Lot shown on the Plan, subsequently established within the perimeter boundaries shown on said Plan, is hereby dedicated to be available for any utility use and the necessary construction associated with the installation, maintenance and repair of such, provided that where any Lot line is eliminated, the easement along said Lot line is extinguished except as to any utilities then existing in said easement.

An eight (8) foot access easement is established behind certain Lots, as identified on the Plan, for access to the Common Facilities.

A twenty foot (20') storm drain easement, ten (10) feet on each side of the centerline of pipe, structure, line or swale, unless otherwise indicated, shall be created where shown on the Plan. No building or other permanent structure shall be erected or maintained on any part of any area herein reserved as an easement and/or right-of-way.

Notwithstanding any provision of this Declaration or of any amendment to this Declaration, so long as the Declarant or successor to or assign of Declarant is engaged in developing or improving any portion of the Property, Declarant or its designees shall have an unlimited easement of ingress, egress, and use over any lands not conveyed to an individual owner for occupancy for (1) movement and storage of building materials and equipment; (2) erection and maintenance of directional and promotional signs; and (3) conduct of sales activities, including maintenance of any office or model homes. This easement shall expire eighteen (18) months from the date of acceptance of the public improvements shown on the Plan by the Town of Smyrna.

The Subdivision has a water distribution system owned and operated by the Town of Smyrna, its successors and assigns, and each Lot is subject to easements, rights, and

reservations reserved unto the Town of Smyrna, its successors and assigns, as the owner and operator thereof, and each Lot is subject to payment of use charges by the Town of Smyrna for the use thereof.

ARTICLE X

DECLARANT SALES ACTIVITIES

The Declarant reserves the right with respect to its marketing of the Lots to use the Common Facilities for the ingress and egress of itself, its officers, employees, agents, contractors and subcontractors and for prospective sale or rental of Lots, including the right to park in parking spaces. The Declarant shall also have the right, until the conveyance of the last Lot it owns, to maintain a construction, sales and/or storage trailer(s) and to erect signs on the Common Facilities and on its Lots advertising such Lots for sale or lease. The Declarant shall have the right from time to time to locate and relocate model Lots and sales or rental office in connection with the marketing of Lots. The rights reserved for the Declarant by this Article shall remain in effect for one (1) year following the date of the last transfer of a Lot from the Declarant. This Article shall not be amended without the prior written consent of the Declarant.

ARTICLE XI

ARCHITECTURAL REVIEW

Section 1. **Dwellings.** No improvement or alteration (including change of exterior finish or color), including landscaping and plantings, patio, deck or exterior addition or alteration to any Dwelling or Lot which changes the external appearance of the Dwelling or Lot shall be commenced, erected, installed or maintained upon the Lot before the Lot Owner submits to the Declarant or the Board of Directors, as applicable, an application requesting the Board of Director's review and approval of such improvement, addition or alteration.

Section 2. Application Contents and Process.

- a. So long as the Declarant shall own at least one (1) Lot in the Community, the Declarant shall have the sole responsibility for the approval or disapproval of any application for such improvement, addition or alteration, such approval not to be unreasonable withheld. The rights reserved for the Declarant by this Article shall remain in effect for one (1) year following the date of the last transfer of a Lot from the Declarant.
- b. The Board of Directors shall have the right to establish design criteria and standards for alterations, additions and improvements within the Property.
- c. Each Lot Owner shall submit to the Board of Directors by certified mail, return receipt requested, plans and specifications showing the nature, kind, shape, height, materials, finish, colors and location of the Lot Owner's proposed change, alteration or addition to the Lot. The submission shall contain proof of compliance with all applicable codes, laws and ordinances.
- d. The Board of Directors has the right to approve or disapprove any proposed construction or other change to exterior aspects of a Lot for any reason, whether subjective or objective, including judgments based in whole or in part upon a sense of taste, aesthetics, harmony, suitability or compatibility with the Community. If the submission is for the repair or restoration of damage or destruction to a Lot, then the purpose of the review by the Board of Directors under this Article is only for the purpose of confirming that the proposal described in the submission will restore the exterior aspects of the Lot to the condition and appearance preceding the damage or destruction without material change. The approval of the Board of Directors is required for any change to the exterior aspects of the Lot from the condition and appearance preceding the damage or destruction.
- e. The Board of Directors shall review the plans to determine, *inter alia*, whether they are harmonious and compatible with the Lots in the Community and consistent with the design criteria, if any, developed by the Board of Directors.
- f. The Board of Directors shall issue a written decision to the Owner within 45 days after the date the Owner's submission, completed in compliance with the requirements of this Article and the Rules and Regulations, is received by the Board of Directors. The 45-day period can be extended by mutual agreement of Owner and the Board of Directors and, if the Board of Directors requires additional information to make its decision, the 45-day period will be extended for the period of time equal to the number of days between the date the request for additional information was made to

Owner and the date the additional information was received by the Board of Directors. The decision of the Board of Directors is final, conclusive and binding upon all Owners. No Owner shall commence work or make a commitment for work requiring approval under this Article unless and until Owner receives written confirmation of approval under this Article.

- g. If the submission is disapproved, the reasons for disapproval shall be included in the written decision. A decision of disapproval is final but without prejudice; the Owner is permitted to resubmit the Owner's submission, modified or amended, for review by the Board of Directors in accordance with the provision of this Article.
- h. If a conditioned approval is given, commencement of the work described in the submission constitutes an acceptance by the Owner of all condition of approval set by the Board of Directors.
- i. The Board of Directors shall have the right to request that a bond be posted prior to the authorization of work as surety against damage to Common Facilities or Rights of Ways or Streets adjoining the Lots.
- j. If no decision is issued with the 45-day period (as it may have been extended), the proposal described in the submission is deemed denied.
- k. Board of Directors approval does not constitute approval by any other regulatory agency.

Section 3. Exclusion from Architectural Review.

- a. The provisions of this Article shall not apply to the Declarant.
- b. Review under this Article is not for ordinary pruning and cutting of plants, shrubs and trees within Lots; however, cutting of trees, exposure of bare soil and removal of plant material without replacement requires a submission to and approval of the Board of Directors.

Section 4. Architectural Review Committee. The Board of Directors may delegate its rights and duties under this Article in whole or in part to an architectural review committee under applicable provisions of the Bylaws. If delegation has been made to an architectural review committee, the architectural review committee shall exercise the rights and carry out the responsibilities as may be delegated by the Board of Directors.

Section 5. **Fees.** The Board of Directors may adopt a schedule of fees that may be charged for the review of submissions under this Article.

Section 6. **Waiver.** The Board of Directors is authorized to interpret the requirements affecting Lots under this Article and the applicable provisions of the Rules and Regulations. The Board of Directors is authorized to grant reasonable waivers from these requirements but only upon a finding by the Board of Directors that the Owner has furnished sufficient evidence to substantiate to the satisfaction of the Board of Directors the standards set forth below. The authority to grant waivers may not be delegated by the Board of Directors to the architectural review committee. If the Board of Directors grants to any Lot a waiver from any requirement, the decision applies only to that Lot and only so long as the Lot remains in compliance with the conditions of the waiver. The grant of a waiver as to any Lot does not create or imply any obligation on the part of the Board of Directors to grant a waiver to another Lot whether or not similar circumstances apply. The following standards must be met for the granting of a waiver:

- a. The requirement creates an unreasonable hardship on the Owner due to peculiar physical features of the Lot.
- b. Compliance with the requirement would result in an unreasonable economic burden on the Owner that would be alleviated by the requested waiver.
- c. The waiver requested does not materially alter exterior aspects of the Lot to the extent that the exterior aspects of the Lot, as modified by the requested waiver, would not be compatible or harmonious with other Lots in the vicinity.

Section 7 **Limited Review.** The Board of Directors may, in rendering any decision or responding to any request for a waiver, consider whether the proposal is in compliance with applicable laws and may request the Owner to furnish evidence that substantiates compliance.

However, neither the Board of Directors nor any Declarant nor any person or persons exercising or participating in the rights of review or approval under this Article, whether or not the person is qualified to render advice as an architect, engineer, attorney or other professional, has any responsibility or obligation to review submissions for, or bears any liability for:

- a. Compliance of submissions with applicable law or advising any person of the need for any approvals permits or licenses under applicable law.
- b. Conformity of submissions to architectural or engineering design standards or advising upon the suitability of construction materials or methods.
- c. Compliance with requirements of mortgagees or insurance companies.
- d. Any health, safety, liability or other issues.

Section 8. **No Liability.** Neither the Association, the Board of Directors, the Declarant, the officers of the Association, nor any other person or committee exercising rights of review or approval under this Article shall have any liability to any person arising from or related to the exercise of or failure to exercise the rights of review under this Article, the issuance of or failure to issue any decision under this Article, or the grant of or failure to grant any waiver under this Article.

ARTICLE XII

LEASING OF RESIDENCES

1. Declarant reserves the right to lease any and all of the Lots owned by Declarant subject only to the provisions of this Article.

2. No Lot Owner shall be permitted to lease his Lot unless such Lot Owner has complied with the relevant provisions of this Declaration, the Bylaws and any applicable Rule and Regulation of the Association. All leases must be in writing for a term not to be less than one (1) year and approved by the Association, which approval shall not be unreasonably

withheld. All leases shall provide that the lessee shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association, as may from time to time be promulgated by the Board of Directors. The leasing of a Lot shall not affect the liability of the Lot Owner with respect to his or her obligations under this Declaration, the Bylaws and such Rules and Regulations. The provisions of the first two sentences of this paragraph shall not apply to the holder of a first mortgage lien on a Lot who acquires title thereto.

3. In the event the Lot Owner shall fail to pay any Assessment levied by the Board of Directors against a leased Lot, and such failure to pay continues for ten (10) days, the Board of Directors shall so notify the lessee of such Lot in writing of the amount due and, within fifteen (15) days after the date of such notice, the lessee shall pay to the Association the amount of such unpaid Assessment, subject however to paragraph 4 of this Article. The amount of such unpaid Assessment paid to the Association by lessee after the nonpayment by the Lot Owner shall be credited against and shall offset the next monthly rental installment due to the Lot Owner following the payment by the lessee of such Assessment to the Association.

4. In no event shall the lessee be responsible to the Association for any amount of unpaid Assessment during any one month in excess of one monthly rental installment.

5. The inclusion of paragraphs 3 and 4 of this Article in a lease or addendum to a lease for the rental of a Lot shall be a condition precedent to the approval of such lease by the Board of Directors.

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ARTICLE XII

INTERPRETATION

This Declaration shall bind all Lots in the Property owned by Declarant on the date on which this Declaration is recorded and all other Lots in the Property as to which the owners thereof have joined in this Declaration by separate writing.

ARTICLE XIII

MISCELLANEOUS

(1) Any notice required to be sent to Declarant or Owner under the provisions of the Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as the record Owner of the Lot at the time of such mailing.

(2) All reference herein to the masculine shall be deemed to include the feminine or neuter genders, and vice versa, as appropriate. All reference herein to the singular shall be deemed to include the plural, and vice versa, as appropriate.

(3) This Declaration shall run with the land and shall be binding upon Declarant, its successors and assigns, all Owners and their respective lessees, mortgagees, invitees and licensees.

[signature page follows]

IN WITNESS WHEREOF, the said Jeffrey B. Stover, Managing Member of Eagle Land, L.L.C., has caused his hand and seal to be hereunto set the day and year first above written.

SEALED AND DELIVERED IN THE PRESENCE OF:

EAGLE LAND, L.L.C., a Delaware limited liability company

Donna H. Pody
Witness

By: Jeffrey B. Stover [SEAL]
Print Name: Jeffrey B. Stover
Title: Managing Member

STATE OF DELAWARE)
) SS.
COUNTY OF New Castle)

BE IT REMEMBERED, that on this 24th day of November, 2004, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Jeffrey B. Stover, Managing Member of Eagle Land, L.L.C., a Delaware limited liability company, party to this Declaration, known to me personally to be such, and acknowledged this Declaration to be his act and deed and the act and deed of said limited liability company as duly authorized by that entity.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Donna Helen Pody
Notary Public
Print Name: Donna Helen Pody
Date Commission Expires: Oct 9 2006



EXHIBIT "A"

All that certain tract, piece or parcel of land with no improvements thereon erected, situated in the Town of Smyrna, Kent County, State of Delaware, lying on the northwesterly side of Glenwood Avenue between Myrtle Street and Delaware Route No. 6; being bounded on the northeast by Eagles Chase Subdivision and lands of Flora R. Savage; on the east by the northwest end of Myrtle Street, lands of Ronald I. Fretz and lands of Infante LLC c/o Bulldozer's Saloon; on the southeast by Glenwood Avenue, lands of Rachel B. Lane, Lands of Carl A. Van Hekle, III, lands of Myrtle Lebel and lands of Anna Caldwell; on the south by lands of Dee A. Watson and Edith D. Hoskinson; and on the west by lands of the Smyrna Special School District, separated there from by the center of the run of Green Branch; and being more particularly described in accordance with an Overall Subdivision Plat of Eagle's View Subdivision, prepared by Becker Morgan Group, Inc., dated December 5, 2003 and last revised August 12, 2004, and recorded in the Office of the Recorder of Deeds, in and for Kent County, Delaware, in Plot Book 74, Page 91, as follows to wit:

Beginning at a pipe (disturbed) in the westerly line of Glenwood Avenue at a corner for this parcel and for lands of Infante, LLC, said point of beginning being South 52° 45' 00" West, a distance of 296.00' from the intersection of the south right-of-way line of Myrtle Street with the westerly right-of-way line of Glenwood Avenue; thence running from said point of beginning with the westerly right-of-way line of Glenwood Avenue South 52° 45' 00" West, a distance of 200.67 feet to a found pipe at a corner for this parcel and lands of Rachel B. Lane c/o Rachel Shaw, thence with said lands of Lane North 37° 15' 00" West, a distance of 295.00 feet to a point at a corner for this parcel and lands of said Lane; thence turning and running with in part lands of said Lane, in part with lands of Carl A. Van Hekle III and in part with lands of Myrtle Lebel South 52° 45' 00" West, a distance of 296.05 feet to a found pipe (disturbed) at a corner for this parcel and in line with the lands of Anna Caldwell, thence turning and running with said Caldwell lands the following three (3) courses and distances:

- 1) North 37° 15' 00" West, a distance of 135.60 feet to a found pipe; thence
- 2) South 52° 45' 00" West, a distance of 54.00 feet to a point; thence
- 3) South 37° 15' 00" East, a distance of 430.60 feet to a found pipe in the westerly right-of-way line of Glenwood Avenue; thence with the westerly right-of-way line of Glenwood Avenue South 52° 45' 00" West, a distance of 50.00 feet to a found concrete monument (disturbed) at a corner for this parcel and the lands of Dee A. Watson, Jr.; thence running in part with said Watson, Jr. and in part with lands of Dee A. Watson North 37° 15' 00" West, a distance of 430.60 feet to a point, thence continuing with said Watson South 52° 45' 00" West a

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distance of 200.00 feet to a point at a corner for this parcel and in line with lands of Edith D. Hoskinson, thence turning and running with said Hoskinson North 37° 15' 00" West, a distance of 373.12 feet to a point in the center of Greens Branch, in line with lands of Smyrna Special School District; thence by and with the center of Greens Branch on the following twenty-one courses: 1) North 24° 09' 59" East, 105.16' 2) North 03° 27' 55" East, 100.13'; 3) North 06° 49' 10" East, 30.00';

4) North 74° 26' 20" West, 41.83'; 5) North 21° 18' 58" West, 36.51';
6) North 38° 05' 33" East 46.80'; 7) North 26° 05' 55" East 61.05';
8) South 87° 21' 52" East, 32.98'; 9) North 13° 41' 53" East, 77.10 feet;
10) North 14° 57' 12" East, 100.05'; 11) North 14° 01' 45" East, 65.07';
12) North 16° 22' 52" East, 77.13'; 13) North 53° 17' 45" East, 81.39';
14) North 61° 04' 53" East, 84.08'; 15) South 84° 05' 33" East, 80.48';
16) North 32° 46' 48" East, 28.78'; 17) North 02° 35' 31" East, 46.84';
18) North 24° 19' 11" West, 20.52'; 19) North 32° 12' 04" East, 51.42';
20) North 22° 56' 34" East, 69.45'; 21) North 26° 58' 42" East, 55.77 to a corner in the center of Greens Branch for this parcel and lands of Town of Smyrna; thence turning and running in part with lands of Town of Smyrna, in part with Eagles Chase Subdivision and in part with the south end of Green's Branch Lane right-of-way South 52° 41' 56" East, a distance of 248.37 feet to a point at a corner of this parcel and the southeast corner of Green's Branch Lane right-of-way, thence turning and running with Eagles Chase Subdivision the following two courses 1) South 29° 18' 04" West, a distance of 20.00 feet to a point; thence 2) South 60° 47' 56" East, a distance of 288.15 feet to a found iron bar at a corner for this parcel and for lands of Flora R. Savage; thence with said lands of Savage South 37° 15' 00" East, a distance of 372.42 feet to a found pipe in line with said lands of Savage and at the northwest corner of the west end of Myrtle Street right-of-way, thence turning and running in part with the west end of Myrtle Street right-of-way and in part with lands of Ronald I. Fretz South 52° 45' 00" West, a distance of 198.00 feet to a found pipe; thence continuing with said lands of Fretz South 37° 15' 00" East, a distance of 225.00 feet to a corner for this parcel and in line with lands of Infante, LLC, turning and running with said Infante, LLC, the following two courses 1) South 52° 45' 00" West, a distance of 148.00 feet to a found pipe; thence 2) South 37° 15' 00" East, a distance of 200.00 feet to the point and place of beginning.

EXCEPTING THEREOUT AND THEREFROM the residual lands of Eagle Land, LLC being more particularly bounded and described as follows, to-wit:

All that certain tract, piece or parcel of land with no improvements thereon erected, situated in the Town of Smyrna, Kent County, State of Delaware, lying on the

northwesterly side of Glenwood Avenue between Myrtle Street and Delaware Route No. 6; being bounded on the northeast by lands now or late of Anna Caldwell and the southwesterly right-of-way of Arctic Lane; on the northwest by the southerly right-of-way of Arctic Lane; on the southwest by Eagle's View Subdivision and lands now or late of Dee A. Watson; on the southeast by the northwesterly right-of-way of Glenwood Avenue; and being more particularly described in accordance with an Overall Subdivision Plat of Eagle's View Subdivision, prepared by Becker Morgan Group, Inc., dated December 5, 2003 and last revised August 12, 2004, and recorded in the Office of the Recorder of Deeds, in and for Kent County, Delaware, in Plot Book 74, Page 91, as follows to wit:

Beginning at a point on the easterly property line for this parcel and at a corner of the lands now or formerly of Anna Caldwell, said point of beginning being South $52^{\circ} 45' 00''$ West, a distance of 441.72 feet from a concrete monument to be set at the westerly end of a 25 foot radius junction curve joining Summer Drive and Arctic Lane right-of-way lines, thence running from said point of beginning with said lands of Caldwell South $37^{\circ} 15' 00''$ East, a distance of 430.60 feet to found pipe at a corner for this parcel and in line with northwesterly right-of-way of Glenwood Avenue; thence turning and running with said right-of-way line South $52^{\circ} 45' 00''$ West a distance of 50.00 feet to a found concrete monument (disturbed) at a corner for this parcel and said lands of Watson; thence turning and running with said lands of Watson North $37^{\circ} 15' 00''$ West, a distance of 430.60 feet to a point at the corner of said lands of Watson and Eagle's View Subdivision and common open space; thence continuing along the line of common open space with said lands of Eagle's View Subdivision Lot 25 to a point in the southerly line of Winter Lane (50' wide right-of-way) North $37^{\circ} 15' 00''$ West, a distance of 95.00 feet to a point at a corner for this parcel in line with the southerly right-of-way of Arctic Lane; thence turning and curving to the left on the arc of a circle having a radius of 150.00 feet an arc distance of 85.31 feet (having a chord bearing of South $73^{\circ} 50' 43''$ E, a distance of 84.16') to a concrete monument to be set at a corner for this parcel and the southerly right-of-way of Arctic Lane; thence turning and running with said lands of Eagle's View Subdivision common open space South $37^{\circ} 15' 00''$ East, a distance of 30.38 feet to the point and place of beginning and containing 0.56 acres of land, to be the same more or less.